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Bhote and Murmi Rebels

(Free translations)

1. Royal order to the Praja inhabitants of Panchsayakhola:

"When people belonging to the Murmi community engaged in rebellion (Kul) they were captured and beheaded. If any of the rebels is hiding there, seize him and hand him over to your Amali. It has been proved that you were not involved in the rebellion; no action will be taken against those who were not so involved. Occupy your lands and homesteads, engage in trade and other occupations, and discharge the prescribed obligations through the Amali."

Shrawn Badi 12, 1850 (July 1793)  
Regmi Research Collection, Vol. 36, P. 11

2. Royal order to the Praja inhabitants of Talakhu:

"The inhabitants of other villages who were guilty of rebellion have been beheaded. If you are not so guilty, go back to your village, look after your lands and homesteads, and provide the prescribed services on Sera lands. In case the Bhote rebels flee to your village, capture them and hand them over to the Amali."

Shrawan Badi 12, 1850 (July 1793)  
Regmi Research Collection, Vol. 36, P. 12

3. Royal order to the Murmi Prajas of Phokatpur village:

"When miscreants in your village started a rebellion, the ringleaders were beheaded. However, we have pardoned their relatives and followers (Kabila) and sent back to their homes. You are therefore ordered to go back to your village and reoccupy your lands and homesteads. Discharge your customary obligations in the prescribed manner through the Amali."

Shrawan Sudi 6, 1850 (July 1793)  
Regmi Research Collection, Vol. 36, P. 15

This order was sent to the Murmi inhabitants of the following villages as well:-

- |                  |                    |
|------------------|--------------------|
| 1. Tapeka        | 2. Sanogaun        |
| 3. Dhaibung      | 4. Kamchok         |
| 5. Upallo-Gerkhu | 6. Lachyang        |
| 7. Hilpa         | 8. Bhulutar-Jewang |
| 9. Kabilas       | 10. Chogde         |
| 11. Pudiketikpa  | 12. Chidyang       |

All these villages are located in Nuwakot.

4. Royal order to Bhote and Murmi Prajas throughout Palanchok:

"We have received reports that you are afraid of your lives because you had taken part in the recent rebellion. Those who were guilty of murder have already been beheaded. You no longer need to have any fears on this account. With full assurance, discharge your customary obligations as usual."

Aswin Sudi 4, 1850 (September 1793)  
Regmi Research Collection, Vol. 36, P. 36

Jagirdar's Privileges in Mahottari

Royal order to Kazi Bakhtwar Singh:-

"We have received reports that the Subba of Mal lands (i.e. lands from which revenue was appropriated by the government) is claiming income from Sair (customs) duties and jimidari levies collected in Dharmapur and nine other maujas in Mahottari district. These moujas form part of the jagir assigned to Kazis. We hereby reconfirm the jagirdar's privileges in respect to these moujas as enjoyed by Kazi Jaspau Thapa until the Vikrama year 1866 (A.D. 1809). Both Sair duties and jimidari levies have been included in the jagir. Use these moujas as your jagir according to practices followed until Vikrama 1866.

Kartik 10, 1866 (October 25, 1809)  
Regmi Research Collection, Vol. 38, P. 592.

Kazi Balanarasingh Kunwar's Assignments

The following royal orders were issued in connection with a special assignment of Kazi Balanarasingh Kunwar, father of Jung Bahadur, on Kartik 10, 1867 (October 1810):-

1. Jagir Assignments for the Army

"You are hereby authorized to prescribe schedules (raibandi) of jagir land assignments to both new and old companies, for whom such schedules have not been prescribed, as well as for companies to be recruited in the future. Resume lands in excess of the figures mentioned in the schedules, and assign additional lands in cases of shortfall. Arrange for the reclamation of waste lands which can be irrigated and grant tax-exemption on such lands for a specified period in the beginning."

Regmi Research Collection, Vol. 38, P. 591

## 2. Public Notification Regarding Authority Granted to Kazi Balanarsingh Kunwar

"We have granted authority to Kazi Balanarasingh Kunwar to reclaim lands as rice-fields wherever possible in homesteads or pastures on jagir, manachamal, bekh-bunyad, chhap, and other holdings belonging to royal priests, Chautaras, Kazis, Sardars, Khajanchis, Subbas, Dwars, Najikis, jestha budhas, ditthas, Subedars, Jamadars, Umras, etc. Allow him to make arrangements for such reclamation. Persons who reclaim lands under prescribed terms and conditions shall be allowed to appropriate the income with full assurance. Any person who causes any obstruction in the reclamation of lands in this manner shall be liable to punishment."

Regmi Research Collection, Vol. 38, pp. 592-93

## 3. Land and Revenue Functions

"You need not submit accounts and records relating to rice-lands on which rents (bali) have been collected, or new tenants appointed, according to our orders. In the case of unclaimed (ukas) lands, send your men to ascertain the output, sell the rents, transmit the income to us, and submit accounts. Take similar action in the case of revenue from the Darshan-Bhet levy as well. Scrutinize documents relating to rice-lands and homestead-tax revenue (Khuwa) comprising jagir assignments, inspect such lands, and make arrangements for granting jagir, manachamal, and birta lands according to the concerned documents."

Regmi Research Collection, Vol. 38, P. 593

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### A Lac Plantation in Pallokirat

Subba Harka Bali and Subba Sukharaj owned a catechu plantation in the Nibukhola area of Pallokirat, from which they produced lac. The plantation had been started by their father. Because the local people trespassed on the plantation and felled the catechu trees, the two Subbas submitted a petition to Kathmandu. A royal order reconfirming their title to the plantation was, therefore, issued on Monday, Jestha Badi 3, 1904 (May 1847).

The Subbas paid a thek tax on the plantation, and the revenue had been assigned as jagir to the Srinath-Kampu and the Srijung Paltan.

Regmi Research Collection, Vol. 35, P. 380

Note: It is obvious that the two Subbas owned the plantation under kipat tenure. Such property rights in land were virtually unknown in state-owned raikar in the middle of the nineteenth century, particularly in forests and plantations.

Regmi Research Collection, Vol. 35, P. 380



Amanat Regulations for Chitaun, A.D. 1818

On Ashadh Badi 10, 1875 (June 1818), Harivamsha Jaisi was appointed for the collection of revenue on Amanat basis in Chitaun, succeeding Balabhadra Padhya. He was assigned a yearly salary of Rs. 300. His staff included a Peshkar and seven peons. The appointment was effective for the one-year period from Baisakh Badi 1 to Chaitra Sudi 15, 1875 (year beginning April 1818). (Regmi Research Collection, Vol. 42, P. 321).

The district of Chitaun was then known as Marjyadpur. It comprised four Pargannas in both the hill and inner Tarai regions: Chitaun, Belod, Sajhaut, and Gahidwara

The following regulations were promulgated in the name of Harivamsha Jaisi on Baisakh Badi 14 1875 (April 1818).

Regulations

(Free Translation)

1. The rates of taxation shall be as follows for ryots who have been settled for a long time in the cultivated moujas of these four pargannas:-

<u>Description</u>		<u>Rate of Tax</u>
Ryots	...	Rs. 7½ per <u>Hal</u> (plow-team) comprising six oxen
Immigrants from India Plowmen	...	Rs. 3 and 12 annas do.
(angabariya)	...	One rupee per household
Households which require priests	...	Rsa 1¼ each

Other levies shall be collected at the following rates:-

<u>Description</u>		<u>Rate</u> (on each mouja)
Farakhtane	...	Rs. 4
Ambal-Bheti	...	Rs. 1
Tikabheti	...	Rs. 1
Pagari-Salami of Mahto	...	Rs. 1

2. Amalis and Ijaradars used to collect a levy known as Maujeyan-Dastur. In the future, they shall only accept such provisions as are offered willingly by the ryots on the day when they visit the concerned mouja. There shall be no forcible exaction.

3. The rates of taxation in the cultivated moujas for the high-land areas (Cachar) shall be as follows: (see note at end):-

<u>Description</u>	<u>Rate of Tax</u>
<u>Praja</u> cultivators ...	Rs. 2 per plow-team comprising two oxen
Immigrants from India ...	Rs. 1 do.
Plowmen (angabariya) ...	Eight annas per household
Households requiring priests ...	Eight annas per household

Other levies shall be collected at the following rates:-

<u>Description</u>	<u>Rate</u> (on each mouja)
Farakhtane ...	Rs. 2½
Ambal-Bheti ...	Rs. 1
Tikabheti ...	Rs. 1
Pagari-Salami of Mahto ...	Rs. 1

Taxes from Praja households in the hill areas shall be collected at the rates prescribed by Dware Bhawananda in the Vikrama year 1860 (A.D. 1803).

(Note: The ijara system of revenue collection in Chitaun was abolished on Ashadh Badi 9, 1860 (June 1803) and the amanat system introduced. Dware Bhawananda was appointed as Subba to implement the new amanat arrangements. The rate of the plow-tax throughout Chitaun was then reduced from Rs. 9 to Rs. 6½ per hal (plow-team). Regmi Research Collection, Vol. 20, P. 99. Additional information on this subject is contained in "Land Tax Assessment Rates in Chitaun", Regmi Research Series, Year 3, No. 4, April 1, 1971, pp. 85-86)

The rates of taxation on newly-reclaimed Kalabanjari lands in all the four Pargannas, inclusive of the Cachar area, shall be as follows:-

	<u>First year</u>	<u>Second year</u>	<u>Third year</u>
1. Rate per <u>Hal</u>	6 annas	12 annas	Rs. 1½
2. Households of plowmen (angabariya), each	2 annas	4 annas	8 annas
3. Households requiring priests, each	8 annas	8 annas	8 annas

Other levies shall be as follows (on each mouja):-

<u>Description</u>	<u>Rates</u>		
	<u>First year</u>	<u>Second year</u>	<u>Third year</u>
( <u>Paraahatana</u> )	8 annas	Rs. 1	Rs. 2
<u>Tikabheti</u>	8 annas	8 annas	Rs. 1
<u>Pagari-Salami of Mahto</u>	Rs. 1	Rs. 1½	Rs. 2

From the fourth year, taxes and levies on newly-reclaimed moujas shall be collected at the normal rates applicable to old moujas.

5. Supply oil worth Rs. 400 at prices current there to the Kot-Bhandar (Royal Household) as usual.
6. Procure ivory, rhinoceros horn and rhinoceros calves from the local forests and send them to us. We shall grant a suitable reward to the person who does so. Expenses incurred on rhinoceros calves shall be debitted in the accounts.
7. Customary expenses incurred for Dashain ceremonies shall be debitted in the accounts.
8. In case a confession is obtained from any person guilty of murder, cow-slaughter, and violent and lawless activities in the presence of local prominent persons, punish him with fines, if appropriate. If punishment in respect to life and property is necessary, arrest him and put him in irons. Refer the case to us and take action as ordered.
9. Invite merchants to export sal and khair timber from that district. Refer necessary matters in this connection to us and take action as ordered.
10. Work wholeheartedly in such a manner that our interests may be promoted and you get credit. Refer to us any matter that requires our sanction; we shall investigate it and take appropriate decisions.
11. Punish moneylenders who charge interest at rates exceeding ten percent from the Praja inhabitants of the district. Issue a public notification prohibiting interest at higher rates in the future.
12. Collect revenues from sal and khair exports, as well as the kachharai tax (on cattle grazed in the local forests), and duties on buffaloes, throughout the district. In case any person claims that revenue from these sources has been included in jagir, birta, manachamal, chhap, or bekh-bunyad grants, check the relevant royal orders and take action accordingly.

The term Cachar or Kachhar has been defined as "a high river bluff". (George A Grierson, Bihar Peasant Life (reprint of 1885 ed.), Delhi: Cosmo Publications, 1975, P. 164. The term "bluff" means, according to the Webster's New World Dictionary, "a high, steep, broad-faced bank or cliff".

Maresh C. Regmi.

### Sera Lands in Tokha

Royal order to Kulananda Jha:

"We hereby grant you a three-year ijara for the management of asera lands in Tokha, which have been assigned to the Hattisar (Elephant-Depot), from Baisakh Badi 1, 1872 to Chaitra Sudi 15, 1874. The ijara was previously held by Hanumanta Singh.

"Rents on these lands amount to 1095 muris of rice a year, which shall be apportioned as follows:-

<u>Description</u>	<u>Quantity</u> (Muri-Pathi-Mana)
1. For Hattisar ...	1080-0-0
2. For religious purposes: ...	15-0-0
(a) Sri Chandeshwari Temple ...	5-4-4
(b) Sri Taleju Temple ...	2-12-4
(c) Sri Balanilakantha Temple ...	5-4-0
(d) Sri Guhyeshwari Temple ..	0-5-0
(e) Guthi functions ...	0-3-0
(f) <u>Hoganayata</u> (?a) ...	0-3-0
(g) <u>Bisket</u> festival ...	1-8-0
<b>Totala</b>	<b>1095 muris</b>

"The fifteen mohinaikes, and the twenty-five porters employed for the transportation of rice, shall be exempted from forced-labor obligations (beth, begar), the saunefagu tax, homestead taxes (ghargani), the sahanapiwal tax, the dhalwa levy, and other payments (udhauni, padhauni). The Amali shall have no jurisdiction over them in this matter. The Adai shall (despense justice) and collect fines and penalties from the mohinaike and portersa

"Do not harass the Mohinaikes. In case the Sera lands are damaged by floods or wash-outs, or in case crops are damaged by drought or other causes, we shall send men to assess the extent of the damage and grant appropriate remissions. Punish those who cultivate lands in excess of the area actually allotted to them without declaring such excess area."

Monday, Aswin Badi 30, 1872 (September 1815)  
Regmi Research Collection, Vol. 42, pp. 82-84.

#### Pota Tax Remissions, A.D. 1796

Royal orders were issued on Ashadh Sudi 2, 1853 (June 1796) granting exemption from the pota tax to the following persons:-

- (1) Vidyapati Bande Newar of Kwabahal Tole in Kathmandu, on a total area of  $59\frac{1}{2}$  khets owned by him under Suna-Birta tenure at Tokha, Tahachal, Thapathali, and elsewhere.
- (2) Laxmi Narayan, veterinary physician (for the royal bulls), on a total area of nine ropanis endowed by him as Guthi for Sri Shivalinga and Sri Mahakala.

Regmi Research Collection,

Vol. 23, p. 51.

On Marga Badi 11, 1853 (November 1796), the pota tax was similarly remitted on 35 ropanis of Suna-Birta lands owned by Dhana Singh Budhe Newar of Marutol in Kathmandu in appreciation of his gift of fruits and vegetables to the royal household. (Ibid, p. 189)

On Saturday, Baisakh Sudi 3, 1850 (April 1793), a royal order was issued in the names of Jagat Muni and Chhatrapati granting them exemption from payment of the pota tax amounting to Rs 16 and  $15\frac{1}{2}$  annas on 39.43 ropanis of Suna-Birta lands owned by them in consideration of the priestly functions performed by them at the Sri Bhairavi-Bhagawati and Sri Manakamana temples in 1953 Vikrama (A.D. 1896). Their descendant, Rajendra Muni Gubhaju of Kwabahal, Thahiti (Kathmandu) registered 4.004 ropanis out of this area as his share of the property at the Kathmandu Pota Bandobast Adda.

Regmi Research Collection, Vol. 13, P. 54.

Hodgson on Justice

Edited By:

Ludwig F. Stiller, S.J.

(The editor of the Regmi Research Series is grateful to Fr. Ludwig F. Stiller, S.J., for permission to reproduce this valuable unpublished material).

## PREFACE

The information provided here on the law and the administration of justice in Nepal was gathered by Brian H. Hodgson, Resident to Nepal during the latter part of Bhim Sen Thapa's rule. The information falls under several distinct headings:

- Chapter I:       Answers provided by three qualified respondents to a lengthy questionnaire prepared by Hodgson.
- Chapter II:       Answers by one of these respondents to a list of supplementary questions.
- Chapter III:      Two Parts
- Part I:       Data on the major crimes and the punishments usually meted out for these crimes.
- Part II:       Data on the actual incidence of these crimes.
- Chapter IV:       Hodgson's summary of the main points of Nepal's judicial system.
- Chapter V:        An extract from a paper prepared by Hodgson explaining the court system at the time when one of the Residency sweepers had committed a serious offence and the question of the sweepers' being tried in a Nepalese court was raised.

The information contained in these five chapters was included in a series of reports sent to the governor general of the East India Company. In preparing these reports for publication, I have taken several liberties:

1. Hodgson listed separately for each respondent his questions and the answers provided to those questions. To facilitate comparison of the respondents' answers, I have included the answers from all three respondents under each question. The reader will find that each respondent interprets each question in his own way and answers that part of the question that appeals to him.
2. I have referred to the three respondents in Chapter I merely as "A", "B", and "C". Hodgson provides two names: Bang Singh and Krishna Ram Pandit. He does not tell us which set of answers belongs to Krishna Ram and which set belongs to Bang Singh (or Bhang Singh?). We only know that these two men were respondents "A" and "B".

Internal evidence may help. Krishna Ram Pandit was at the time of writing, and had been for some years previously, the Dharmadhikar of Nepal. The Dharmadhikar handled all cases that involved the loss of caste but no other judicial matters.

Bhang Singh had been the Dittha, or chief justice, stationed in Kathmandu. At the time he answered Hodgson's questionnaire, Bhang Singh was in Banaras. He had been accused of irregularities and "malversations" while in office and had chosen to live in Banaras rather than to undergo investigation for these accusations. There is no way to identify respondent "C" from Hodgson's notes. This respondent adds some very interesting material on trial procedures, but what qualification the respondent had for this information cannot be discerned. He does seem to be especially well informed about justice in the outlying provinces.

Hodgson himself never had a chance to discuss his questions or their answers with his respondents. He had only the answers they provided. The material Hodgson chose to include in his reports is only a part of the material he had at his disposal, so his conclusions may indeed go beyond the material included in these three sets of responses and the additional information he acquired by the supplementary questions answered by Respondent "B" (the former Dittha?).

Hodgson speaks of the Desh Achar of Gorkha. Exactly what this might be is not clear from his notes. It would be extremely useful if some scholar could bring forward this document to complete our understanding of Law and Justice in the days preceeding the Muluki Ain of Surendra Bikram.

3. I have edited Hodgson's language in quite a number of questions and also his summary. His sentences in the summary were unnecessarily long and cumbersome. As for the questions, many were so syncopated it was difficult to understand just what he was asking. Fortunately I had three separate translations of the questions to guide me in editing. The questions as printed here are less succinctly expressed, but perhaps more understandable for most readers.

Ludwig F. Stiller, S.J.  
Kathmandu  
30 July 1984

Chapter ITHE ADMINISTRATION OF JUSTICE IN NEPAL  
ACCORDING TO HINDU PRINCIPLES

## Part I: THE COURTS

1. Question: How many courts of Justice are there in Kathmandu, and what are their names?

Answers:

A. There are 4 Nyaya Sabhas. The first and chief is called Kotaling. The 2nd, Inta Chapli. The 3rd, Taksar. The 4th, Dhansar.

B. There are four: 1st, Kotaling; 2nd, Inta Chapli; 3rd, Taksar; 4th, Dhansar.

C. There are eight:

- |                                |                           |
|--------------------------------|---------------------------|
| 1. The Kausi <sup>1</sup>      | 5. Taksar                 |
| 2. Bangya Baithak <sup>2</sup> | 6. Dhansar.               |
| 3. Kotaling                    | 7. Daftar Khana           |
| 4. Inta Chapli                 | 8. Chibandel <sup>3</sup> |

In the Kausi, the Sarkar itself renders Justice. The Bangya Baithak is the general fiscal record office. A separate Ditttha presides over it. It is also a Mal Adalat. The Inta Chapli, Kotaling, Taksar and Dhansar are the proper Adalats, all exercising both civil and criminal judicature. In the Daftar Khana the disputes of the Soldiers relative to the lands assigned them for pay are investigated. The Chibhandel is a tribunal for the settlement of all disputes relating to houses; whence the etymology, Chi meaning house and Bhandel meaning Bhandari. Neither of these last has criminal jurisdiction and whatever penal offences may issue out of soldiers' claims and claims relating to houses are carried to the Inta Chapli. All these Eight Adalats are situated in the City of Kathmandu within eighty or ninety paces of each other.

2. Question: What are the territorial limits of the jurisdiction of each court?

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1. Kausi or Kosi, the same as the Bharadar Sabha of the later answers. B.H.H.

2. Bangya Baithak, the same as the Kumari Chowk, B.H.H.

3. The registry office for houses is the Chi Bhandel. That for lands the Bhu Bhandel. Institutions most creditable to Nepal. See Chapter II, questions 27-29. B.H.H.



## Answers:

- A. There are none. At the plaintiff's pleasure, any civil suit, whatever its amount, may be heard in any of the four courts of the Capital. Penal cases must be carried to the Inta Chapli.
  - B. There are no such limits assigned.
  - C. There are no express limits of the kind. Any citizen of Kathmandu or Bhadgaon, or any subject dwelling in the provinces, may carry his cause to any court, provincial or Sadar, that he fancies.
3. Question: What are the limits of the civil and penal jurisdiction of each?

## Answers:

- A. Answered in No. 2 above.
  - B. All four courts hear and determine civil cases without limit. So likewise in penal cases. But in offences involving the loss of life or limb the prisoner and proceedings are handed up from the three other courts to the Inta Chapli where the proceedings of the lower court are reviewed and where alone the power of inflicting punishment rests.
  - C. There are no limits assigned.
4. Question: Are all the courts of the Capital of equal and concurrent jurisdiction or not?

## Answers:

- A. The other courts of the Capital are subject to the Kotaling in which the supreme judicial officer or Dittha personally presides.
- B. All the courts are subject to the orders of the Dittha or President of the Inta Chapli and Kotaling.<sup>4</sup>
- C. All courts exercise civil and criminal jurisdiction, both provincial and Sadar. But the "Panch Khat" are subject to the exclusive ultimate cognizance of the Sarkar. On the occurrence of any one of these offences, it is necessary to report the case to the government. The government, upon examination of the report, will either direct such and such punishments to be

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<sup>4</sup> Hodgson provides a marginal note here, but the writing is too faded to be legible.

inflicted on the offender, or, if the offence has been committed in the interior and it be not deemed fit to entrust the local court with even the primary investigation of the matter, the government may direct that the offender and the evidence of his guilt be sent to Kathmandu to the Sadar Adalat.<sup>5</sup>

5. Question: Do the courts always sit or have they terms and vacations? And when and of what extent are the vacations?

Answers:

- A. The courts always sit, with the exception of only 15 days in the year: 10 days at Dasahara and 5 days at Dewali, during which time the courts are closed.
- B. The courts sit for all 12 months of the year with the exception of only 7 days, during which times the courts are closed: four days at the end of September or the beginning of October and the remaining three days towards the close of October.

6. Question: Are the courts of the Capital fixed, or do their judges make circuits?

Answers:

- A. The courts are fixed. No judicial authority of the Capital ever leaves the Capital. When there is need, the Ditttha sends special judges (Bichari) into the provinces.
- B. The courts are always fixed nor do any of the judges make Circuits; but the Ditttha of the Inta Chapali has the power of sending special judges to any part of the Kingdom to investigate official malversations when such occur.

7. Question: In what cases does an appeal lie to the BHARADAR SABHA, or Council of State, from the courts of the Capital and of the provinces?

Answers:

- A. If anyone is dissatisfied with the decision of the courts of the Capital on his case he may petition the government. The Bharadars (Ministry), assembled in the Kholcha, receive his appeal and finally decide.

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5. There are eight courts at Kathmandu to settle disputes of property and punish offences. Civil actions to any amount may be brought in any of them. In regard to offences of a grave character, committed in the interior, the case must be reported to the Sarkar, which either orders such and such a punishment to be inflicted or commands the prisoner and witnesses to be sent to Kathmandu. Respondent C.

- B. No one is at liberty to carry his plaint in the first instance to the BHARADAR SABHA; but if he remain dissatisfied with the Proceedings had in his case in the several courts, he may then apply through the Dittha to the Maharaja. The Prince in such cases directs his chief judges and Bharadars to investigate the matter in the BHARADAR SABHA.

The result of their investigation is reported through the Chief Minister to the Prince who usually directs a decree such as the report suggests.

- C. If the matter is serious and one or other Party is dissatisfied with the judgement of the court of law, he applies first to the Premier. If he does not get satisfaction from him either, he then proceeds to the Palace Gate and calls out: "Justice Justice". When this appeal reaches the Raja's ears it is met thus: 4 Kazis, 4 Sardars, 4 eminent Panch-men, 1 Dittha, and 1 Bichari are collected in the Palace and the matter is referred to them. Their decision is final.

8. Question: Has the BHARADAR SABHA any original jurisdiction?

Answers:

- A. Answered above, number seven.

- B. The supreme ordinary appeal court is the Kotaling, but those who are dissatisfied with its decision can apply to the BHARADAR SABHA or Council of State. When the investigation of the BHARADARS is complete the Premier reports it to the Prince, after which the Prince issues his orders on the case. These orders are definitive.

9. Question: Are the BHARADARS or Ministers of State assisted in judicial cases by the Chief judicial authorities of the Capital?

Answers:

- A. They are. The Dittha, the Bicharis, and the Dharmadhikar sit with the Kazis (or Ministers) in such cases.

- B. When the Dittha and Bicharis cannot settle the matter in grave cases relating to the loss of caste and such like, the case is transferred to the BHARADAR SABHA, and the Bharadars are assisted by the Dittha and Bicharis of the Kotaling and, if need be, by the Dharmadhikar also.

10. Question: Is there any prosecutor general or defender general in the system?

Answers:

- A. No, none whatever.

B. There is no Sarkar Vakeel in our courts. In the courts in Hindusthan, a Jilla judge who has decided unjustly cannot be punished. Provision is made only for an appeal. Here, on the contrary, if the Ditttha do any wrong, he is immediately punished. We have therefore no need of a government Vakeel.

11. Question: If the prosecution fail to appear at the trial of an offender confined at his instance, is the offender dismissed or what course is taken?

Answers:

- A. The offender is not dismissed, but remanded to confinement and the trial deferred.
- B. In Nepal, if anyone informs against another affirming that he has committed a theft or other offence, the appropriate officers of the court to which the complaint is brought are immediately dispatched to apprehend the accused. As soon as the accused arrives, the case is investigated. There is no delay whatever. If the accused is convicted he is instantly punished. If, on the arrival of the accused, the accuser is not forthcoming, a search is made for him. The investigation is put off even for a long while, till the accuser is found and produced. If, after much delay and vain search for the accuser, the relatives of the accused offer bail for his appearance when wanted, the bail is taken and the accused permitted to depart.

12. Question: What and how many provincial courts are there in Nepal?

Answers:

- A. For the provinces west of the Capital there are two courts constituted by the supreme judicial officer at the Capital (that is the Ditttha) and two more for the Eastern provinces.
- B. One court for each Subba. (See Chapter II, question 3).

13. Question: Is the appeal from the provincial courts to courts of the Capital or to the BHARADAR SABHA?

Answers:

- A. There is an appeal to the supreme court of the Capital, or Kotaling.
- B. If anyone is dissatisfied with the decision of the court of his province he may appeal to any of the four courts of the Capital, and if in them also he gets no satisfaction, he may carry his cause to the BHARADAR SABHA. If also the provincial judge or those of the Capital are at any time perplexed with a cause before them, they usually refer the case to the BHARADAR SABHA.

C. Generally, all GRAVE CRIMINAL Cases are carried to the Sadar Adalatsn Whoever receives charge of a province is expressly forbidden by the terms of his commission from exercising judicial cognizance of certain offences. These offences are called "Panch Khat".<sup>o</sup> 1. Brahmhatya or killing of a Brahman, 2. Gohatya or cow killing, 3. Strihatya, or woman killing, 4. Balhatya, or child killing, and 5. Patkri, or all unlawful sexual commerce: incest, adultery, and such other actions as involve a loss of caste by the higher party. With the exception of these five, which must be reported to the Sarkar for decision, all penal cases and all civil ones are entirely within the cognizance of the provincial authority.

14. Question: Are not the powers of a provincial court related to the rank of the officer who happens to be nominated to the charge of the province? In other words, what are the powers of a provincial court of a Subha, of a Sardar, and of a Kazi?

Answers:

- A. No, they are not. A provincial court has always the same authority whatever be the rank of the officer in command of the province.
- B. The court has the same powers always, whatever be the governor's rank. But in all cases involving breach of the laws of religion and loss of caste the provincial court must forward its investigation with the offender's confession to Kathmandu to the government. The government refers them to the Ditttha. The Ditttha reports the customary proceeding had in such matters; and according to that report a LAL MOHAR command is transmitted to the provincial court to award such and such punishment, or, to send the offender and witnesses to Kathmandu, as the case may be. The provincial officer has no power to decide upon these affairs of JAT and PANI. To the decision of all others he is competent.

15. Question: When anyone is appointed to the government of a province, does the Dharmadhikar of Kathmandu send a Deputy Dharmadhikar with him? Or do the Ditttha or Bicharis of Kathmandu send a Deputy Bichari with him? Or does the Provincial governor appoint his own judicial officers? Or does he himself administer justice?

Answers:

- A. The provincial governor appoints his own judicial

authority, called usually Faujdar,<sup>7</sup> who transacts the business of the administration of justice. The Faujdar's appointment must be ratified by the Darbar.

- B. No deputies are sent from Kathmandu with Governors, but two Bicharis are appointed by the Dittha of Kathmandu for the Western Hills, and two more for the Eastern Hills, with a view that in cases when anyone is dissatisfied with the decision of the provincial court he may appeal to these Bicharis. And whenever cases of Chandraj or such like occur, a Pandit provided with the Shashtra is despatched to the spot by the Dharmadhikar of Kathmandu. Exclusive of these limitations on his authority, the provincial governor, whatever be his rank, has unlimited judicial authority, always however reporting grave matters to the government and awaiting orders.

16. Question: Are the provincial courts usually subject to the Military or fiscal authority of the province?

Answers:

- A. Answered in the above.
- B. Military officers, fiscal officers, courtiers, and others, or whatever profession, are eligible to judicial situations in the provinces, if they have the confidence of government and are men of respectability and capable of the charge.

17. Question: Enumerate the name and function of every officer, from the highest to the lowest, attached to each of the Sadar and provincial courts.

Answers:<sup>8</sup>

- A. At the capital, one Dittha for all the 4 courts. For each court, two Bicharis, 1 Jamadar, 25 Sipahis, 35 Mahaniahs, and 5 Chaprassies. The Dittha gives orders to the Bichari. The Bichari to the Jamadar. The Jamadar to the Sipahis and Mahaniahs, the Sipahis and Mahaniahs make all persons present for the trial.
- B. At the Capital, one Dittha presiding over all four courts. In addition:

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7. Only in the Tarai, or Lowlands, where alone such Moslem terms prevail. These military terms current below prove nothing against what is noted above as to the absolute independence of the CIVIL institutions of Nepal upon Moslem models. The Gurkhas borrowed their military system entirely from below, but from us not the Moghuls. Here and there indeed the Mussulman name of a civil functionary has crept into use of late; but it is vox et praeterea nil.

8. See also Chapter II, question 5 below.

For the Kotaling: 2 Bicharis, 1 Khardar, 1 Major,  
1 Jamadar, 2 Havildars, 2 Amaldars,  
40 Sipahis;

For the Inta Chapli:

1 Bichari,	1 Araz-begi,	2 Khardars,
2 Jamdars,	4 Havildars,	4 Amaldars,
40 Sipahis,	2 Mahanaikiahs,	128 Mahaniahs,
15 Tolmuls,	24 Chowki-Mahaniahs,	22 Kotwals,
2 Kumhal Naikiahs,	1 Tol-pradhan,	1 Pasal-pradhan,
1 Kotwal Naikiah,	2 Tavildars,	6 Bahidars;

For the Taksar:

2 Bicharis,	1 Khardar,	1 Jamadar,
2 Havildars,	2 Amaldars,	25 Sipahis;

For the Dhansar: The same as for the Taksar.

Directly subject to the Dittha are the whole of the above officers; to the Bicharis are especially subject the Khardars, the Tahavildars, the Jamadars, the Sipahis, etc. Immediately under the Araz-begi are the Mahanaikiahs with their Mahaniahs, the Chowki-Mahaniahs, the Kumhal Naikiahs, the Kotwals, the Tolmuls, the Kotwal Naikiahs, the Tol-pradhans, the Pasal-pradhans, etc. The Mahanaikiahs superintend the Mahaniahs.

- c. C. 1 Dittha, 1 Bichari, 1 Araz-begi.  
2 Naikiahs and several Mahaniahs.  
1 Jamadar and some Payedahs and Sipahis are indispensable to the constitution of a court of Justice.

The Dittha decides. The Bichari conducts the interrogation of the parties and ascertains the truth of their statements. The Bahidar writes the Kail-nameh which the Bichari's interrogation forces from the party in the wrong. The Araz-begi is the superintendant of the jail and sheriff, or person who presides over, and is answerable for, executions. The Naikiahs and their Mahaniahs inflict the Korah when needed and they are the Araz-begi's subordinates also. The Jamadars are responsible for having all persons present for the trial whose presence is required, whether parties or witnesses. The Payedahs and Sipahis obey the Jamadars and execute what the Jamadars direct. They execute processes, make and keep all persons forthcoming who are needed before, during, and after the trial till sentence be fulfilled.

18. Question: How are the judges and others attached to the courts paid? By salaries and fees, one or both?

Answers:

- A. By both. They receive salaries from government and take fees also.  
B. By both.

19. Question: Are there separate courts for the Cities of Bhadgaon and of Patan or do the inhabitants of these places resort to the courts of Kathmandu?

Answers:

- A. There are separate courts for Patan and for Bhadgaon,<sup>9</sup> one for each city. Each court has the following functionaries: One Subha, one Dwaria, one Bichari, four Pradhans, and fifty Mahaniahs. There is an appeal from these courts to the Chief court at Kathmandu, and important cases are often referred by them in the first instance to the Supreme court of the Capital.
- B. There are separate courts for either city, from which an appeal lies to the courts of the Capital.
- C. The supreme civil court of the capital (Mul Sabha) is the Kotaling - and the supreme penal court the Inta Chapli. The courts of the provinces and towns have no dependence on them; but are subject to the provincial and local governors. An appeal however lies from all the provincial courts to the supreme courts of the capital. The cities of Bhadgaon and Patan (like Kathmandu) have their own courts<sup>10</sup> - and to the westward and eastward, beyond these cities and in the Hills, there are eight Bicharis - four east and four west. Those Bicharis are nominated by the Ditttha in the Inta Chapli. (See Chapter II.)

20. Question: How far and in what cases do the courts of the Capital use Panchayats. In civil and criminal cases? Or only in the former?

Answerse

- A. Both civil and criminal cases are referred to Panchayats in any and every case, at the discretion of the court or the wish of the parties.
- B. With the exception of cases of life destroyed, all matters may be referred to a Panchayat at the desire of the parties, but cases of battery and assault are not usually referred to Panchayats.
- C. Panchayats are used in civil and criminal cases, and multitudes of domestic Panchayats are also called, a practice much approved by the government. Public Panchayats are called to settle suits come before the

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9. Patan is two miles, Bhadgaon eight, from Kathmandu. Both were formerly capitals. B.H.H.

10. See Chapter II, questions 27-34.



courts. Domestic Panchayats are to settle matters never brought under the court's cognizance. In domestic Panchayats the members get small presents from the parties. In public Panchayats, the members have no remuneration, save the perquisite called Sabha Suddha.

21. Question: Are the Panch-men appointed by the government or by the parties, or does each party appoint an even number of Panch-men and the government add a casting voter and President, or how?

Answers:

- A. They are never appointed by the government, but by the judge at the request of the parties. No man can sit on a Panchayat without the assent of both parties.
  - B. The Panch-men are appointed by the Ditttha at the request of the parties, with whom solely the selection lies. After selection of their Panch-men by the parties, the Ditttha takes from the parties an obligation to abide by the award of the Panchayat. The court or government never appoints Panchayats of their own motion, but, if the parties expressly request it, stating that they can get no satisfaction from their own Panch-men and give a petition to that effect to the government, the government will then appoint a Panchayat to sit on the case.
  - C. The parties each name five Panch-men and the government adds five to their ten.<sup>11</sup>
22. Question: What is done to hasten the decision of the Panchayat if they delay their decision?

Answers:

- A. In such cases the matter is taken out of the hands of the Panchayat and decided by the court which appointed the Panchayat.
  - B. The Panchayats assemble in the court which appointed them. Officers of the court are appointed to see that the Panch-men attend daily and fully, so that there never can be needless delay in the decision of cases by Panchayats.
23. Question: What are the resources of the Panchayat for securing the attendance of unwilling parties and witnesses and the production of papers? And what power has the Panchayat to give validity to their decree?

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11. Not correct. Consult the answers given above. B.H.H.

## Answers:

- A. The Panchayat has no power of its own to summon or enforce the attendance of any person, to make an unwilling witness depose, or to secure the production of necessary papers. All such executive aid is given by the court which appointed the Panchayat. In like manner, the decision of the Panchayat is referred to the court for execution. The Panchayat can give no orders - far less enforce them. It refers its judgement to the court by whom that judgement is carried into effect,
- B. All such executive duties are rendered to the Panchayat by the officers of the court which appointed the Panchayat. The Panchayat has no power of the sort of its own whatever, and the assumption of it would be a grave offense.

24. Question: Are the Panch-men required to be unanimous in their decisions or is a simple majority sufficient. What is done if there be one or two resolute dissentients?

## Answers:

- A. The Panch-men must be unanimous.
- B. They must be unanimous. Such at least is the general rule. But a very large majority will suffice in certain cases.

25. Question: Are there persons at Kathmandu who are constantly employed as Panch-men or as presidents of Panchayats, or are Panch-men exclusively selected for each occasion indiscriminately from the general body of citizens?

## Answers:

- A. There are no permanent individual Panch-men, but in all cases wherein Parbattiahs are concerned, it is necessary to choose Panch-men out of the following distinguished tribes: 1st Aryal, 2nd Khadel, 3rd Pande, 4th Pant, 5th Bohara, 6th Rana - one person being selected out of each tribe, and among the Newars, the tribes from which Panch-men, in cases affecting them, must necessarily be chosen are 1st Maikhe, 2nd Bhanil, 3rd Achar, 4th Shrestha. In matters affecting persons neither Parbattiahs nor Newars there is no limit as to the selection by the parties of their Panch-men.
- B. There are no permanent or established Panch men, but wise, just, etc., such experienced men only are chosen for this duty.

26a Question: Are the Panch-men allowed travelling expenses or provided food for the duration of the trial? If allowed, who pays? Does each party pay for his own men?

Answers:

- A. Persons who sit on Panchayats are never paid any sum in compensation for travelling expenses or loss of time or on any account whatever.
- B. Panch-men receive no compensation whatever; the very idea of compensating them is abhorred.

27. Question: What is the Dittha's authority in those three courts of the Capital in which he does not personally preside?

Answers:

- A. The Bicharis or judges of those courts cannot decide independently of the Dittha of the Kotaling. The Bicharis of those courts are not "Swatantra".
- B. In that court in which the Dittha personally presides, cases are decided by the joint wisdom of himself and his Bicharis. In those courts in which the Dittha is not personally present, the Bicharis decide small matters absolutely, but they report their investigations of serious cases to the Dittha and decide according to the Dittha's directions.

28a Question: What officers do the courts have, to search for and apprehend criminals and bring them and the evidence of their guilt before the courts? Who sees to it that the sentence is executed?

Answers:

- A. The officers enumerated in answer to question 17 as being attached to the courts of the Dittha and of the Bicharis.
- B. The sole criminal court is the Inta Chapli. The Mahanaikiah and Mahaniahs of that court are those who search for and apprehend criminals. Those who execute the sentence, whether whipping or other, are the same officers and the others before enumerated.

29. Question: What officers serve processes in civil suits and see that unwilling defendants and witnesses in such suits are present? Who sees to the execution of the court's judgement?<sup>12</sup>

Answers:

- A. The last mentioned, as being employed in criminal cases.

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12. Apparently the respondents did not understand what Hodgson's question meant. Editor.

B. Civil suits may be tried in any of the courts. The executive officers of the courts are those before enumerated.

30. Question: What happens if either the plaintiff or defendant in a civil suit fails to attend at any stage of the trial before decision?

Answers:

- A. If the plaintiff is absent and the defendant present, it is the custom to take security from the defendant for his presence when wanted at some future time and to let him go. No decision is had in such cases. If the plaintiff is present and the defendant absent, the latter is not judged guilty. He must be searched for and found, and, until he is so, no decision can be come to.<sup>13</sup>
- B. If the plaintiff is not forthcoming, he is searched for. If he is not immediately found, Hazir Zamine is taken from the defendant to appear when wanted, and he is let go. But no decision is ever taken in the case in such circumstances. If the defendant is the absent party, the same course is pursued.
- C. Prior to "Thaping the Beri" the plaintiff may withdraw his suit and no further proceeding is had. But the case may be revived by the son or other representative of the plaintiff, if the plaintiff be dead, and when so revived it will be heard and decided.

31. Question: What security is there in criminal cases for apprehended offenders being prosecuted to conviction and to ensure that accusers and witnesses are present at the trial?

Answers:

- A. "Nail Zamine and Hazir Jamine" are taken from prosecutor and witnesses.<sup>14</sup>
- B. No answer given.

32. Question: In civil or criminal cases, what concern has the Dharmadhikar with the courts of law? Out of 100 cases brought before the courts, about how many will fall in any way under the Dharmadhikar's cognizance?

Answers:

- A. Eating with those with whom you ought not to eat. Sexual commerce with those between whom it is forbidden. Drinking water from the hands of those not entitled to offer it. In a word, doing anything from negligence, inadvertance, or licentiousness by which loss of caste is incurred,

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13. This has special application in the notorious case of Casinath Mull. See Letters from Kathmandu: The Kot Massacre, Chapter IV. Editor.

14. These terms are not current in the court, but are used merely as being intelligible to me. B.H.H.

renders the sinner subject to the Dharmadhikar's censure. The offender must pay the fine to the Dharmadhikar called, Go-dan and the Dharmadhikar will cause him to perform the Prayaschitta. Only in such matters has the Dharmadhikar any concern.

- B. In civil cases the Dharmadhikar has no concern whatever, nor in criminal cases, except such as involve some offence against religion or the law of caste.

33. Question: What are Prayaschitta, Gaddi Mabarak, Chumawan and Aputali?

Answers:

A. Prayaschitta: the ceremonies one must perform to recover lost caste; Gaddi Mabarak: the offerings made to a new Raja on his installation; Chumawan: the presents made to the Raja to enable him to meet the marriage expenses when he himself, or his son or daughter, is married; Aputali: escheats, the lapse of property to the Prince for want of heirs to the last possessor.

B. Prayaschitta: the ceremonies that must be performed for recovering caste; Chumawan: the offerings made to the Raja by all subjects on the occasions of his own or his son's marriage; Aputali: escheats, the lapse of property to the Crown for want of heirs to the last possessor.

34. Question: Is the Kumari Chowk an office of record and registry for all branches of the government or only for the judicial branch? Has it any judicial authority?

Answers:

A. It is an office of record and registry for the fiscal administration and has no connection with the courts of law, nor does it contain their records.

B. The Kumari Chowk has no judicial authority. It is not a court of law but the general record office of the fiscal administration.

## PART II: FORMS OF PROCEDURE ,

35. Question: Describe the forms of procedure step by step in a civil case.

Answers:

A. Answered in the sequel.

B. If a person come into court and state that another person owes, and will not pay him, so much money, the Bichari of the court immediately asks him the particulars of the debt. He replies by stating those particulars to the Bichari, who commands the Jamadar of the court to send one of his Sipahis to fetch the debtor.

The Jamadar accordingly sends a Sipahi along with the creditor, who goes to point out the debtor. The creditor pays the Sipahi two Annas per day until he has found the debtor and arrested him and brought him into court.

When the debtor is produced in court, the Dittha or Bicharis interrogate the parties face to face. The debtor is asked if he acknowledges the debt stated against him and if he will immediately discharge it. The debtor may answer by acknowledging the debt and stating his willingness to pay as soon as he can collect the means, which he hopes to do in a few days. In this case the Bichari will ask the creditor to wait a few days. The creditor may reply that he cannot wait, having immediate need of the money. If so, one of the Chapprassies of the court is attached to the debtor with directions to see that the debtor produces the money in court. The debtor must then produce money or goods or whatever property he has and bring it into court. The Dittha and Bicharis then call to their assistance three or four merchants and proceed to appraise the goods produced in satisfaction of the debt and immediately pay the creditor. The creditor cannot object to this appraisement of the debtor's goods and chattels. In matters thus settled - that is, where the defendant admits the cause of action to be valid, five percent of the property litigated is taken from the one party and ten from the other, and no more.<sup>15</sup>

If the defendant, when produced in court in the manner above related, deny the debt, then the Plaintiff's proofs are called for. If he has only a simple note of hand either unattested, or an attested acknowledgement, the witnesses to which are dead, then the Dittha and Bicharis interrogate the plaintiff thus. This paper is of no use as evidence. How do you propose to establish your claim. The plaintiff answers, "I lent the money to the defendant's father and the note produced is his handwriting and my claim is a just claim." Whereupon the plaintiff is commanded formally to pledge himself to prosecute his claim to a conclusion in the court wherein he is, and no other. The words, enjoining the plaintiff thus to gage himself are these "BERI THAPO" and the act consists in the plaintiff's taking a Rupee in his hand and striking the earth with the closed hand saying at the same time "My claim is just and I gage myself to prove it so." The defendant is then commanded to take up the gage of the plaintiff and pledge himself similarly to attend the court to the conclusion of the trial. This he does by formally denying the authenticity of the document produced against him as well as the reality of the debt. Upon this denial

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15. The fee or tax is called Dasond-Bisond, a compound word, and the passage might be rendered thus: "From ten to five percent according to circumstances is taken from the parties. The Parbattia language from which this paper is translated has hardly any grammar, the sentences often hanging together by mere juxtaposition." B.H.H.

he also strikes the earth with his hand closed on a Rupee. The Rupee of the plaintiff and that of the defendant are deposited in court.

The next step is for the court to take the fee called Karpan, five Rupees, from each Party. Both Beri and Karpan are the perquisites of the various officers of the court and do not go to the government. The giving of Karpan by the Parties implies that they desire to refer their dispute to the decision of the ordeal. Accordingly, as soon as the Karpan is paid, the Ditttha acquaints the government that the Parties in a certain cause wish to undergo ordeal. The order for them to undertake it is thereupon issued from the Darbar. When the order has reached the court, the Ditttha and Bicharis first of all exhort the Parties to come to an understanding and to seek the settlement of their dispute by other means than ordeal. If they refuse, the Trial by Ordeal is directed to proceed.

The ordeal is called Nyaya and the form of it is as follows. Upon two bits of paper the names of the Parties are respectively inscribed. The papers are rolled up into balls (called Gola); the Balls have puja offered to them, and from either Party a fine or fee of one Rupee is taken. The Balls are then affixed to staffs of reed, whereupon two Annas (called Narkouli) are taken from each Party. The reeds are then entrusted to two of the Havildars of the court and sent to the Rani Pokhari. The Havildars, a Bichari of the court, a Brahman, and the Parties proceed to the Rani Pokhari, as likewise two men of the Chamakhalak (or Chamar) caste. Arrived at the Rani Pokhari, the Bichari again exhorts the Parties to avoid the ordeal by some other settlement of the business, the truth of which lies in their own breasts. But if they insist on ordeal, the two Havildars, each with a reed, proceed, one to the East, and the other to the West side of the Pokhari, entering the water about knee deep. The Brahman, the Parties, and the Chamakhalak at this moment all enter the water a little way. The brahman performs puja to Varuna in the name of the Parties and repeats a sacred text, the meaning of which is that mankind know not what passes in the minds of each other, but that all inward thoughts and acts are known to the Gods Surya and Chandra and Varuna and Yama and that they will do right between the Parties to this dispute. When the Puja is over, the Brahman gives the Tilak to the two Chamakhalaks and says to them, "let the champion of truth win and let the false one's champion lose." This said, the Brahman and the Parties come out of the water. The Chamakhalaks then divide, one going to the place where one reed (Kerkat) is erected, and the other, to the other reed. They then enter the deep water and, at a signal, both immerse themselves at the same instant. Whoever first emerges from the water, the reed beside him with the scroll attached to it is instantly destroyed. The other reed is carried back to the court where the Ball containing the scroll is opened and the scroll read. If the scroll bears the plaintiff's name, the plaintiff wins the cause.

If the defendant's, the defendant is victorious. The fine called Jitauri is then paid by the winner and that called Harauri by the loser, besides which five Rupees are demanded from the winner in return for a turban, which he gets<sup>16</sup> and the same sum, under the name of Sabha Suddha (or purification of the court) from the loser.

The above four demands on the parties: Jitauri, Harauri, Pagri, and Sabha Suddha are government taxes. Exclusive of them, eight Annas must be paid to the Mahaniahs of the court. Eight Annas more to the Kotwals, and eight more to the Kumhal Naikiahs, and lastly eight more to the Khardar or registrar. In this manner multitudes of cases are decided by Nyaya (ordeal) when the parties cannot be brought to agree upon the subject matter of dispute and have no documentary evidence to adduce.

- C. Whoever has a complaint to make, true or false, goes to the court. The Bichari asks him against whom his plaint is, where the defendant is to be found, and of what nature the plaint itself be. The plaintiff explains and then asks for a Payeday of the court to go with him to whom he will point out the defendant. The Bichari gives the necessary order to the Jamadar; the Jamadar to his Havildar; and the Havildar to the Sipahis.<sup>17</sup>

The Sipahi, ordered to go immediately asks eight Annas from the plaintiff. When he receives this, the Sipahi goes with him and arrests the defendant whom the plaintiff points out to him.

On the arrival of the defendant in court, the Bichari interrogates the parties face to face and usually brings them to such an understanding as prevents the necessity of going to trial. In this case Pan Phul (some small fees) are charged to them.

If the parties cannot be brought to an understanding and they persist in positive affirmation and denial, the Bichari commands them: "Beri Thapo!" and takes one Rupee from each as Beri. After Beri is paid, Karpan also attaches, five Rupees from each party. When Karpan has been paid, the Bichari asks the parties if they desire to refer their cause to trial by Panchayat or by ordeal (Nyaya). If they say Panchayat, ten good men and true are appointed to sit and decide. After the decision, the tax called Jitauri is taken from the winner and that called Harauri from the loser. If the parties prefer

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16. This fee is called Pagari. B.H.H.

17. These Sipahis are not regulars, but a sort of militia, or provincials, exclusively attached to the courts. Each of the principal courts has a company of them or about eighty men.



ordeal, then one Rupee per ball (to roll up the parties' scrolls)<sup>18</sup> and two Annas per Narkat (to fix the balls on) are taken from each party and the trial is continued at the Rani Pokhari, a fortunate day only being chosen for the immersion. Whose champion raises his head first out of the water, his scroll with the ball and Narkat are sunk in the Pokhari. The other's ball and Narkat are carried back to the court. In this case (as in every other) the loser is made to sign a Kail Nameh, to "touch the stone", and pay a Rupee and four Dams. Besides this, he is fined according to his fault. However much is taken from the loser as Harauri and Dand, half as much is taken from the winner as Jitauri. Such is the issue by Ordeal. Beri means a Chain, and the act of 'Thaping the Beri' obliges the parties to persevere to a decision and prevents them from withdrawing the action. The proceeds go to the Bichari. Karpan is the beginning of Nyaya<sup>19</sup> - the way of Nyaya - and the payment implies that the parties have chosen this way of trial. Half the produce of five Rupees per party goes to the Ditha, half to the Bichari. The fee called

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18. The details as above in answer 35. A.

19. It is a significant circumstance that the word Nyaya (justice, right) is technically applied solely to ordeal. See, and compare with this statement Answer 19 in Chapter II. See also and compare the general tenour and spirit of Answer 14. The first great object of the courts of Nepal when litigations come before them is not trial, but reconciliation. The parties and witnesses all clamourously urge what occurs to them (never upon oath) and try their strengths against each other. The general result of this apparently uncomely, but really effectual, procedure is to bring the parties to an understanding, which the court takes care that the loser abides by. But, if the court cannot thus succeed in bringing the parties to reconcile their difference or to submit it to the court's summary arbitraments upon a view of the animated exhibition just described, then, and then only, the trial in our sense begins, the first step of the trial is to bind the parties to the issue: for that is the meaning of Thaping the Beri - a ceremony which then takes place. And here for the first time, oaths are permitted, which very generally are used instead of evidence. If the testimony of external witnesses is readily forthcoming, it is taken and preferred. But, in general, the parties themselves must look to that point well. For the court seldom cares to delay or to exert itself in order that witnesses may appear. Neither the people nor the judges deem external witnesses the one thing indispensable. (See answer 19), and if such are not readily forthcoming to give decisive testimony, the court and country are agreed to the propriety of at once resorting to various other modes of proof, with which, though once familiar, we now deem justice to have little connection. These modes of proof are enumerated in Answers 14 and 18. They are decisory oaths of the parties, in civil cases, either party taking the oath at their pleasure. Purgatory oaths of the accused in some penal cases. Ordeals of various kinds, both in civil and criminal matters.

Gola, of one Rupee per party, goes all to the Dittha. The fee called Narkouli is the Khardar's (Bahidar's) perquisite. There is one other fee called Sabha Suddha - one Rupee from either party - and this goes to the residue of the court's officers, not especially provided for by the above named fees.

36. Question: Describe the form of proceeding step by step in a criminal case?

Answers:

A. Answered in the sequel.

B. If anyone comes into court and states that such a person has killed such another by poison, sword, dagger or otherwise, the informer is instantly interrogated by the court thus: "How? who? when? before whom? the corpus delicti, where, etc." He answers by pointing out all these particulars according to his knowledge of the facts, adducing the names of the witnesses or saying that though he has no other witnesses than himself to the fact of murder, he pledges himself to prove it or abide the consequences of a failure in the proof. This last engagement when tendered by the accuser is immediately reduced to writing to bind him the more effectively. After this, one or more Sipahis of the court are sent with the informer to secure the murderer and produce him and the testimony of the deed in court. When these are produced, there follows an interrogation of the accused. If the accused confesses the murder, there is no need to call evidence. If he denies it, evidence is then gone into. If the witnesses depose positively to their having seen the accused commit the murder, the accused is again asked what he has to say. If he still refuses to confess, he is whipped into a confession, which, when obtained, is reduced to writing and attested by the murderer. The murderer is then put in irons and sent to jail. Thus theft, robbery, incest, etc., are tried in Nepal, and the convicts sent to prison.

And lastly (a very different sort of thing from the above) Panchayats, chiefly applied, but not exclusively, to civil actions. A Panchayat of this sort often acts the part of a jury when men of note are accused, the government nominating the Panchas. In civil cases, too, the parties tired of litigating, will sometimes desire the court or the government to nominate a Panchayat to hear and decide without appeal. Ordinarily, Panchayats are chosen purely by the parties, and half the judicial business of the kingdom is performed by them to the satisfaction alike of the parties, the public, and the government. The function of these Panchas appears to me to be essentially that of jurors (in the western system). They find the verdict, and the court, out of which they issue and in which they assemble, merely enforces their finding. Domestic Panchayats are another thing. They too are very popular, especially among merchants, whose wealth attracts the cupidity of the courts, and the community of merchants can, on the other hand, always furnish intelligent referees or Panchmen.

When the number of convicted prisoners amounts to twenty to thirty, the Dittha makes out a calendar of their crimes and adds thereto their confessions and statements of the punishment customarily inflicted in such cases. This list the Dittha carries to the BHARADAR SABHA (Council of State). The BHARADAR SABHA either ratifies the punishment allotted by the Dittha or substitutes another punishment. This list, altered or ratified in the Council of State, is referred by the Premier to the Prince. As a matter of form, the list is sanctioned by the Prince, after which it is re-delivered to the Dittha, who makes it over to the ARAZ-BEGI.

The ARAZ-BEGI, taking the prisoners and the Mahanaikiahs and some men of the Porya caste with him, proceeds to the banks of the Bishnumati, where the sentence of the law is inflicted by the hands of the Poryas in the presence of the Araz-begi and Mahanaikiahs. Thus are grave offences, involving the penalty of life or limb, treated.

In respect to mutual revilings and quarrels, false evidence, false accusation of moral delinquency, and such like minor crimes and offences, punishment is apportioned with reference to the caste of the offender or offenders.

- C. In grave cases of private wrong,<sup>20</sup> the complainant goes first to the Bichari who puts in writing the substance of the complaint and requests the complainant to come again on the morrow. The next day he comes, accordingly, and further investigation is made into his statement. When fully understood this statement forms the basis for an order to seize the accused. Payedays and Sipahis of the court are sent to apprehend and bring the accused into court.

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20. The words of the original mean literally "grave penal cases" but the context shows that the great public crimes cannot be alluded to, for informers and prosecutors pro bono publico would hardly be found if, instead of compensation, they met with taxation. In respect to the application of the taxes called Dasond-Bisond and Jitauri-Harauri to matters of tort and crime, this much seems certain that in all cases of tort whatever, even those that partake most of the nature of crime, both parties are taxed, more or less, under the names of Jitauri-Harauri, and that in respect to one case of public crime (that of theft, if the property is recovered) the tax called Dasond, or ten percent, attaches on the property. It should be observed that in Nepal, resort to the courts in matters of tort and injury is by prosecution, not by an action of, or for, damages. The very idea of the latter appears to be unknown.

When both accused and accuser are present in court, they are placed face to face, and the Bichari proceeds with the investigation, questioning them both and letting them try their strengths against each other. If in this manner the speech of both cannot be brought to accord, they are commanded to "Thap the Beri" and pay one Rupee each. Next, the evidence of witnesses is called for and heard. If there be none, resort is had to the ordeal of immersion in the Rani Pokharia. The loser in this Nyaya is made to "touch the stone" and is fined. The winner gets the Jitauri Pagri and pays the Jitauri tax. In matters of the first importance the Dand is one thousand Rupees and the Jitauri is five hundred. The Dhunga Chuayi is one Rupee from the loser. The Karpana ten, five from each party. The Beri is two Rupees, one from each. The Narkouli, four Annas, two from each. In matters of small importance the Dand may be about two hundred and fifty and the Jitauri one hundred and twenty-five. The others as before.

If a theft has been committed and the thief taken in the fact, as soon as the news of it reaches the court, Sipahis and Mahaniahs of the court are sent to bring the thief before the court.

When the accused has arrived, the Bichari interrogates the thief as to where? when? how? whose property has been stolen? where the spoil is concealed? etc., etc., etc. The thief is compelled by threats and the Korah to confess. He is then sent to jail.

If a Parbattia commit adultery with a Parbatni wife, the injured husband may, if he has power, cut down the adulterer and punish him with his own hand. If he himself cannot do this, he may employ his brother. If he has no brother capable of destroying the adulterer and so is helpless without the court's aid, he may apply to the Inta Chapli for redress. If the fact be proved, the adulterer shall be decapitated and his property confiscated.

If in a violent affray a man is killed, the Mahaniahs and Payedays of the court are immediately dispatched to apprehend and bring in the man-slaughterer, who is sometimes caught immediately, sometimes after an interval of some months. Whenever he is apprehended and brought into court, he is condemned to death and his property confiscated. When in this manner several persons have been convicted and are collected in the jail for execution (capital or maiming) the Araz-begi makes out a calendar of them and presents it to the Dittha. The Dittha reports to the Sarkar and, having taken the orders, sends to the fulfilment of the sentences upon the convicts from the Sarkar, commits them all to the Araz-begi.

The Araz-begi, on some Saturday or Tuesday takes those condemned to the banks of the Bishnumati where men of the Porya caste are employed to fulfil the sentence of the court. Some are hanged by the neck - some by the heels - till dead. Some decapitated. Some

played alive. Some have a hand, a foot, a virile or some other member cut off. Some an eye plucked out. etc., etc., etc. according to their respective offences. Such is the criminal procedure of Nepal.<sup>21</sup>

37. Question: Do the parties plead viva voce or by written depositions?

Answers:

- A. They invariably state their own cases viva voce
- B. Almost universally viva voce, but the plaintiff sometimes begins his suit with a written statement.

38. Question: Do the parties tell their own tales or employ Vakeels?

Answers:

- A. They tell their own tale. Vakeels are unknown.
- B. Almost universally they tell their own tale, but instances of a Pleader (Mukshari) being employed have occurred, usually a near relation, and only when the Principal was incapable. Professional or permanent Pleaders are unknown.

39. Question: In penal cases, can witnesses be compelled to attend to the summons of the accused and to depose, with all the usual sanctions?

Answers:

- A. Yes, the court compels the attendance of the witnesses for the accused in the usual way and their deposition
- B. They are not

40. Question: Who pays witnesses expenses in criminal cases? Are such witnesses obliged to pay for their own food during attendance on the court and pay their journey to and from? or does the government support them?

Answers:

- A. The witnesses in penal cases support themselves. No allowance for food or travelling expenses is made them by anyone.
- B. Since criminal cases are heard and decided as soon as they occur, witnesses are never obliged to attend long on the court. They have, therefore, no allowance whatever

(To be continued)

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21. See Chapter III.