before held, and decreed to those now claiming them. There was nothing produced on the part of appellant to shew any subsequent transfer, or right of present occupation; and a judgment was passed accordingly in favor of respondents. This, on the same grounds, is affirmed; with costs chargeable to appellant.

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[18] *The 17th January*, 1848.

PRESENT: R. H. RATTRAY, ESQ., *Judge*, W. B. JACKSON, ESQ., *Temporary Judge*, AND E. CURRIE, ESQ., EXERCISING THE POWERS OF A JUDGE.

CASE NO. 199 OF 1847.

Regular Appeal from a decree passed by the Judge of Purneah, Mr. D. Pringle, February 27th, 1847.

SYUD MOHUMMUD REZZA AND SYUD AHMUD REZZA, *Appellants* (*Defendants with others*) *v.* SYUD INAIT REZZA *alias* SYUD MEERUN, *Respondent* (*Plaintiff*).

[*Mahomedan Law—Paternity—Son of slave girl—Acknowledgment by father.*

Acknowledgment of the plaintiff, as his son, by the deceased is sufficient proof of plaintiff's paternity; though plaintiff was born to a slave girl, he is entitled to an equal share with other sons born of any other wife.]

Wukeel of Appellants—Hamid Rusool.

Wukeel of Respondent—None, nor present in person.

THIS suit was instituted by respondent, on the 23d June 1845, to recover from appellants a 4 *annas'* share of the estate of Syud Hosein Rezza, deceased, with mesne profits: the whole estimated at Company's rupees 1,83,932-6-1.

The following is the decree appealed against:—

'This is a claim to succeed to a fourth share of the property, real and personal, of Syud Hosein Rezza, late proprietor of a moiety of *pergunnah* Soorjapore: laid with mesne profits, at 1,83,932 rupees, 6 *annas*, and 1 *pie*.

'The plaint sets forth, that, on the 27th *Kartik* 1252, Syud Hosein Rezza, father of the plaintiff, (respondent) died, leaving, as heirs, his widow Soorut Jehan, and three sons, Mohummud Rezza, Ahmud Rezza and plaintiff, with one daughter, Kuneez Fatima; that on this, the defendants, with the exception to the last, having forcibly possessed themselves of the property and effects, plaintiff made application to the civil court under Act 19 of 1841, to be protected against such usurpation; in which though he duly established his title, his claim was unjustly set aside in favor of the above defendants: plaintiff and remaining defendant being referred to a regular suit. Since which time every unworthy means has been used for defeating plaintiff's just claim, which he thus brings forward, in accordance with the *ferœz*, as established for such succession.

[19] 'To this, defendants, Mohummud Rezza and Ahmud Rezza, reply: *firstly*, that plaintiff is no son of the deceased; *secondly*, that they, with Soorut Jehan, his widow, are his only representatives, and, consequently, entitled to succeed him; who, it is added, neither possessed nor desired any consort save the ranee, so that it is impossible the plaintiff could have so sprung from him; *thirdly*, that this was determined by the enquiry, under Act 19 of 1841, in which only the usual order issued, referring parties dissatisfied to a regular suit; *fourthly*, that the schedule of the property, then made, shews its estimate by plaintiff

to be excessive; *fifthly*, that the including Kuneez Fatima in the suit, as a daughter of the deceased, is only done in collusion with the said defendant; *sixthly*, that plaintiff should have named his mother; who she was, and when married to the deceased; and should have stated the time of his own birth; and that he would find it hard to name his grandfather.

'Soorut Jehan, in reply, affirms, that she was the only consort the deceased ever had, who used always to disclaim all relationship with the plaintiff.

'Kuneez Fatmia replies, that she should not be included, as it is clear from the plaint, that the foregoing defendants were alone admitted to succeed, by the summary award under Act 19 of 1841.

'The plaintiff, in replication, affirms his mother to have been duly married to the deceased; but contends that proof to this fact, after so long a time (should) not be required of him: his father being likewise dead; though he was brought up by them as their child, and a marriage thus contracted for him with the daughter of Rajah Akbur Hosein.

'The following proofs are adduced by him in support of his allegation:

'The reply of the deceased appellant, in the suit of Ameerun Nissa, before the Sudder Dewanny Adawlut, in the course of which he states, that two years after the death of Rajah Akbur Hosein, the ranee, mother of the respondent, (in that suit) formed an alliance between his son, Mean Meerun, whom, from the time of his birth, she had cherished, and her daughter. The evidence of witnesses taken in that suit; one of whom, in reply to a question, stated, that Ameerun Nissa was the daughter of Rajah Akbur Hosein; another that the Mean Meerun was Ranee Zuhoorun Nissa's brother's son; and when asked to name him, replied 'Hosein Rezza'; a third, that Mean Meerun was Hosein Rezza's progeny.

'There is next the evidence of the principal sudder ameen of this district, taken in the enquiry under Act 19 of 1841, who deposes to having heard that plaintiff was Hosein Rezza's son, and to his being married to a daughter of Rajah Akbur Hosein by his second wife; also that he put the question to Hosein **[20]** Rezza, on an occasion referred to, who replied in an angry tone, 'a slave, a slave'; on which witness checked him, saying, 'why thus injure your son by calling him a slave, he is your very picture;' that this was a long time ago, but he should think, subsequent to the decree given in favor of plaintiff's wife against Hosein Rezza.

'Of the remaining witnesses then examined, though no one was present at the marriage of the plaintiff's mother, yet all bear testimony, in the clearest manner, to the acknowledgment by the deceased of plaintiff as his son. One of these is an indigo planter of respectability.

'Of six witnesses, whose evidence is now taken, four depose to the marriage; two, to a like recognition of the plaintiff by the deceased.

'On the part of the defendants, there is the evidence of nine witnesses, who state, the plaintiff is known only as the son of Kunto Gholam and Bhooda Bhatim; and who likewise declare, that Kuneez Fatima is no daughter of the deceased, nor Ameerun Nissa of Akbur Hosein: some of them stating that the said Kunto Gholam is dead, while others are unable to speak to this.

'As reference has been made by both parties to the order issued from this court in the summary enquiry, instituted under Act 19 of 1841, I subjoin it as there recorded:—'The object of Act 19 of 1841, as stated in the title, being, to afford protection against *wrongful* possession, and, as further set forth in the preamble, to prevent the misappropriation of property so circumstanced, by ascertainment of its precise nature; and its operation being restricted by section 1, to cases in which *material prejudice* would be done to the party seeking redress by referring him to a regular suit, while, by section 3, there must

further exist strong reasons for supposing that the party in possession has *no legal title*, to warrant such summary interference, it is clear, that, if any such title be admitted, the court cannot under this Act interfere to declare its extent, far less to eject its possessor : and as no material prejudice would in this case be done the applicants, by referring them to a regular suit,—the interest of the parties in possession affording sufficient security against such,—no order will be given to take security from them, for which the Act does not provide, after determination of the summary suit ; only, that an inventory be made of the remaining personal property of the deceased, and the application of the petitioners dismissed.'

'The question here at issue, is, whether plaintiff be the son of the late Hosein Rezza, legally begotten, or no. In support of which, there is the declaration of parentage, contained in the answer in the suit before the Sudder Dewanny Adawlut above referred to, with the evidence then taken establishing the fact. This [21] was made ten years ago, and is conclusive by Mohummudan law in evidence of marriage, as laid down in Macnaghten (pages 297 to 303) such avowal having nowhere been retracted ; the reply of the deceased to the principal sudder ameen being only evasive; and no other party claiming to stand in the like relation.

'The evidence in the summary enquiry, and in this suit, though in value inferior to that delivered at the period just referred to, is no less distinct in support of both allegations. To this there is to be added, the fact of the marriage of the plaintiff to the daughter of Akbur Hosein, nowhere disputed ; though wholly irreconcileable with the supposition of his spurious origin. That the deceased discontinued the intercourse with his son, after losing the said law suit, the same evidence goes to establish ; though this, it is apparent, in no wise affects the plaintiff's title to be so considered.

'To rebut proofs so conclusive, there is nothing whatever on the part of the defendants, whose witnesses are obviously suborned ; a circumstance that need excite no surprise, when the character of certain of the parties so included, is taken into consideration, as exhibited in a more recent attempt to defraud another of the co-heirs in a case before this court. It only remains to award the plaintiff the share of the estate here claimed ; the amount of the personalty to be determined by the schedule prepared by the court's officer on the demise of Hosein Rezza.'

The grounds of the present appeal were, without any material addition, those taken in the lower court in opposition to plaintiff's claim. The principal objection was, that plaintiff was not the son of Hosein Rezza, by a married wife ; but we find, that in the answer of Hosein Rezza, in the case No. 176, decided on the 12th June 1847, Hosein Rezza acknowledged him as his son ; and though he afterwards added, that he was his son by a slave girl, this does not affect plaintiff's right to inherit. It appears from Macnaghten (page 85, case 4) that 'all the children of a person deceased, whether they are the offspring of a slave girl, or a free married women, are, without distinction, entitled to succeed to their respective shares, according to the law of inheritance.' It is added, that 'to establish the parentage of children by slave girls, it is necessary that the father should acknowledge them, &c.' In the present case, the acknowledgment had been publicly made ; and of the right to succeed, no doubt can exist.

It remains only to determine, what is the share to which the plaintiff is, by inheritance, entitled. At the time this suit was brought, defendants were in possession of a moiety of *pergunnah* Soorjapore, lately held by Syud Hosein Rezza, as heir of his sister, Zuhoor-o-nissa, the widow of Rajah Akbur Hosein ; but by a decree of this Court, dated the 12th June 1847, after deducting $\frac{17}{216}$,

the share decreed to Deedar Hosein (brother of Akbur Hosein) of the *lakhiraj* and garden lands, 66 out of 120 shares, representing the [22] estate of Rajah Akbur Hosein, were assigned to the plaintiffs in that suit; 21 shares having been declared to be the right of Ranee Soomrun, the mother of the rajah: thus leaving 33 shares as the amount of the property devolving on Syud Hosein Rezza the father of the parties in this case, by inheritance from his sister.

We therefore modify the decision of the lower court, which decrees to plaintiff a fourth share of the moiety of the *pergunnah*; and adjudge to him one-fourth of the above mentioned $\frac{33}{120}$ shares, which remain as the inheritance of Syud Hosein Rezza, and one fourth of the whole of the property, movable and immovable, appertaining to his (the said Hosein Rezza's) estate.

Costs to be paid rateably, agreeably to the award.

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4 S.D.A.R. 22=7 Sel. Rep. 499.

The 17th January, 1848.

PRESENT: R. H. RATTRAY, ESQ., *Judge*, W. B. JACKSON, ESQ., *Temporary Judge*; AND E. CURRIE, ESQ., *Exercising the powers of a Judge.*

CASE NO. 239 OF 1846.

Special Appeal from a decision passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, December 6th, 1844; *reversing a decision passed by the Sudder Ameen, Sulamut Ali, November 25th*, 1843.

GUNPUT JHA, *Appellant (Defendant) v.* ANUND SINGH DAS, *Respondent (Plaintiff).*

[*Pre-emption—Plural sellers—Demand.*]

See the same case at p. 378, Vol. VIII, I.D.O.S.

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[23] *The 17th January*, 1848.

PRESENT: R. H. RATTRAY, ESQ., *Judge.*
W. B. JACKSON, ESQ., *Temporary Judge*; AND E. CURRIE, ESQ., *Exercising the powers of a Judge.*

CASE NO. 240 OF 1846.

Special Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, December 6th, 1844; *reversing a decision passed by the Sudder Ameen, Sulamut Ali, November 25th*, 1843.

GUNPUT JHA, *Appellant (Defendant) v.* ANUND SINGH DAS, *Respondent (Plaintiff).*

[See Head-note to 4 S.D.A.R. 22, *supra.*]

Wukeel of Appellant—E. Colebrooke.
Wukeel of Respondent—Gholam Sufdur.

THIS suit was instituted by respondent, on the 22nd December 1842, to obtain by purchase, in right of pre-emption, a half *anna* of a 1 *anna*, 13 *gundahs*, 1 *cowrie*, 1 *krant* share of *mouzah* Okahee *alias* Muheishpore, valued at Company's rupees 375.