ART. XXI.—Some Account of the Systems of Law and Police as recognised in the State of Nepál, by Brian Houghton Hodgson, Esq. M.R.A.S., of the Bengal Civil Service, Resident at the Court of Kat'hamdu, &c. &c.

Introduction.

[With a view to obtain correct and authentic information on the subject of Nepálese law, both in its theoretical principles and practical administration, Mr. Hodgson addressed a series of questions to several individuals who were judged most capable of replying to them in a full and satisfactory manner. Copies of these series of interrogatories, with their respective answers, have been communicated by him to the Royal Asiatic Society (together with a separate paper on crimes and punishments); and the following article has been drawn up from a careful comparison of the whole, excluding as much as possible the repetitions unavoidably occurring, in many instances, in the various answers to any particular question. A reference to the works of Kirkpatrick, Hamilton, and others, will shew how little has hitherto been contributed to the knowledge of Europeans respecting Oriental systems of jurisprudence, as far as regards the kingdom of Nepál; it is therefore particularly gratifying to be enabled to produce so complete a view of the subject as has been furnished by Mr. Hodgson, whose perseverance and energy in obtaining an acquaintance with these and other matters hitherto kept sacred from all strangers, are only equalled by the intelligent and liberal manner in which he communicates to the public the information he has acquired. —Ed.]

ON THE LAW AND POLICE OF NEPÁL.

Question I.—How many courts of law are there at Kat'hamdu? What is the name of each?

Answer.—There are four Nyayasab'has; the first and chief of which is called Kót Linga; the second, Inta Chapli; the third, Taksár; and the fourth, Dhansár. [Another answer mentions four additional courts; viz. the Kósi,* the Bangya-bí'hak,† the Daftar Khána, and the Chibhándel. In the Kósi, the Sírkár‡ itself administers justice.

* Also called Bháradár Sab'há, or great council of state.
† Also called Kamári Chok.
‡ The government, or its representative.
ON THE LAW AND POLICE OF NEPÁL. 259

The Bāngya-biťhák is the general record-office of the fisc, and a separate dit'ha* presides over it. It is also a Mahal-Adálat.† The Köt Linga, Inta Chapli, Taksár, and Dhansár, are the proper Adálatas, exercising both civil and criminal jurisdiction. In the Daftar Khána, the disputes of the soldiers relative to the lands assigned them for pay are investigated, and the Chibhándel is a tribunal for the settlement of all disputes relating to houses; neither of these courts possesses criminal jurisdiction; and whatever penal matters may arise out of the cases brought before them are carried to the Inta Chapli. All these Adálatas are situated in the city of Kat'hwandum, and within eighty or ninety paces of each other.

Question II.—What are the territorial limits of the jurisdiction of each court?

Answer.—There are no limits expressly assigned. Any citizen of Kat'hwandum or Bhatgáon, or any subject dwelling in the provinces, may carry his cause to any court, provincial or superior, that he pleases. [Another answer says, that whencesoever a civil suit comes, and whatever may be its amount, it may be heard in any of the four courts of the capital at the plaintiff’s pleasure; but that grave penal cases must be carried to the Inta Chapli.]

Question III.—Are the four Adálatas of the capital of equal and co-ordinate authority, or how far is one subjected to another?

Answer.—The other courts of the capital are subject to the Köt Linga, in which the supreme judicial officer or dit’ha personally presides.

Question IV.—Do the courts of the capital always sit, or have they terms and vacations?

Answer.—They always sit, with the exception of fifteen days in the twelve months; viz. ten days at the Dasahra, and five days at the Dewáli; during which the courts are closed.

Question V.—Are the courts of the capital permanently fixed there; or do their judges, or any of them, make circuits, civil or criminal?

Answer.—They are fixed, nor does any judicial authority of the capital ever quit it. When necessary, the dit’ha sends special judges (bichári) into the provinces.

Question VI.—In what cases does an appeal lie from the supreme or provincial courts to the Bháradár Sab’há?

Answer.—If any one is dissatisfied with the decision of the courts

* A superintending minister of justice, who does not try causes, but watches over the conduct of the court.—B. HAMiLTON.
† A court for questions relating to land revenue.—Ed.
‡ Dasahra and Dewáli; public festivals.
of the capital on his case, he may petition the government, when the bháradárs (ministers) assembled in the Khólecha (palace) receive his appeal and finally decide. [Another respondent says: If the matter be grave, and the party, one or other, be dissatisfied with the judgment of the courts of law, he applies first to the premier; and if he fails in obtaining satisfaction from him he then proceeds to the palace gate, and calls out, "Justice! justice!" which appeal, when it reaches the rágá’s ears, is thus met: four kájis, four sirdárs, four eminent panch-men, one dit’ha, and one bichári, are assembled together in the palace, and to them the matter is referred, their award being final.

Question VII.—Are the bháradárs, or ministers, assisted in judicial cases by the chief judicial authorities of the capital, when they hear appeals in the Bháradár Sab’há?

Answer.—They are: the dit’ha, the bicháris, and the dharmá – d’hi kári,* sit with the ministers in such cases.

Question VIII.—What concern has the dharmá – dhi kári with the courts of law in civil and penal cases; and of a hundred cases brought before the courts, what number will come in any way under the cognizance of the dharmá – dhi kári?

Answer.—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 any thing from negligence, inadventure, or licentiousness, by which loss of caste is incurred, renders the sinner liable to the censure of the dharmá – dhi kári. He must pay the fine called Gáo-dán to the dharmá – dhi kári, who will cause him to perform the práyaschitta.† In such matters only has the dharmá – dhi kári any concern.

Question IX.—Is any pursuer-general or defender-general recognised in the system?

Answer.—No; none whatever.

Question X.—If the prosecutor fail to appear at the trial of an offender confined at his instance, is the offender dismissed, or what course is taken?

Answer.—The offender is not dismissed but remanded to confinement, and the trial is deferred.

Question XI.—What, and how many, provincial courts are there?

Answer.—For the provinces west of the capital there are two courts constituted by the supreme judicial authority there; that is, the Dit’ha: and the provinces east of the capital have also two courts similarly constituted.

* A high law officer; the chancellor. † See Question XXX.
Question XII.—Is the regular appeal from the provincial courts of justice to the ordinary courts of the capital, or to the bháradár sab’há?

Answer.—To the supreme court of the capital, or Kót-Linga.

Question XIII.—Are not the powers of the provincial courts regulated with reference to the rank of the officer who happens to be nominated to the charge of the province? In other words, what are the limits of a provincial court, of a súba, of a sirdár, and of a kóji?

Answer.—They are not; whatever may be the rank of the officer commanding in the province for the time being, the authority of the provincial court is always the same. [Another answer states, that generally all grave criminal cases are carried to the Sadr Adálats; and the officer receiving charge of a province has a clause inserted in his commission prohibiting him from exercising judicial authority in certain offences. These are termed Panch-khát;* viz. 1, Bráhmatya, or slaying a Bráhman; 2, Gouhatya, or killing a cow; 3, Stríhatya, or killing a woman; 4, Bálahaty, or killing children; and 5, Pathi, and all unlawful intercourse of the sexes, such as incest, adultery, or whatever involves a loss of caste by the higher party. All penal cases, with the exception of these five, which must be reported for the direction of the sirkár, and all civil cases whatsoever, are within the jurisdiction of the provincial authorities.]

Question XIV.—When a súba, sirdár, or kóji, is appointed to the government of a province, does the dharmád’hikári of Kat’hmandu send a deputy dharmád’hikári with him? or, the dit’ha or bichári of Kat’hmandu send a deputy bichári with him? or, does the provincial governor appoint his own judicial officers, or does he himself administer justice in his own province?

Answer.—The provincial governor appoints his own judicial authority, called usually foujdár, who transacts other business for the governor besides the administration of justice. The foujdár’s appointment must, however, be ratified by the darbár.

Question XV.—What are the names and functions of every officer, from the highest to the lowest, attached to each Sadr and provincial court?

Answer.—At the capital, one dit’ha for all the four courts; and for each of them two bicháris, one jámadár, twenty-five sipáhis, twenty-five mahánias, and five chaprássis. The dit’ha gives orders to the bichári, the bichári to the jámadár; and the jámadár to the sipáhis

* Panch, “five,” and the Arabic, ع ناک “a crime, sin, fault.”
and mahânias, who serve processes, and see that all persons are forthcoming when required for the purposes of justice. [Another authority adds the following to the list of officers, after the bichári, viz. the bahidár, araz-begí, and two naikiás. The dit'ha (he says) decides; the bichári conducts the interrogation of the parties, and ascertains the truth of their statements; the bahidár writes the káił-mámá which the bichári's interrogation has forced from the party in the wrong; the araz-begí is the superintendent of the jail, and sheriff or officer who presides over, and is answerable for, executions. The naikiás, with their mahânias, inflict the kórā* when needed, and they are also subordinate to the araz-begí.]

Question XVI.—How are the judges and other persons attached to the courts paid? By fees or salary, or both?

Answer.—By both; they receive salaries from government and take fees also.

Question XVII.—Are there separate courts for the cities of Pátan and Bhátgáon,† or do the inhabitants of those places resort to the courts of Kat’hmandu?

Answer.—There are separate courts for Pátan and Bhátgáon, one for each city; and each court has the following functionaries attached to it, viz. one dwária, one bichári, four pradháns and fifty mahânias. There is an appeal from these courts to the chief court at Kat’hmandu, and important causes are sent by them to that court in the first instance.

Question XVIII.—How far, and in what cases, do the Sadr courts use Pancháyets?—in civil and criminal cases, or in the former only?

Answer.—Both civil and criminal cases are referred to Pancháyets, in any or every instance, at the discretion of the court or the wish of the parties. [The answer of another respondent is as follows: With the exception of cases of life destroyed, all matters may be referred to a Pancháyet at the desire of the parties; but cases of assault and battery are not usually referred to Pancháyets.]

Question XIX.—Are the persons composing the Pancháyet appointed by the parties to the suit, or by the government; or does each party nominate its own members and the government add a president or casting vote, or how?

Answer.—The members of the Pancháyet are never appointed by the government, but by the judge (dit'ha) at the solicitation of the parties; and no man can sit on a Pancháyet without the consent of

* A kind of whip.—Ed.
† Both places are situated in the great valley, the former at the distance of eight, the latter at that of only two miles from Kat’hmandu.—B.H.H.
both parties. [Another reply adds, that the judge takes from the parties an obligation to abide by the award of the Panchâyet when given, and that the court or government never volunteers to appoint a Panchâyet; but if the parties expressly solicit it by a petition, declaring that they can get no satisfaction from their own nominees, the government will then appoint a Panchâyet to sit on the case. A third respondent says generally, in answer to the query, "The parties each name five members, and the government adds five to their ten."

Question XX.—What means are adopted to hasten the decision of the Panchâyet, if it be very dilatory?

Answer.—In such cases the matter is taken out of the hands of the Panchâyet, and decided by the court which appointed it to sit. [The answer given by another of the respondents states that there never can be needless delay in the decision of causes by Panchâyets, as these tribunals assemble in the courts out of which they issue, and officers of the court are appointed to see that the members attend regularly and constantly.]

Question XXI.—With what powers are the Panchâyets invested to enforce the attendance of parties and witnesses, and the production of papers; and to give validity to their decrees?

Answer.—The Panchâyet has no authority of its own to summon or compel the attendance of any person, to make an unwilling witness deposite, or to secure the production of necessary papers; all such executive aid being afforded by the court appointing the Panchâyet: and, in like manner, the decision of the Panchâyet is referred to the court to be carried into effect. The Panchâyet cannot give orders, far less enforce them, but communicates its judgment to the court, by which it is put in execution.

Question XXII.—Are all the Panch required to be unanimous, or is a simple majority sufficient? And what course is adopted if there be one or two resolute dissentients?

Answer.—The whole of the Panch must be unanimous.

Question XXIII.—Are there any persons at Kathmandu who are regularly employed as members or presidents of Panchâyets, or are persons indiscriminately selected for each occasion?

Answer.—There are no permanent individual members of the Panchâyet; but in all cases wherein Parbattias are concerned it is necessary to choose the Panch men out of the following distinguished tribes, viz. Arjâl, Khandal or Khanal, Pandé, Parat'h, Bôhara, and Rana; one person being selected from each tribe. And among the Newars a similar regulation is observed, the tribes from which the individuals are chosen being the Maiké, Bhanîl, Achar, and Srisht.
In matters affecting persons who are neither Parbattias nor Newars, there is no restriction as to the selection of the Panch-men by the respective parties.

_**Question XXIV.**—Are the Pancháyet allowed travelling expenses or diet so long as they attend, or not? If allowed, by whom are these expenses paid? Does each party defray its own, or how?

_**Answer.**—Persons who sit on Pancháyet are never paid any sum either as compensation for travelling expenses, loss of time, or on any other account whatsoever.

_**Question XXV.**—What is the nature of the dit’ha’s authority in those three courts of the capital over which he does not personally preside?

_**Answer.**—The bicháris, or judges of these courts, cannot decide independently of the dit’ha of the kót-Linga: the bicháris of those courts are not independent. [Another answer is as follows: In those two courts in which the dit’ha personally presides, causes are decided by the joint wisdom of himself and colleagues (bicháris). In those in which he is not personally present, the bicháris decide small matters absolutely, but their investigations of grave ones are reported to the dit’ha, and they decide according to his directions.]

_**Question XXVI.**—What officers of the court are there to search for and apprehend criminals, to bring them and the evidences of their guilt before the courts, and to see sentence executed on them?

_**Answer.**—The officers enumerated in the answer to _Question XV._, as being attached to the courts of the dit’ha and the bicháris.

_**Question XXVII.**—What officers are there to serve processes in civil suits, to see that the parties and witnesses in such suits are forthcoming, and to carry the decisions of the courts into effect?

_**Answer.**—Those last mentioned, as being employed in criminal cases.

_**Question XXVIII.**—If the plaintiff or defendants in a civil suit neglect to attend at any stage of the trial before decision, is the plaintiff non-suited, the defendant cast, the parties forcibly made to appear, the decision suspended or pronounced conditionally, or what course is adopted?

_**Answer.**—If the plaintiff be absent and the defendant present, it is the custom to take security from the defendant to appear when called upon at some future time, and to let him depart: no decision is come to in such cases. If the plaintiff be present, and the defendant absent, the latter is not therefore cast; he is searched for, and until he is found no decision can be pronounced.
Question XXIX. — What security is provided in criminal cases that offenders, when apprehended, shall be prosecuted to conviction; and how are prosecutors and witnesses made forthcoming at the time of trial?
Answer. — Mál zámini, and hazn zámini, are taken from prosecutors and witnesses.

Question XXX. — What are práyaschitta, chandráyan, and aptali?
Answer. — Práyaschitta: the ceremonies necessary to be performed by an individual for recovering his lost caste. Chandráyan: expiatory ceremonies performed by the whole city or kingdom, in atonement for the commission of some heinous sin or uncleanness, the consequences of which have affected a considerable body of the citizens. Aptali — escheats: the lapse of property to the prince, for want of heirs to the last possessor.

Question XXXI. — Is the Kumári Chók an office of record and registry for all branches of the government, or for judicial affairs only; and has it any judicial authority?
Answer. — It is an office of record and registry for the fisc; and has no connexion with the courts of law, nor does it contain their records. [Another respondent, in answer to Question I., reckons it among the courts of law, — Adálats.]

Question XXXII. — Describe the forms of procedure in a civil cause, step by step.
Answer. — If a person comes into court and states that another person owes him a certain sum of money, which he refuses to pay, the bichári of the court immediately asks him for the particulars of the debt, which he accordingly furnishes. The bichári then commands the jamadár of the court to send one of his sipáhís to fetch the debtor; the creditor accompanies the sipáhi to point out the debtor, and pays him two annas per diem, until he has arrested the latter and brought him into court. When he is there produced, the dít'ha and bicháris interrogate the parties face to face. The debtor is asked if he acknowledges the debt alleged against him, and will immediately discharge it. The debtor may answer by acknowledging the debt, and stating his willingness to pay it as soon as he can collect the means, which he hopes to do in a few days. In this case, the bichári will desire the creditor to wait a few days. The creditor may reply that he cannot wait, having immediate need of the money; and if so, one of the chaprássis of the court is attached to the debtor, with directions to see to the producing of the money in court, by any means. The debtor must then produce money, or goods, or whatever
property he has, and bring it into court. The ādāha and bichāris then, calling to their assistance three or four merchants, proceed to appraise the goods produced in satisfaction of the debt, and immediately discharge it; nor can the creditor object to their appraisement of the debtor's goods and chattels. In matters thus arranged; that is, where the defendant admits the cause of action to be valid, five per cent of the property litigated is taken from the one party, and ten per cent from the other, and no more.* If the defendant, when produced in court in the manner above described, denies, instead of confessing, the debt, then the plaintiff's proofs are called for; and if he has only a simple note of hand unattested, or an attested acknowledgment the witnesses to which are dead, then the ādāha and bichāris interrogate the plaintiff thus: "This paper is of no use as evidence; how do you propose to establish your claim?" The plaintiff may answer, "I lent the money to the father of the defendant; the note produced is in his handwriting, and my claim is a just claim." Hereupon the plaintiff is required to pledge himself formally to prosecute his claim in the court in which he is, and in no other. The words enjoining the plaintiff thus to gage himself, are "Beri ŏhōpō;" and the mode is by the plaintiff's taking a rupee in his hand, which he closes, and strikes the ground, exclaiming, 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, or to pledge himself in a similar manner to attend the court duly to the conclusion of the trial, which he does by formally denying the authenticity of the document produced against him, as well as the validity of the debt; and upon this denial he likewise strikes the earth with his hand closed on a rupee. The rupee of the plaintiff and that of the defendant, which are called bērō, are now deposited in court. The next step is for the court to take the fee called karpan, or five rupees, from each party. The amount of both bērō and karpan is the perquisite of the various officers of the court, and does not go to the government. The giving of karpan by the parties implies their desire to refer the dispute to the decision of the ordeal; and accordingly, as soon as the karpan is paid down, the ādāha acquaints the government that the parties in a certain cause wish to undergo the ordeal. The necessary order is thereupon issued from the Durbār; but when it has reached the court, the ādāha and bichāris first of all exhort the parties to come to an understanding and effect a settlement of their dispute by some other means; if, however, they will not consent, the trial is directed to proceed. The

* This fine or tax is called dasōrad-bis-ōnd.
ordeal is called nyáya, and the form of it is as follows: The names of
the respective parties are inscribed on two pieces of paper, which are
rolled up into balls, and then have pája* offered to them. From each
party a fine or fee† of one rupee is taken; the balls are then affixed
to staffs of reed, and two annas‡ more are taken from each party.
The reeds are then intrusted to two of the havildárs of the court to
take to the Queen’s Tank; and with the havildárs, a bichári of the
court, a Bráhman, and the parties, proceed thither, as also two men
of the Chámákhalak (or Chamára) caste.§ On arriving at the tank,
the bichári again exhorts the parties to avoid the ordeal by adopting
some other mode of settling the business, the merits of which are only
known to themselves. If they continue to insist on the ordeal, the
two havildárs, each holding one of the reeds, go, one to the east and
the other to the west side of the tank, entering the water about knee
deep. The Bráhman, the parties, and the Chámákhalaks, all at this
moment enter the water a little way; and the Bráhman performs pája
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 past acts are known
to the gods Súrya, Chandra, Varuna, and Yáma;|| and that they
will do justice between the parties in this cause. When the pája is
over, the Bráhman gives the tilak to the two Chámákhalaks, and says
to them, “Let the champion of truth win, and let the false one’s
champion lose!” This being said, the Bráhman and the parties come
out of the water, and the Chámákhalaks separate, one going to each
place where a reed is erected. They then enter the deep water, and,
at a signal given, both immerse themselves in the water at the same
instant. Whichever of them first rises from the water, the reed
nearest to him is instantly destroyed, together with the scroll attached
to it. The other reed is carried back to the court, where the ball of
paper is opened, and the name read. If the scroll bear the plaintiff’s
name, he wins the cause; if it be that of the defendant, the latter is
victorious. The fine called jìţhouri is then paid by the winner, and
that called harouri by the loser;¶ besides which, five rupees are
demanded from the winner in return for a turban which he gets,** and
the same sum, under the name of sabhásúdďha (or purification of the

* Pújá , worship—adoration.—Ed. " Called gótā.
† This fee is called narkoulí. § A very low tribe.
|| Súrya, the sun; Chandra, the moon; Varuna, the regent of the ocean; Yáma, the deity presiding over the infernal regions.—Ed.
¶ Vide answer to Question LXIII.
** Hence this fee or tax is called pagri (turban).
From the loser. The above four demands on the parties, viz. jīt'hōuri, harouri, pagri, and sabhāsūdd'ha, are government taxes; and, exclusive of these, eight annas must be paid to the mahānias of the court, eight annas more to the kotmāl, eight more to the kumhāl-nātikias, and, lastly, eight more to the khardār or registrar. In this manner multitudes of causes are decided by nyāya (ordeal), when the parties cannot be brought to agree upon the subject-matter of dispute, and have neither documentary nor verbal evidence to adduce.

**Question XXXIII.**—Describe the forms of procedure in a criminal cause, step by step.

**Answer.**—If any one comes into court, and states that such an one has killed such another by poison, sword, dagger, or otherwise, the informant is instantly interrogated by the court thus: How? Who? When? Before whom? The Corpus delicti: Where? &c. &c. He answers by stating 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 more effectually; after which, one or more sipāhis of the court are sent with the informant to secure the murderer, and produce him and the testimony of the deed in court, which, when produced accordingly, is followed by an interrogation of the accused. If the accused confesses the murder, there is no necessity to call for evidence; but if he deny it, evidence is then gone into; and if the witnesses depose positively to their having seen the accused commit the murder, the latter is again asked what he has to say; and if he still refuses to confess, he is whipped until he does; the confession, when obtained, is reduced to writing and attested by the murderer, who is then put in irons and sent to jail. Cases of theft, robbery, incest, &c. are also thus dealt with in Nepāl, and the convicts sent to prison. When the number amounts to twenty or thirty, the dit'ha makes out a calendar of their crimes, to which he appends their confessions, and a specification of the punishment usually inflicted in such cases. This list the dit'ha carries to the Bhāradār Sabhā (council of state), whence it is taken by the premier to the prince, after the dit'ha's allotment of punishment to each convict has been ratified, or some other punishment substituted. The list, so altered or confirmed in the council of state, and referred by the premier to the prince, is, as a matter of form, sanctioned by the latter, after which it is re-delivered to the dit'ha, who makes it over to the araz begī. The latter, taking the prisoners, the mahā-nātikias,
and some men of the Pórya caste* with him, proceeds to the banks of the Bishek-mati, where the sentence of the law is inflicted by the hands of the Póryas, and in the presence of the araz begí and the mahánáikias. Grave offences, involving the penalty of life or limb, are thus treated. With 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.

Question XXXIV. — Do the parties plead vivâ voce, or by written statements?

Answer. — They state their own cases invariably vivâ voce.

Question XXXV. — Do parties tell their own tale, or employ vakils?

Answer. — They tell their own tale — vakils are unknown. [Another respondent says that instances of a pleader (mukhsár) being employed have occurred; it is usually a near relation, and only when the principal was incapable. Professional or permanent pleaders are unknown.]

Question XXXVI. — In penal cases, are witnesses compellable to attend to the summons of the accused, and to depose with all the usual sanctions?

Answer. — Yes; the court compels the attendance and deposition, in the usual way, of the witnesses for the accused.

Question XXXVII. — Who defrays the expenses of witnesses in criminal cases? Are such witnesses obliged to feed themselves during their attendance on the court, and journey to and fro, or does the government support them?

Answer. — The witnesses in penal cases support themselves; no allowance for food, travelling expenses, &c. is made them by any one.

Question XXXVIII. — In criminal cases, if the prisoner volunteers a confession, does his confession supersede the necessity of trial?

Answer. — It does, entirely.

Question XXXIX. — If the prisoner be fully convicted by evidence, must his confession nevertheless be had?

Answer. — It must.

Question XL. — If he be sullenly silent, how is his confession obtained?

Answer. — He is scolded, beaten, and frightened.

Question XLI. — May the prisoner demand to be confronted with his accuser, and cross-examine the witnesses against him?

* The vilest of the vile.
Answer.—He has both privileges always granted to him.

Question XLIII.—In civil cases, are witnesses allowed their travelling expenses and subsistence, or not? and when, and how?

Answer.—Witnesses must in all cases bear their own expenses.

Question XLIII.—Must the expenses of a witness in a civil case be tendered to him by the party as soon as he is desired to attend, or may they be tendered after the witness has presented himself in court?

Answer.—Witnesses must attend without any allowance being tendered, sooner or later.

Question XLIV.—In civil cases, how are costs, exclusive of expenses for witnesses, distributed and realised? Does each party always bear his own, or are all the costs ever laid as a penalty on the losing party when he is to blame?

Answer.—All costs whatever are distributed between the parties, after the decision, according to fixed rules.

Question XLV.—If a witness in a civil cause refuses to attend or to depone, what is the course adopted with respect to him? may the summoning party recover damages proportioned to the loss sustained by the witness's absence or silence? and may any punishment be inflicted on such contumacious witness?

Answer.—The court will always compel the attendance of a witness required, and will compel his deposition too; and if there be reason to suppose he is prevailing or concealing some part of what he knows, he is imprisoned until he makes a full revelation.

Question XLVI.—What is the punishment for perjury and subornation of perjury?

Answer.—In trifling cases, the perjurer and suborner are fined; in grave matters, they are corporally punished, and even capitaly, according to the mischief done.

Question XLVII.—How many sorts of evidence are admissible—oral testimony—writings—decisory oaths—oaths of purgation and imprecation—ordeals?

Answer.—In civil causes, the Hari-vansa is put on the head of the witness preparing to depose, and he is solemnly reminded of the sanctity of truth. [Another respondent says, "Evidence of external witnesses is the first and best sort; but if there are none, then an oath is tendered on the Hari-vansa to both parties, and they are required to make their statements over again under the sanction of this oath; by these statements, so taken, the court will sometimes decide, or one party in such a case may tender the other a decisory oath, and, if he will take it, the tenderer must submit."
Question XLVIII. — Is oral testimony taken on oath or without oath? — what are the forms?

Answer. — On oath; the form is given above. [By another respondent: "If the witness be a Sivámárgi or Bráhmanical Hindú, he is sworn on the Hari-vansa; if a Buddhist, on the Pancha-raksha; if a Moslem, on the Korán."]

Question XLIX. — In civil causes, if testimony of men and writings is forthcoming, may either party call for ordeal, or is it only a pis aller? and if one party demands, is the other bound to assent?

Answer. — Ordeals are only a substitute, the best that can be had when oral and written testimony are both wanting.

Question L. — May the prisoner in a penal cause rebut evidence by the ordeal, and are ordeals allowed to any persons under accusation of crime?

Answer. — If the prisoner be convicted by evidence, but still refuses to confess, and asserts his innocence, his demand of the ordeal must be allowed.

Question LI. — Do parties ever depose in their own causes, and under the same sanctions as external witnesses?

Answer. — In all causes, civil and criminal, the parties may depose like external witnesses, and under the same penalties for falsehood.

Question LII. — How are writings signed or sealed, and attested or proved? are the attesting parties summoned, or, if dead, is their handwriting proved, or how?

Answer. — In cases of bonds, &c. the witnesses to which are dead, and no other satisfactory evidence is forthcoming, ordeal is resorted to.

Question LIII. — How are unattested or casual writings proved? must the writer be produced, or will evidence of his handwriting be admitted?

Answer. — If the writer be forthcoming, he must be produced; if not, evidence of his handwriting is admitted, and any other sort of evidence whatever that can be had: but if the result of the whole is unsatisfactory to the court, it will direct an ordeal.

Question LIV. — Are tradesmen allowed to adduce their entries in their books to prove debts to them? and must the shopman or enterer of the items be produced to prove the entries?

Answer. — The value of entries in merchant's books, and in general mercantile affairs, are referred by the court to a Pancháyet of merchants.

Question LV. — How is the evidence of a man of rank taken?

Answer. — He must go into court and depose like any other person.
Another authority, however, states, on the contrary, that such a person is not required to go into court and depone; but an officer of the court is deputed to wait on him at his house, and to procure his evidence by interrogatories.

**Question LVI.**—How is the evidence of a woman of rank taken ?

*Answer.*—The court deputes a female to hear the evidence of a lady of rank, and to report it to the court.

**Question LVII.**—Is oral evidence taken down as uttered, by rapid writers, and enrolled on record ?

*Answer.*—In general, oral evidence is not taken down or preserved, nor is it ever taken in whole. In trifling matters, no record whatever of the evidence is made; but in grave affairs, the substance of the more material depositions is preserved and recorded.

**Question LVIII.**—Is written evidence, when adduced, recorded; and, if so, is it in full or in abstract ?

*Answer.*—Important writings are copied, and the copies are recorded after the decision of the case.

**Question LIX.**—Is the decree recorded, and a copy of it given to the winning party ?

*Answer.*—The decree is written, the original is given to the winner of the cause, and a copy is deposited in the record-office of the court.

[Another respondent states, “the decree is not written or recorded.”]

**Question LX.**—Do the decrees record the cause in full or in abstract ?

*Answer.*—In full, with respect to whatever they profess to record, which, however (as stated above), is not every stage of the proceeding.

**Question LXI.**—Are the records of the several courts of justice preserved in the Kumâri Chôk, and sent there immediately after the causes are decided ?

*Answer.*—The Kumâri Chôk is the general and ultimate place of deposit, whither the records of each court of justice are sent after explanation, and account of receipts rendered to the government at the close of each year. In the interim, the records stay in the courts where the affairs are decided.

**Question LXII.**—Where the party in a civil cause enters a suit, does he pay any fee, or when he exhibits a document; and, in short, upon what occasions is any thing demanded of him ?

*Answer.*—There is no fee paid on any of the occasions alluded to; what is taken is taken when the cause is decided.

**Question LXIII.**—What are jîthourî and harourî ?—in what proportion and on what principle are they taken ?
**Answer.**—*Jit'houri* is what is paid to the government by the winner of a cause, and *harouri*, what is paid by the loser. They are proportioned to the amount litigated.

**Question LXIV.** What is *dhúngá-chūâyi*?

**Answer.**—A stone (*dhúngá*), the image of *Vishnú*, is placed before the loser when he has lost, and he is commanded to touch it; he places one rupee and one pice on the stone, and then salutes it with a bow, and retires, leaving the offering.

**Question LXV.**—Besides *jit'houri*, *harouri*, and *dhúngá-chūâyi*, what other expenses fall on the litigants?

**Answer.**—Half as much as is taken as *harouri* is taken as *jit'houri*; both go to the *sirkár*, and are proportioned in amount to the property litigated. *Dhúngá-chūâyi* is one rupee per cause taken from the loser; *sabhásūdḥá* is one or two rupees per cause, according to circumstances; *dhúngá-chūâyi* is the perquisite of the *bichári*.

**Question LXVI.**—Can a civil action of damages be brought for assault, battery, defamation, &c.; or must the party complained against be of necessity prosecuted criminally?

**Answer.**—A civil action may be brought by the injured party in any of the four courts of the capital.

**Question LXVII.**—If the defendant in any case as above be cast, is he ever made to pay the plaintiff’s expenses in prosecuting him?

**Answer.**—In cases of that sort, no expenses fall on the plaintiff, for the *sirkár* takes no fines or taxes from him; witnesses have no allowance, and *vakils* are unknown.

**Question LXVIII.**—What is the jail-delivery at the dásahra? Are not offenders tried and punished at the time of offence? and, with courts always sitting and competent to hear all causes, how comes it that multitudes of prisoners are collected for the dásahra?

**Answer.**—The jail-delivery is a mere removal of prisoners from the city into an adjacent village, in order that the city may be fully lustrated and purified at that season. The usage has no special reference to judicial matters; but so many offenders as ought about that time to be heard and dismissed, or executed, are so heard and dealt with.

**Question LXIX.**—Is the jail delivered at the dásahra by the *dit'ha*a’s court, or by the council of *bháradars*?

**Answer.**—When the dásahra approaches, the *dit'ha* takes to the *bháradár* sathá the criminal calendar of those whose offences have been tried, and states the crime of each, the evidence, and the punishment he conceives applicable. The *bháradárs*, according to their judgment on the *dit'ha*a’s report, set down the punishment to be
inflicted on each offender, and return the list to the diṭ'há, who makes it over to the araz begí, or sheriff, and he sees execution done accordingly, through the medium of the mahá-náikias.

Question LXX.—What is the prisoner's daily allowance?—and what is the system of prison discipline?

Answer.—Each prisoner receives daily a seer of parched rice and a few condiments. [Another respondent states, that prisoners of the common class get one and a half annas per diem; persons above that class receive, according to their condition, from four annas to one rupee per diem.]

Question LXXI.—What is the preventive establishment in cities?

Answer.—There is no civil establishment of watchmen, but the military patrole the streets throughout the night at intervals.

Question LXXII.—To whom are night-brawls, and riots, and disturbances, reported?

Answer.—The night-watch of the city belongs to the soldiery, who go their rounds at stated times. If they apprehend any persons in their rounds, they keep them till morning in the guard-room, and then deliver them to the mahánias, by whom they are produced in court, when their affairs are summarily heard, and they are released or committed to prison, as the case may be.

Question LXXIII.—What are the village establishments of the preventive and detective kind?

Answer.—In each village one dwária, four pradháns, four náikias, and from five to ten mahánias.

Question LXXIV.—In the villages of Nepál is there any establishment similar to the village economy of the plains? Any bará alotaya, or bará balotaya?

Answer.—No: there is neither pattél, nor patwari, nor mirā'ha, nor garait, nor blacksmith, nor carpenter, nor chamár, nor washerman, nor barber, nor potter, nor kandú, in any village of Nepal.

Question LXXV.—Is the managing zemindár of each village, or are the principal landholders collectively, bound to government, in cases of theft, to produce the thief, or restore the stolen property?

Answer.—No: there is no such usage.

Question LXXVI.—Is the village málguzár usually a farmer of the revenues, or only a collector? the principal resident, ryot or a stranger? and how do these fiscal arrangements affect those for police purposes?

Answer.—The dwária and pradháns above mentioned collect the revenues, and the same persons superintend the police, keep the peace, and punish with small fines and whipping trifling breaches of
it. The dwâria is chiefly an official person, and the representative of government or its assignee: the pradhâns are the most substantial land-owners of the village, and chiefly represent the community. They act together for purposes of detection and apprehension; the four pradhâns under the dwâria.*

Question LXXVII.—How much of the law depends on custom, and how much on the sástras?

Answer.—Many of the decisions of the courts are founded on customary laws only; many also on written and sacred canons. [By another respondent: “There is no code of laws, no written body of public enactments. If a question turn upon the caste of a Brâhman or a Râjput, then reference is made to the gîrû (râj gîrû), who consults the sástra, and enjoins the ceremonies needful for the recovery of the caste or the punishment of him who has lost it. If a question before the courts affect a Parbattia, or Neuár, or Bhôtia, it is referred to the customs established in the time of Jáya T’hití Mát Râjá, for each separate tribe; dhúngâ-chúdyi being performed as directed by those customs. Since the Gorkhali conquest of Nepál Proper, the ordeal by immersion in the Queen’s Tank has become the prevalent mode of settling knotty points.”†]

Question LXXVIII.—In general, what sort of causes are governed by the sástras, and what by customary laws?

Answer.—Infringements of the law of caste in any and every way fall under the sástra; other matters are almost entirely governed by customary law (dés-áchár).

Question LXXIX.—Do the Newârs and Parbattias follow the same or different law sástras?

Answer.—The customs of the Buddha portion of the Newârs are peculiar to themselves.

Question LXXX.—With respect to inheritance, adoption, and

* Note from Mr. Hodgson’s remarks on the great military road which traverses the valley of Nepál. “This state, instead of collecting its revenues, and paying its establishments out of them, prefers the method of assigning its revenue claims directly to its functionaries, and leaving them to collect the amount; while, as judicial follows revenue administration in Nepál, the government feels little concern about territorial divisions: in the whole country westward from Kathmandu, as far as the Narâyâni river; and eastward as far as the Dúd Kósi river, there is no specific arrondisement, district, or sîla. These large tracts of country are assigned principally to the Compú, or army stationed in the capital; and their judicial administration is for the most part in the hands of deputies of the officers, supervised by certain migratory royal judges, called mountain-bichâris.”

† Dr. Buchanan Hamilton observes, that ordeals were seldom used until the Gorkha family seized the government; since which time they have become very frequent.—Account of Nepál, p. 103.
wills, do you follow the Mitákshará, the Dáyabhága, or any other Sástra of the plains; or have you only a customary law in such matters?

Answer.—We constantly refer to those books in the decision of such cases.

Question LXXXI.—How do sons divide among the Khás tribe? Sons by wives and those by concubines; also unmarried daughters? What is the widow's share, if there be sons and daughters? What if there be none?

Answer.—Among the Khás, sons by concubines get a third of what constitutes the share of a son by a wife. [Another respondent says in addition: "If a Khás has a son born in wedlock, that son is his heir; if he has no such son, his brothers and his brother's male descendants are his heirs: his married daughters and their progeny never. If he has a virgin daughter, she is entitled to a marriage portion, and no more."

Question LXXXII.—Can the Khás adopt an heir not of their kindred, if they have near male relations?

Answer.—No: they must choose for adoption the child of some one of their nearest relatives.

Question LXXXIII.—Are wills in force among the Khás? and how much of ancestral and of acquired property can a Khás alienate by will from his sons or daughters?

Answer.—If a Khás has a son, he cannot alienate a rupee from him by will, save only, and in moderation, to pious uses.

Question LXXXIV.—Do the magars, and gurúngs, and other Parbattias, differ from the Khás in respect to inheritance, adoption, and wills?

Answer.—In general, they agree closely.

Question LXXXV.—How is it with respect to the Newárs, Sivamárgi, and Buddha-márgi.

Answer.—The former section agree mostly with the Parbattias on all three heads; the latter section have some rules of their own.

Question LXXXVI.—How is it with regard to the Múrmí tribe, and the Kairánti?

Answer.—Answered above: in regard to inheritance, all tribes agree.

Question LXXXVII.—Are the customs of the several tribes above mentioned, in respect to inheritance, &c., reduced to writing, collected, and methodised? If not, how can they be ascertained with sufficient ease in cases of dispute before the courts?

Answer.—The customary law on those heads is reduced to writing,
and the book containing it is studied by the bicháris, and others whom it may concern. [Another respondent, on the other hand, says, with reference to the customary laws: "They are not reduced to writing; nor are the dit'has or bicháris regularly educated to the law. A dit'ha or bichári has nothing to do with the courts till he receives from the government the turban of investiture; but that is never conferred, save on persons conversant with the customs of the country, and the usages of its various tribes; and this general conversancy with such matters, aided by the opinions of elders in any particular cases of difficulty, is his sole stay on the judgment-seat, unless it is that the ci-devant dit'ha or bichári, when removed by rotation or otherwise, cannot retire until he has imparted to his successor a knowledge of the state of the court, and the general routine of procedures." A third reply is as follows: "When cases of dispute on these topics are brought into the court, the judge calls for the sentiments of a few of the most respectable elders of the tribe to which the litigants belong, and follows their statement of the custom of the tribe."]

**Question LXXXVIII.** Are the bicháris regularly educated to the law?

**Answer.**—Those who understand dharma and ádharma, who are well educated and practised in law affairs, are alone made bicháris. [By another authority: "Those who are well educated, of high character, and practically acquainted with the law, are alone made bicháris. It is not indispensable that they should have read the law Sástray though, if they have, so much the better."]

**Question LXXXIX.** The dit'ha is not often a professed lawyer; yet, is he not president of the supreme court? How is this?

**Answer.**—Whether the dit'ha has read the Nyáya Sástray or not, he must understand nyáya (justice-law), and be a man of high respectability.

**Question XC.** Are there separate bicháris for the investigation of the civil causes of Newárs and of Parbattias?

**Answer.**—There are not.

**Question XCI.** In the dit'ha's court, if the dit'ha be the judge, the investigator, and decider, what is the function of the bicháris?

**Answer.**—The investigation is the joint work of the dit'has and the bicháris. [Another respondent says: "They both act together: the decree proceeds from the dit'ha."]

**Question XCII.** In courts where no dit'ha presides, do the bicháris act in his stead?

**Answer.**—See the answer to Question XXV.
Question XCIII.—Among Newârs and Parbattias, may not the creditor seize and detain the debtor in his own house, and beat and misuse him also? and to what extent?

Answer.—The creditor may attach duns to the debtor, to follow and dun him wherever he goes. The creditor may also stop the debtor wherever he finds him; take him home, confine, beat, and abuse him; so that he does him no serious injury in health or limbs. [Another answer states, that the creditor may seize upon the debtor, confine him in his own house, place him under the spout that discharges the filthy wash of the house, and such like; but he has no further power over him.]

Question XCIV.—Is sitting dharna in use in Nepál?

Answer.—It is.

Question XCV.—Give a contrasted catalogue of the principal crimes and their punishments.

Answer.—Destruction of human life, with or without malice, and in whatever way, must be atoned for by loss of life. Killing a cow is another capital crime. Incest is a third. Deflowering a female of the sacred tribe subjects a man of a lower caste to capital punishment, and the confiscation of all his property. Robbery is a capital crime. Burglary is punished by cutting off the burglar’s hands. [The subjoined scale is furnished by another respondent:

**Killing in an affray.**—The principal is hanged; the accessories before the fact severely fined.

**Killing by some accident.**—Long imprisonment and fining, besides undergoing ṭriyaschitā.*

**Theft and petty burglary.**—For the first offence, one hand is cut off; for the second, the other; the third is capital.

**Petty thefts.**—Whipping, fining, and imprisonment for short periods.

**Treason, and petty treason.**—Death and confiscation: women and Brāhmans are never done to death, but degraded in every possible way, and then expelled the country.]

Question XCVI.—If a Newâr wife commit adultery, does she forfeit her sriḍhán† to her husband, or not? and how is it if she seek a divorce from him from mere caprice? If, on the other hand, he divorces her from a similar motive, what follows as to the sriḍhán?

Answer.—If a Newâr husband divorce himself from his wife, she carries away her sriḍhán with her: if a Newâr wife divorce herself, she may then also carry off with her her own property or portion. Adultery the Newârs heed not.

* Vide answer to Question XXX.
† *Srîdhán, dowry.*
Question XCVII.—Among the Parbattia tribes, when the injured husband discovers or suspects the fact, must he inform the courts or the sirkár before or afterwards? and must he prove the adultery in court subsequently? What, if he then fails in the proof?

Answer.—When a Parbattia has satisfied himself of the adultery, and the identity of the male adulterer, he may kill him before giving any information to the court or to the sirkár; he must afterwards prove the adultery, and if he fails in the proof he will be hanged.

Question XCVIII.—Are such cases investigated in the courts of law, or in the Bháradár Sabhá?

Answer.—The investigation is conducted in the dit‘ha’s court; but when completed, the dit‘ha refers it to the Bháradár Sabhá for instructions, or a final decree.*

Note.—The paper “On Crimes and Punishments,” drawn up by Mr. B. H. Hodgson, and referred to in the introduction to the preceding article, is intended for insertion in the next Number.—Ed.

* One of the respondents—the person referred to by Mr. Hodgson in his Memoir on the Law of Adultery in Nepál, p. 48 of this volume—voluntarily appended some remarks of his own to these queries, which will be found in substance in the same passage.—Ed.