Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Sayad Mir Ujmudin Khan Valad Mir Kamrudin Khan v. *Zia-ul-Nissa Begam and another (two consolidated Appeals), from the High Court of Judicature at Bombay; delivered March 27th,* 1879.

Present:

SIR JAMES W. COLVILE.
SIR ROBERT J. PHILLIMORE.
SIR MONTAGUE E. SMITH.

THE question in this Appeal regards the succession to one Amir-ul-Nissa Begam who died in 1857. The short history of the case is this: Afzaluddin, who was the last recognised Nawab of Surat, died on the 8th August 1842. He left two wives, Amir-ul-Nissa Begam and Padsha Begam. He also left a daughter, Bakhtiar-ul-Nissa Begam, whom we may take for the purpose of this decision to have been born on the 13th March 1821, some four years before the marriage of Afzaluddin with Amir-ul-Nissa Begam. Bakhtiar-ul-Nissa Begam had been married in her father's lifetime to Mir Jafir Aly, and the issue of that marriage was two daughters, the Respondents. Immediately after the death of the Nawab in 1842 there arose considerable discussion regarding the right of succession to him, and there was a contest before one of the Government officers, Mr. Elliott, on that subject. No final decision, however, appears to have been come to until after the passing of Act XVIII. of 1848, which placed the administration of the estate of the late Nawab at the disposal of the Governor of

L 346. 125.—4/79. Wt. B 30. E. & S.

Bombay in Council, leaving to them to determine who were entitled to succeed. Their course of action under that Act was to refer the matters in dispute in the first instance to Mr. Frere, the then agent in Surat. A question as to the status of Amir-ul-Nissa Begam was raised before him, it being alleged that she had been a purchased slave of Afzaluddin, that while she was in that state the daughter Bakhtiar-ul-Nissa Begam was born, and that four years after the birth of Bakhtiar-ul-Nissa the Nawab, having shortly before the ceremony emancipated her, had married her. This case was then put forward in order to meet the question raised whether, according to Mohammedan law, Bakhtiar-ul-Nissa Begam could take any share in her father's estate. As the daughter of a concubine who was a slave girl, she would have been entitled to do so, whereas as the illegitimate daughter of the Nawab by a free woman she might not be. She, therefore, and her husband, who acted for her, were then interested in making out that Amir-ul-Nissa Begam had been a slave, whilst the residuaries, who are now represented by the Plaintiff and Appellant, were interested in maintaining the contrary. Mr. Frere, without deciding anything as to the status of Amir-ul-Nissa Begam, but proceeding very much upon the special power that belonged to the Nawab, and the acts of recognition on his part of Bakhtiar-ul-Nissa Begam as his daughter, and Amir-ul-Nissa as his wife, reported that the succession was to be divided as follows, viz.: that one sixteenth was to go to Amir-ul-Nissa Begam; another sixteenth, making up the eighth to which the widows are entitled under Mohammedan law, was to go to Padsha Begam, the other widow; that Bakhtiar-ul-Nissa Begam was to take the share to which she would be entitled as legitimate

daughter, namely, eight sixteenths, or one half; and that the remaining six sixteenths were to be divided between Mir Moinooddin Khan and his brother Mir Kamrooddin, two distant relatives of the Nawab, who filled the character of residuaries according to Mohammedan law. It is, of course, impossible to go behind the finding of Mr. Frere which was adopted and confirmed by the Governor in Council, and must be assumed to have determined once and for all the succession of Afzaluddin. Bakhtiar-ul-Nissa Begam died in 1845 in her mother's lifetime. Amir-ul-Nissa did not die until 1857, and it is conceded that, but for the question that has been raised in this suit, the Respondents, her two granddaughters, would be her only ascertainable heirs. Kamrooddin also died in the lifetime of Amir-ul-Nissa Begam.

In this state of things, and a good many years after the death of Amir-ul-Nissa Begam, the present suits were instituted by one Fatma-ul-Nissa Begam, who claimed to be the sister and heiress of Moinooddin, who, though he had survived Amir-ul-Nissa Begam, was then dead; and the title put forward was that according to the law of Willa, which has been very ably and clearly expounded at the Bar, the person entitled to succeed and take the property of which Amir-ul-Nissa Begam died possessed, or to which she was entitled, was Moinooddin, as the male heir of Afzaluddin, who was the emancipator of Amir-ul-Nissa Begam, to the disherison of her own natural heirs.

A number of issues were settled in the suit, with many of which it is unnecessary to deal. The principal one, and that upon which both the Courts below have decided against the Plaintiff in the suit, and in favour of the Respondents, was that by Act V. of 1843 this right, which was the foundation of the claim

of Moinooddin, or of his representative Fatma, was taken away, and it is to that question that their Lordships propose on the present occasion to address themselves. In order to try that question they must, of course, assume that the status of Amir-ul-Nissa Begam was that which the Plaintiff represented it to have been, namely, that having been originally a Rajpoot girl who had been converted to Mohammedanism, she was brought into the zenana of the Nawab as his purchased slave; that she was the mother, whilst still a slave, of Bakhtiar-ul-Nissa by him; and that on the day previous to the celebration of the nikah marriage, by which she became his wife, he had emancipated her. It must also be assumed, that the Willa rule of the Mohammedan law is such as Mr. Scoble has shown it to be upon the authorities which he cited. The question now to be decided is, whether the Act in question prevents the application of that rule of law, and entitles those parties who but for it would have succeeded to their grandmother, as her natural heirs, to take the inheritance. Each of the Courts below has adopted a view of the operation of the Act favourable to the Respondents, though not precisely upon the same grounds. The Subordinate Judge says: "This Act was passed to declare and "amend the law regarding the condition "of slavery within the territories of the East "India Company; and section 3 runs as "follows:—'No person who may have ac-"'quired property by his own industry or by "'inheritance shall be dispossessed of such pro-"'perty or prevented from taking possession "'thereof, on the ground that such person or "'that the person from whom the property may "'have been derived was a slave.' Now in the "present case the Plaintiff alleges that had Amir-"ul-Nissa been a free woman the Defendants

" would have been her heirs, but because she was " a slave her property goes to her master's rela- " tives. The section appears to me clearly to " apply to such a contention." He then discusses Mr. Baillie's view of the effect of the Statute, as expressed in Book IV. of his Digest of Mohammedan Law, and refers to the absence of any discussion on the subject before Mr. Frere, when indeed the question had not arisen, and ends by saying: " I think then that " the plea that Amir-ul-Nissa's property must " go to her husband's relations instead of to " her own grandchildren because though subse- " quently emancipated and married she was " originally a slave is one which the Court " cannot entertain, and that the claim is on this " ground inadmissible."

The High Court say on this subject, " We think " that Act V. of 1843 deprived the Plaintiff of " any right to bring this suit. Amir-ul-Nissa " died in 1857 when that Act was in full force. " We think that the effect of that Act was to " prevent the enforcement of any rights which " would, if that Act had not been passed, have " arisen out of the status of slavery. The right " claimed by the Plaintiff rests solely upon the " alleged fact that Amir-ul-Nissa had been at " one time the slave of the late Nawab. He is " said by the Plaintiff to have enfranchised " Amir-ul-Nissa; and on the authority of " 1 Baillie's Digest, 386, 387, and 3 Hidaya, 444, " 445, it is contended that he, as her emancipator, " or, he being dead, his nearest male relative, or " in default of him, that male relative's heir " would be her heir, and that neither her daughter " nor the Defendants who are that daughter's " daughters are so. That right, if it ever " existed, is in our opinion one arising out of " an alleged property of the late Nawab in " Amir-ul-Nissa's person and services before he

" enfranchised her, and as such is one of the " rights which every Civil Court in British " India is prohibited by section 2 of Act V. of " 1843 from enforcing. We are not prepared to " say whether this case would not also come " within the prohibition in section 3 of the same " enactment."

The High Court then proceeded mainly upon the 2nd section, and the Subordinate Judge upon the 3rd section of the Act. In their Lordships' opinion both sections point to the conclusion that it was the general intention of the Legislature in passing this Act to relieve all persons then subject thereto from all the disabilities arising out of the status of slavery; and without saying whether the 2nd section of the Act is sufficient of itself to dispose of the claim in this suit, they have come to the conclusion that the 3rd section at least has that effect.

The section runs thus: " And it is hereby " declared and enacted, that no person who " may have acquired property by 'inheri- " tance' shall be dispossessed of such property " or prevented from taking possession thereof, " on the ground that such person from whom " the property may have been derived was a " slave." Various arguments have been addressed to their Lordships as to the non-applicability of this enactment to the present case. It was first said that to apply it to this case would be to give a restrospective effect to the Act, in violation of the well-known rule of construction. Their Lordships cannot accede to that argument. The Act was in force at the time of the death of Amir-ul-Nissa; and the question who is entitled to succeed to her property is determinable by the law as it stood when the succession opened. Their Lordships cannot recognise any vested interest said to have been acquired previous to the passing of the Act by the unascertained

persons who might at her death be the then residuary heirs of her husband; or admit that her husband, by the act of emancipation, acquired a vested right which the Statute could not except by express and retrospective words take away. One of his residuary heirs died before the widow, and it is not contended that any interest vested in him. The whole right, if any, which can be asserted under the Willa rule of law is treated as having been in Moinooddin when Amir-ul-Nissa died. If he too had died in her lifetime, the right could not have been asserted by his sister and heiress, the Plaintiff in the suits. It would have been in some more distant male relative of the Nawab.

It was further contended that the Respondents cannot claim the benefit of the Statute, inasmuch as they are not persons "who may have acquired property by inheritance," and that the words are to be construed by the Mohammedan law, which gives the property to a preferable class of heirs, viz., the heirs of the husband, the emancipator. This argument seems to their Lordships to reduce the clause to a nullity. They conceive that the words must be taken to include any persons who would have acquired a title to property by right of inheritance, but for some obstacle arising out of the status of slavery.

It was argued by Mr. Doyne that in all probability the Legislature had not its mind directed to this somewhat obscure branch of Mohammedan law, and that the section must be taken to apply only to cases in which the person from whom the property is inherited was at the time of his death a slave; but if the third section were to be taken subject to the old Mohammedan law, the master in such a case would be entitled to take the property of the slave; and the son of the slave, or the other

natural heirs of the slave could not be said to be persons "who may have acquired property by inheritance." The clause upon this construction of it would have no meaning or operation.

Their Lordships cannot accede to the general proposition of Mr. Doyne that the operation of the Statute or of this particular section in it is to be confined to the property of persons who at the time of their death were slaves. They are of opinion that in construing this remedial statute they ought to give to it the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied, and falls within the language of the enactment. They find it impossible to say that this is not the case in the present instance.

They have already intimated their opinion that the general scope and object of the Statute was to remove all the disabilities arising out of the status of slavery. The rule of Willa whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator of the emancipated was not less such a disability, than the rule of law whereby the natural heirs of an unemancipated slave were excluded by his master or his heirs. As to the language of the Act, the question which arises upon the first words of the section has been already dealt with; but a further argument has been founded upon the words "that the person from whom the property may be derived *was a slave.*" The words are not "was a slave at the time of his or her death," and the term may well be taken to apply to any person who had at any time been a slave. Putting this interpretation upon the Statute, their Lordships think that it is sufficient to dispose of this Appeal without going into any of the other questions raised either of law or of fact, and they will therefore

humbly advise Her Majesty to affirm the decision under Appeal, and to dismiss this Appeal with costs.