1875.

TEJ RÁM v. HARSUKH.

matters of which it has not cognizance, but the High Court is not competent in the exercise of this authority to interfere and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact. It is true that some cases may be found in the reported decisions of other High Courts, in which it appears that Judges have claimed in virtue of the right of superintendence given them by the Statute to exercise larger powers than we believe are conferred by the provisions of that law, but the practice of this Court has accorded with the views expressed by us, and on the construction we put on the Statute we are not at liberty to disturb it.

The record will be returned to the Bench with this expression of our opinion.

BEFORE A FULL BENCH.

1875.
August 27.

(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, and Mr. Justice Spankie.)

DEBI PARSHÁD AND OTHERS (DEFENDANTS) *v.* THÁKUR DIAL AND OTHERS (PLAINTIFFS)*.

Hindú Law—Undivided Hindú Family—Inheritance.

When, in an undivided Hindú family living under the Mitakshara law, a brother dies without leaving issue, but leaving brothers, and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers, but on partition the whole estate, including the interest of the brother so dying, is divisible; and the right of representation secures to the sons or grandsons of a deceased brother the share which their father or grand-father would have taken, had he survived the period of distribution.

Madho Singh v. *Bindessery Roy* (1) over-ruled.

Durga, Bisheshar, Bhairo, and Ram Pargas were four brothers united in estate. Ram Pargas died leaving sons who were the plaintiffs in this suit. Then Durga and Bhairo died without issue. Finally Bisheshar died leaving sons who were the defendants in the this suit.

(1) II. C. R., N.-W. P., 1868, p. 101.

* Regular Appeal, No. 38 of 1875, from a decree of the Subordinate Judge of Benares, dated the 15th December, 1874.

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

The principal issue raised by the suit was whether the plaintiffs were entitled on partition to a moiety of the undivided immoveable estate of the family, or to one-fourth. The first Court held, having regard to the answers to the questions 3 and 4 given in p. 33, Bk. ii., West and Bühler's Digest of Hindú Law Cases, to *bywastha* No. 2, dated 5th July, 1860, *Bywasthas*, S. D. A., N.-W. P., vol. i., part i., and to the opinion of three of the Benares pandits whom it examined on the point, that the plaintiffs were entitled to a moiety of the estate.

The first plea taken by the defendants on appeal by them to the High Court impugned this ruling. With reference to that plea, the Court (Pearson and Spankie, JJ.) referred to the Full Bench the following question, *viz.* :—

"Whether, in a joint family property, two of four brothers dying without issue, their interest passed on their death to their surviving brother exclusively, or whether the sons of a brother who predeceased them are entitled to participate in it?"

The order of reference was accompanied with these remarks :—

Had Bhairo and Durga left separate estates, there can be no doubt that their surviving brother would have succeeded to them in preference to, and to the exclusion of, their nephews; and it is contended that the succession would not be different in a joint undivided family. The contention is supported by the decision of a Bench of this Court, dated the 25th February, 1868, in special appeal No. 1779 of 1867, at page 101 of the High Court Reports for 1868. The ruling of the lower Court in this case is opposed to that decision, but is supported by the answers to the questions 3 and 4 given in page 33, Bk. ii, West and Bühler's Digest, and by the opinions of the Benares pandits examined by the Subordinate Judge. Under the circumstances we think it expedient to refer the point in question for the consideration of a Full Bench.

Pandit *Ajudhia Náth* (with him Munshi *Sukh Ram*), for the appellants, contended that, on the death of a member of an undivided Hindú family, his estate devolved on his heirs. There is nothing in Hindú law to the contrary, and the pandits examined by the first Court are agreed in so stating. Although perhaps it cannot be said that any one member of an undivided Hindú family is the owner of any particular portion of the undivided estate,

still his share in it is capable of being defined and expressed. He may be the owner of one-half, or one-third, and so on. If, on his death, his estate devolves on his heirs, then the estate of a brother dying without issue devolves on his surviving brothers and their heirs, according to the rule of succession laid down in Mitakshara. If that rule does not apply, there is no other. If the lower Court is right, the death of a member of an undivided Hindú family alters the shares of the surviving members. Thus there would be no inheritance liable to obstruction, according to the definition of the term in Mitakshara, but a third kind of inheritance, *viz.*, one liable to alteration. It is true that the Privy Council has ruled in *Katáma Natchiar* v. *The Rájáh of Shivágunga* (1) that the members of an undivided Hindú family are entitled to the benefit of survivorship, but that is as against females. All the members are not entitled to participate in the estate of a deceased member—*Madho Singh* v. *Bindessery Roy* (2). There is no authority to show that the share to which a member of an undivided Hindú family has succeeded lapses on his death into the estate of the common ancestor. It would be impossible to say, where a family consisted of several branches, whether the estate of a deceased member lapsed into the estate of the ancestor of the branch to which he belonged, or into the estate of the common ancestor. A brother in an undivided Hindú family is preferred to a nephew—*Madho Singh* v. *Bindessery Roy*; *Brojo Kishoree Dassee* v. *Sreenath Bose* (3). The *status* of a re-united Hindú family and an undivided are the same. The rules of succession in a re-united Hindú family support the contention of the appellants.

Mr. *Mahmood* (with him Munshi *Hanúmán Parshád*) for the respondents—As to the *status* of an undivided Hindú family, see Norton's Leading Cases on Inheritance, part i, 173. In *Katáma Natchiar* v. *The Rájáh of Shivágunga* the Privy Council held that the property of an undivided Hindú family is subject to the benefit of survivorship. Again, in delivering the judgment of the Privy Council in *Appovier* v. *Rama Subba Aiyan* (4), Lord West-

(1) 9 Moore's Ind. App. 539. (2) H. C. R., N.-W. P., 1868, p. 101.
(3) 9 W. R. 463. (4) 11 Moore's Ind. App. 75.

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

bury said that no member of an undivided Hindú family could ascertain his share without partition, and that partition produced an effect upon the undivided estate of the family similar to the effect produced by the conversion of joint-tenancy into a tenancy in common. The respondents as coparceners with the appellants in an undivided estate are entitled to share *per capita*. It appears from the judgment in *Sudabart Prasad Sahu* v. *Foolbash Koer* (1) that the mere fact of birth entitles the sons of brothers united in estate to a right of coparcenership with their fathers and uncles. There are numerous rulings to the effect that, under Mitakshara, the son has rights of the same degree and quality as the father. In *Bhyro Pershad* v. *Basisto Narain Pandey* (2) it was held that, so long as an estate remains undivided, the share of a member of the coparcenery is so uncertain and undefined that he may be said to have only "a life interest in a common property." The deaths of Bhairo and Durga neither reduced the shares of the respondents nor increased those of the appellants. The nature of the possession of the parties remained the same, and their shares in the estate are equal shares. But taking another view, even if "the allotment of the shares is according to the fathers"—Mitakshara, ch. i, s. 5, v. 1,—the respondents are entitled to share *per stirpes*, that is, they are entitled to a moiety of the estate in dispute.—Norton's Leading Cases, part i, 299; part ii, 461; *Duljeet Singh* v. *Sheomunook Singh* (3). They stand in the same relation to the common ancestor as the appellants, and are entitled to the share which their father would have acquired on partition—Norton's Leading Cases, part ii, 463. So long as the estate remained undivided the share of Bisheshar could not assume a definite shape and descend to the appellants, or on the death of Durga and Bhairo their shares become definite and descend to Bisheshar.

The opinion of the Full Bench was as follows :—

To answer the question proposed to us it is necessary to consider the condition of a Hindú family in these Provinces while it remains undivided, and to inquire whether the same rules of succession apply while the members continue joint in estate, when they have separated and effected partition, and when they have re-united.

(1) 3 B. L. R. F. B. 31; s. c. 12 W. R. F. B. 1. (2) 16 W. R. 31.
(3) 1 S. D. Rep., 59; s. c. Morley's Digest, vol. i, 307,

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

Sir Thomas Strange in the ninth chapter (1) of his work on Hindú Law declares that "wherever a plurality of sons exists, the inheritance descends to them as coparceners making together but one heir" * * * "the deceased may have left, not only more sons than one, but brothers, as well as a widow or widows, and daughters, together with other dependants; and such sons and brothers may have their wives and children respectively; the whole having constituted in his lifetime, not so many coparceners indeed, in the proper sense of the term, but an undivided family. Or supposing him to have been a single man, with collateral relations only, their descendants and connexions, all living together in coparcenary, his death makes no difference in this respect among the survivors." If undivided at his death they still continue so in point of law, however appearances may indicate a different state. So long as they remain joint they offer one common sacrifice. "The religious duty of unseparated brethren is single,"—Nareda, quoted in Mitakshara, ch. ii, s. 12, v. 3,—until partition takes place.

In respect of property, whatever is acquired by the several members, with certain exceptions, falls into and becomes part of the common fund, and the expenses of all members are met from this common fund; no account being taken of excess in the expenditure of some over the expenditure of other members. This community of worship and property being the ordinary condition of a Hindú family, it is to be presumed that a Hindú family is undivided until the contrary is shown, and that the acquisitions of the several members form part of the common stock unless the acquirer, or those claiming under him, prove that it was acquired in such a manner as would, by the special provisions of the law, constitute it the sole property of the acquirer.

Moreover, "according to the true constitution of an undivided Hindú family, no individual member of the family, whilst it remains undivided, can predicate of the joint and undivided property, that he has a certain share."—*Appovier* v. *Rama Subba Aiyan* (2); while a Full Bench of the High Court of Calcutta has gone so far as to hold, in *Sadabart Prashad Sahu* v. *Foolbash Koer* (3), that under the

(1) On Partition, 4th ed. p. 198. (2) 11 Moore's Ind. App. 75. (3) 12 W. R. F. B. 1; s. c. 3 B.L.R. F. B. 31.

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

Mitakshara law one of the several members of a joint Hindú family cannot, without legal necessity, alienate any portion of the undivided ancestral property without the consent of the whole of the cosharers, and that such an alienation is not valid, even for the share to which the alienor would have been entitled on partition.

The condition of an undivided family being such as has been described, it is not unintelligible that rules may govern the distribution of the joint inheritance different from those which would regulate the devolution of separate property: and it has been ruled that in one and the same family different rules may govern the succession to the estate of a deceased member according to the nature of the different properties comprising it, whether it be joint or separate.—*Katáma Natchiar* v. *The Rájah of Shivágunga* (1).

The peculiar incidents of the joint property of an undivided family are survivorship and the right of representation. In the Shivágunga case above cited the Lords of the Privy Council declared that, "according to the principles of Hindú law, there is coparcenaryship between the different members of a united family, and survivorship following upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession" (2). It has been argued that this is a mere statement of the general rule, and that it does not necessarily follow from it that the benefit of survivorship extends to all and not only to some of the surviving members of the family. When once the principle of survivorship is admitted, it is difficult in the absence of express law to limit its operation. The principle of survivorship taking effect on the common fund, in which no one of the members of the family has any distinct share, operates not to augment the rights of any particular class of the coparceners but to enlarge the shares which upon partition would fall to the lot of every one of the members. In effect, by the operation of this rule the share to which a coparcener dying without issue would have been entitled does not pass by descent but lapses. The right of representation operates at the time of partition to secure an equal parti-

(1) 9 Moore's Ind. App. at p. 610. (2) at p. 611.

tion of the inheritance between the several sons of the common ancestor and the issue to the third generation of sons who have died leaving issue surviving the period of distribution, such issue taking *per stirpes* the share of their father or forefather.—"Should a younger brother die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather. That son's son shall receive his father's share from his uncle, or from his uncle's son, and the same proportionate share shall be allotted to all the brothers according to law. Or if that grandson be also dead his son takes the share; beyond him the succession stops". —Kátyáyana—cited in Vyavahára Mayúkha, ch. iv., s. 4, v. 21. "Although grandsons have by birth a right in the grandfather's estate equally with sons, still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue, and the number of sons be unequal, one having two sons, another three, and a third four, the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So if some of the sons be living and some have died leaving male issue, the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text"—Mitakshara, ch. i., s. 5, v. 2. "A grandson (D) whose father (B) is dead, and a great-grandson (F) whose father (E) and grandfather (C) are dead, participate equally in the inheritance with the son (A), for they without distinction confer equal benefits on the deceased owner of the property by the presentation to him of funeral offerings at solemn obsequies."— Dáya-Krama Sangraha, ch. i, s. 1, v. 3. Unless authority be shown to the contrary, these incidents of the joint estate of an unseparated Hindú family, survivorship and the right of representation, govern the case before us and determine the answer to be given to the question put to us. The fathers and uncles of the parties lived as an unseparated Hindú family in possession of an undivided estate. Assuming partition to be made now, there are living representatives of two sons only of the common ancestor, and equal partition being made

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

between the stocks, each stock is entitled to one moiety; but it is argued that, inasmuch as the father of the one line died before any of his three brothers, and the father of the other line died after two other brothers, who died without male issue, the shares of the brethren dying without male issue descended to the sole surviving brother and passed from him to his issue—to the exclusion of the line of the brother who died first—in other words, it is contended that the case is not to be governed by the law of survivorship, except so far as to exclude females, but that the shares of the deceased brothers passed to the surviving brother in virtue of the rule that, "in case of competition between brothers and nephews, the nephews have no title to succession, for their right of inheritance is declared to be on failure of brothers."—Mitakshara, ch. ii, s. 4, v. 8. No doubt, if this rule was intended not only to apply to the descent of the separate property of a brother but to operate on the share which he would have taken in the common property of the family had he survived the period of partition, the contention is correct; but if we carefully examine the system on which the Mitakshara is compiled and bear in mind the principles of Hindú law, as to which there can be no dispute, it will appear that the rule on which the contention is based cannot apply to the undivided ancestral estate, nor to any thing which has accrued to and become part of that estate. The author of the treatise commences with a definition of heritage, "dáya", and distinguishes between the wealth of a father or grandfather which *becomes the property* of his sons or grandsons *by right of their being his sons and grandsons*, and which the author consequently terms unobstructed, and property which *devolves* on parents, brothers and the rest, *on the demise* of the owner without male issue, and which he terms liable to obstruction, because existence of issue or the survival of the owner impede its devolution. After investigating the nature of property and reviewing the methods by which it may be acquired, he declares the fundamental principle of the Hindú law obtaining in these Provinces that property in the paternal or ancestral estate is by birth. He next describes the limitation to which the power of the father over ancestral and acquired wealth is subject, and having previously defined partition to be "the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate,"

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

he proceeds to declare in what manner and subject to what rules the common property of the family is to be distributed by partition in the father's lifetime or after his decease. The consequence of the doctrine that a right in the paternal ancestral estate is acquired by birth is that there is in fact no devolution of the property from one owner to another, but that as each son comes into being he forthwith acquires a right which would, on partition, reduce the shares of the other sons, and which, should he not survive partition and have issue, his son or grandson would take by substitution, and which, if he dies before that period, will simply lapse. There being no devolution of the property, the laws of descent are inapplicable. An ascertainment of the rights of the several members of the family is effected by partition, and consequently the rules regulating partition in every Hindú work on inheritance take the place of rules regulating the descent of property from an owner leaving issue. Unless there is a plain direction to the contrary, rules of partition from their very nature operate at the time when the partition is made. Unless it is expressly declared that the ascertainment of shares is to be made at an earlier period, it must be assumed they are to be ascertained at the time partition is made. Seeing that a son in the undivided family is a co-owner, having acquired his right by birth, there is no more reason for fixing the date of the death of the father as the period at which shares should be ascertained than in fixing the date of a son's death as that period: and if shares are not ascertained until the period of distribution; if, until that time, no one can declare he has any share in the common property, it accounts for the circumstance that in none of the treatises on Hindú law which have been brought to our notice is there any rule declaring what is to be done with the interest (it can hardly be called a share) in the common property which has been acquired by a member of the family who has not survived the period of distribution. On the other hand, there are express rules declaring that the partition is to be an equal partition, subject to the qualification that those who take by representation take only the share which he whom they respectively represent would have taken, had he survived partition.

Having in ch. i. dealt with the distribution of the estate of a Hindú who dies leaving issue, and having declared the rules which provide for the distribution of the paternal and ancestral pro-

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

perty of the undivided family, the author next proceeds in ch. ii. to treat of the descent of the estate of a man who dies without issue. The first section clearly relates only to separate property. It presumes the case of a man who, leaving no male issue, could not be the founder of an undivided family. — "That sons, principal and secondary, take the heritage, has been shown. The order of succession among all tribes and classes, on failure of them, is next declared." Here then we pass from a law of partition to a law of devolution of inheritance, the persons entitled no longer acquire an interest by birth. It accrues on the death of the owner, and to be entitled to claim they must survive the owner, and first in the line of descent the author places the widow, and after explaining that, if the proprietors died in union with his brethren, the widow has merely a right of maintenance, he concludes the discussion of her claims with the declaration that a wedded wife, being chaste, takes the whole estate of a man who, being *separated from his co-heirs*, and not subsequently re-united with them, dies leaving no male issue.

In the 2nd section the right of succession of daughters and daughter's sons are declared. Now in this section there is no distinct allusion to separate property, yet it has never been doubted that it deals only with separate property, and the intention is evident from the commencement of the section :—"On failure of her (the widow), the daughters inherit." The widow could only take separate property and the daughters succeed to what, if she had survived the *propositus*, the widow would have taken. Similarly, the following section, which treats of the rights of parents, commences with the declaration :—"On failure of those heirs, the two parents, meaning the mother and father, are successors," preference being given to the mother. In this section again there is no mention of separate property, but it manifestly deals only with that property, for it is declared that the parents take, in default of widow, daughters, and daughter's sons.

We now arrive at the fourth section, which treats of the rights of brothers, and which it is argued governs the case before us. That section commences like the preceding by premising the failure of the heir whose right had been last declared; and from this circumstance it must again be inferred that the property to which it regulates the

succession is such property as would have been taken by the heirs entitled to priority of succession, had they survived the *propositus*. If it be held that the interest which a coparcener acquires by birth does not lapse on his death without male issue, but passes under the law of succession to heirs other than direct issue, who presumably do not exist, and other than his widow, whose title is expressly denied, it follows that the right would devolve not on brothers only, but on those heirs also who are entitled to succeed in priority to brothers. Thus, a daughter, a daughter's son, a mother, or a father, might, on partition, claim the share of a deceased coparcener. No instance is cited in which such a claim has been allowed. The conclusion seems clear that s. 4. like the preceding sections of the chapter provides only for the devolution of the separate estate of the *propositus*.

But in support of the contention that the interest of a member of an undivided family in the common fund is a share, and that the rules respecting the succession of brothers operate, notwithstanding the *propositus* may have died in union with his brethren, and regulate the inheritance of that share, reference has been made to the provisions of s. 9, which treat of the succession to re-united kinsmen.

It is argued that brethren who have re-united are in the same position as those who have never separated; that the whole of the property is again brought into a common fund, each brother saying to the other "what is mine is thine and thine is mine," yet nevertheless the interests of each is described as his *share*:—"A re-united brother shall keep the *share* of his re-united co-heir who is deceased"—Yajnavalkya, cited in Mitakshara, ch. ii, s. 9, v. 1—and inasmuch as on the death of a re-united brother without male issue his share devolves on re-united brethren of the whole blood, to the exclusion of re-united brethren of the half blood, or if there be no brethren of the whole blood in re-union, the re-united brethren of the half blood and the unassociated uterine brothers divide the share equally, it is contended that the principle of survivorship does not operate to over-rule the rules regulating the succession of brothers, but that so far as is possible effect is given to both.

1875.

DEBI PARSHÁD v. THÁKUR DIAL.

To these arguments it may be replied that a distinction is recognized by Hindú writers between undivided and re-united brethren (Colebrooke's Digest, ccccxxx.). Moreover a re-union implies a previous partition, in virtue of which each of the re-united brethren has acquired separate ownership of a share. He brings to the re-united fund something which is specially his, while in an undivided family he acquired his right by birth in the estate of his father or grandfather. Again, when a partition is made of the property of an undivided family, no distinction is made between the half-blood and the whole blood:—"If any immoveable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in coparcenary, the half-brothers shall have equal shares with the rest, but the uterine brother has the sole right to the divided property, moveable or immoveable"—(Colebrooke's Digest, ccccxxxi.); and on partition of the common property of re-united brethren the eldest never enjoyed the privilege, now in all cases obsolete, of receiving a larger or better portion than his brethren, to which Hindú writers declared him entitled, on a partition of the property of the undivided family. It is dangerous then to draw an analogy from the special rules which apply to the devolution of the shares of re-united brethren. Indeed, the circumstance that rules have been specially prescribed to regulate the devolution of the common property of re-united brethren affords ground for arguing that they were exceptions to the ordinary rules regulating the partition of the common property of an undivided family.

If then the provisions of ch. ii, s. 4, are not applicable to the interest of an undivided coparcener in the common property, but that interest lapses on his death without issue, it follows that, in the case before the Court, the interests of the brothers who died without issue do not devolve on the last surviving brother, and that the sons of the last surviving brother are only entitled to one moiety of the estate. This conclusion is supported by the opinions of the three pandits examined by the Subordinate Judge of Benares, although the reasons given by one of those gentlemen for the conclusion at which he has arrived are not satisfactory. It is also supported by the decision of the Sudder Court of Calcutta in *Duljeet Singh* v. *Sheomunook Singh* (1), to which Mr. Colebrooke was a

(1) 1 S. D. Rep. 59.

party, and by the decision of the Bombay Court in *Bhugwan Golabchund* v. *Kriparam Anundram* (1). The decision of this Court in *Madho Singh* v. *Bindessery Roy* (2) it is true is opposed to these authorities, but in our judgment that ruling cannot be supported.

BEFORE A FULL BENCH.

1875.
August 27.

Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.

DAIA CHAND AND OTHERS (DEFENDANTS) *v.* SARFRAZ AND OTHERS (PLAINTIFFS.)*

Redemption of Mortgage—Limitation—Acknowledgment of Title of Mortgagor or of his right to Redeem—Act IX. of 1871, *sch.* ii, 148.

Where the defendants attested as correct the record-of-rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor, *held* (SPANKIE, J. dissenting) that there was an acknowledgment of the mortgagor's right to redeem within the meaning of article 148, sch. ii, Act IX. of 1871.

Per PEARSON, J.—That there was also an acknowledgment of the mortgagor's title.

Per SPANKIE, J. *contra.*

THE plaintiffs sued to redeem a mortgage of the entire 20 biswas of mauza Pal, pargana Jauli Jansath, zila Saharanpur, alleged to have been made in 1811 for Rs. 241 by their ancestors to the ancestors of the defendants. The latter denied the mortgage, alleging that they were the proprietors of the estate. From the evidence adduced it appeared that in 1863 the plaintiffs applied to the revenue authorities to record their names as the mortgagors of the estate, but the application was refused. In May, 1872, at the instance of the defendants, the entry of the word "mortgagee" opposite the names of the defendants in the *khewat* annually prepared by the patwári was directed to be discontinued. The first Court, looking at these circumstances, treated the suit as one for the possession of land and dismissed it, holding that it should have been valued at five times the revenue payable to Government in respect of the property in suit, instead of according to the principal amount

(1) 2 Borr. 39. (2) H. C. R., N.-W. P., 1868, p. 101.

* Appeal under cl. 10 of the Letters Patent, No. 4 of 1875.