

stand he must pay in so much of the purchase money as may be rateably due to other creditors under s. 295 on account of their money decrees.

MADDEN
v.
CHAPPANI.

If he will neither elect a resale nor pay the money into Court as above limited, such refund may be enforced either by suit or by an order in execution proceedings by way of restitution. Clause 3, s. 294, of the Code of Civil Procedure is applicable only to cases in which the purchaser buys without the permission of the Court, and there is no other provision in the Code which authorizes the Court executing the decree of its own motion to order a resale by reason of non-compliance with a direction to refund.

We, therefore, answer the question referred to us as follows :— The Court executing the decree has no power to order the purchaser to pay the whole of the purchase money into Court, but it is competent to the Court to give him the option of electing a resale, and if he does not avail himself of that option, it is open to the Court to order him to pay into Court so much of the price as is due to the other decree-creditors entitled to share rateably in the distribution of the assets, and to enforce that order by summary process in execution. The Court is also at liberty, where it sees fit, to refer the execution-creditor or creditors to a regular suit when the circumstances of the case appear to render such a course desirable.

There will be no order as to costs in the matter of this reference.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

KHADAR KHAN, IN RE.*

Cattle Trespass Act I of 1871, s. 22—Compensation.

1887.
Dec. 15.

No appeal lies against an order made under s. 22 of Act I of 1871.

CASE referred under s. 438 of the Code of Criminal Procedure, by A. F. Cox, Acting Sessions Judge of Cuddapah.

The facts of the case as stated by the Judge were as follows :—

One Khadar Khan was ordered by a Second-class Magistrate to pay Rs. 35 as compensation under s. 22 of the Cattle Trespass

* Criminal Revision Case 467 of 1887.

KHADAR
KHAN,
in re.

Act. Khadar Khan appealed, and the Joint Magistrate admitted the appeal and reversed the order treating it as a conviction. The Sessions Judge was of opinion that no appeal lay (Weir, p. 676, ed. 3).

Khadar Khan in person.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

JUDGMENT:—We are of opinion that no appeal lay against the order of the Second-class Magistrate made under s. 22 of Act I of 1871. We set aside the order made by the Joint Magistrate in appeal, and restore the order of the Second-class Magistrate.

ORIGINAL CIVIL.

Before Mr. Justice Kernan.

1888.
April 20.

OUCHTERLONY AND OUCHTERLONY AND OTHERS,

BY REVIVOR

ADMINISTRATOR-GENERAL OF MADRAS AND WAPSHARE
AND OTHERS.*

*Trust—Improvements of estate—Rights of tenant for life and remainder man
as to sums expended.*

A testator conveyed his property which consisted of extensive coffee estates to trustees upon trust as to part thereof for certain persons for life and then upon trust for their children absolutely. A suit having been filed for the administration of the trusts of the will a receiver was appointed. On the application of the receiver, and with the consent of all parties, the Court sanctioned the extension of the estate. This was done by raising a loan on pledge of the profits of the estate, out of which, when realised, the loan was paid off. By the will, the trustees were empowered to raise money for the purpose of managing the estate at their absolute discretion, either by using the profits, or by pledging or selling the corpus. The tenants for life claimed that the loan might be declared a charge on the estate :

Held, that the extension was within the powers of the trustees, but that as between the life-tenants and the remainder men, the former were entitled to have the sums expended on the improvements charged on the corpus, they keeping down the interest.

THIS suit was filed in 1878 for the administration of the trusts under the will of James Ouchterlony. The plaintiff and defendant No. 1 were the surviving sons of the testator, and the other defendants were his two daughters and his daughter-in-law and

* Civil Suit No. 298 of 1878.