This subject is one that possesses much interest whether for the legislator, the historian, or the philosopher. In Hindustán we look in vain for any traces of Hindú legislation or government. The Moslem conquerors have everywhere swept them away, and substituted their own practices and doctrines for those of the conquered. Even in Rájpútána, it may be doubted whether we have the pure and unmixed practices of Hindu legislators and judges, or whether their necessary connection and intercourse with Muhammedan governments have not more or less modified their notions on these subjects, and introduced changes more or less considerable. But in Nepál at least we may be sure that nothing of this kind has occurred. Separated till very recently from any intercourse with Hindustán, shut up within their mountain fastnesses, the Nepálese have been enabled to preserve their institutions in all their Hindú purity; and undoubtedly, if we wish to enquire what are the features of the Hindú system of jurisprudence, it is in Nepál we must seek for the answer.
Mr. Hodgson is the first who has enabled us to obtain something like a precise and practical view of this complex subject. He has acquired his knowledge by dint of painful perseverance in submitting repeated written interrogatories to individuals who had either previously filled, or were then filling, the first judicial situations in Nepal. These individuals gave written answers to his inquiries; and from various motives they might be presumed to speak out fairly. One of these persons presided for many years with a high reputation for ability over the Supreme Court of Justice at Kathmandu. Another was the present Dharma dhikari of Nepal, a Brahman of great and various acquirements, and, from his situation, familiar with the legal administration of the country.

The information thus obtained was recorded by Mr. Hodgson, and transmitted by him to the Governor General in the form of a literal translation of the questions and their answers; to which were added, at separate times, several supplementary papers containing the result of his own local observation and research. The Governor General deemed the information collected by Mr. Hodgson of sufficient interest and importance to authorize its publication.

In attempting to arrange these valuable materials in a more connected and systematic form, any alterations or omissions in the original text have been scrupulously avoided, which might perhaps hazard the correctness of the details, or by taking from their freshness diminish their chance of interest with the earnest enquirer.

Some of the more remarkable features of the Hindu system of jurisprudence seem to call for notice in these preliminary lines, if only for the purpose of drawing the reader's attention to the subject, and furnishing him with an inducement, perhaps, to enter on an enquiry that promises well to reward any attention bestowed upon it.

The judicial system of the Nepalese appears to differ from our European system in having no separate jurisdictions or modes of proceeding for criminal trials and civil suits. Of the four Central Courts, as well as of
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those of the provinces, each is competent to the dispatch of either business, and in the forms established there appears little distinguishable. Another feature of difference, and a highly important one, is the application of the trial by ordeal to the decisions of civil suits, where there is a want of evidence both oral and written. A third feature in which it differs from that of Europe is, the compelling the convicted criminal to confess; he being subjected to the torture of whipping till the desired result is obtained, without which he may not receive the full punishment of his offence. But the most peculiar feature of the system is that which belongs to it as the code of a Hindú people, I allude to the great importance attached to questions of caste, the cognizance of these being restricted to the highest Court (the Inta Chapli), in whatever part of the kingdom the subject matter originate. It may be doubted whether the system followed in all these Courts might not be improved by a closer approximation to European practice, but of some of the peculiarities which distinguish it, as compared at least with English jurisprudence, there can be as little doubt that we should do well to take a lesson from them.

Thus, the Nipálese are not so averse to receive proof of a criminal’s guilt as we are. Provided he be proved guilty, they are not very particular as to the means. They consider in fact that the business of a judge is not to screen a criminal, but to convict him, and they deem the most satisfactory conviction of all, the voluntary confession of the criminal. Another particular which we might with great advantage adopt from them is, the celerity of their proceedings. No delay is ever suffered to take place as soon as a complaint is made, or information given; the parties with their witnesses are sought for, and, as soon as produced, the investigation proceeds at once to a conclusion. A third point worthy of our imitation is, their reception of each party’s story in civil suits as told by himself, or of the prisoner’s defence in criminal cases, without allowing a third person by his studied glosses to come between the judge and the truth. They appear to be sensible that manner as well as matter are to be
regarded, when we desire to judge of the good faith with which a statement is made.

In other particulars the Nepâlese system appears to partake of the excellencies and defects of our own. Thus the prisoner in criminal cases has always the privilege of confronting his accusers, and of cross-examining them; while on the other hand, in civil suits they have (considering the poverty of the country) as excellently graduated a scale of picking the pockets of both plaintiff and defendant, as is to be found in the practice of our own "reason-made-perfect" system. *

There are other valuable peculiarities of the Nepâlese system which deserve to be particularly noticed. Thus, it will be remarked, that the Courts seek in the first instance to reconcile parties, or to refer matters in dispute to arbitration. This natural and highly advantageous system, only recently made the practice of the English Courts, has prevailed in Nêpâl for ages. Again, there are no rules of exclusion in regard to evidence. All is taken and rated only for what it is worth. Neither is there any restriction against parties becoming witnesses in their own causes,—speaking under similar penalties for false evidence as ordinary or external witnesses.

Oaths are very sparingly used, and in general rather as substitutes for evidence than as a means of validating it. This indeed is the most ancient and almost the universal acceptation of testimony on oath. It prevents as a consequence, in regard to witnesses, the adventitious crime of perjury or oath-breaking, leaving the more simple crime of false-witness in its place. But one of the chief practical benefits of the system lies in the sparing employment of records, which are never used for trivial objects. This is a chief cause of the quick dispatch of business which signalizes the Nêpâl Courts, and effectually prevents arrears of business:—a marked contrast to our own Indian system wherein an over-weaning attachment to record is the source of dreadful expense and delay of justice.

* Law is the perfection of reason.
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I. COURTS AT THE CAPITAL.

There are four courts of justice (Nyáya Sabha) at Kathmandú. The first and chief is called Kot Singh; the 2d Inta Chapli; the 3d Táksár; and the 4th Dhansár:

§ 2. Jurisdiction.

"+ There are no regular limits placed to the jurisdiction, personal or local, of these courts, nor indeed of any court in Népál. Offences, however, involving the loss of life or limb, or confiscation of a man's whole substance, can be decided only in the Inta Chapli, whereto they must be at once transferred, for trial as well as sentence, if they originate in any...

* The above remarks were for the most part penned by the late Captain Herbert, into whose hands the voluminous MSS. were placed by Mr. Secretary Swinton, in order to be condensed and prepared for publication. They were afterwards arranged, and the interrogatory style broken down in order to save space, by the late Mr. G. M. Batten, Deputy Secretary to Government in the Political Department, and were finally submitted to the author for his approval and correction before publication. Mr. Colebrooke's account of Hindu Courts of Justice, in the Trans. Roy. As. Soc. II., had not then appeared. J. P. Sec. As. Soc.

† Inverted commas denote where the author's manuscript is directly followed.
shape, in any other court of the Capital or its environs* as they must be referred to it, prior to and for sentence, if they originate in any court of the mountains or of the Tardí. But all other causes of a criminal or quasi criminal nature, (such as trespass, assault, battery, slander; reviling, &c. which in Nèpáл are punished by whipping, petty fines, and short imprisonment, and for which the plaintiff can never have a civil action of damages) may be heard in any of the four courts of Kathmandú, or in any court of the provinces—as may all civil actions whatever without limitation."

§ 3. Officers attached to the courts and their several functions.

All the four courts are under the control of one, and the same supreme judge, called the Ditha.

There are two Bicháris, or judges for each of the three courts, Kot Singh, Taksår, and Dhanándr, who conduct the interrogation of the parties and ascertain the truth of their statements. Subordinate to the Bicháris are the following executive officers:

For the Kot Singh or supreme civil court—

1 Khardár, 1 Jemadár, 2 Amaldás, and
1 Major, 2 Havildárs, 40 Sipáhis.†

"The Bicháris are, originally and properly, the judges. They were so everywhere before the conquest. They are so still, except in the metropolitan courts. The Ditha, or president extraordinary of all the courts,

* The great valley, and its immediate neighbourhood naturally form the peculiar domain of the Metropolitan Courts, but definite legal bounds of jurisdiction are unknown to the system and alien to its genius and character. The rivers Déd Cosi and Trisul Ganga are the eastern and western limits respectively of the local jurisdiction, in the first instance, of the Courts of the Capital. H.

† These military terms, current below, prove nothing against what has been noted above, as to the absolute independence of the civil institutions of Nèpáł upon Moslem models. The Gorkhas borrowed their military system entirely from below, but from us not from the Moghels. Here and there indeed the Mussulman name of a civil functionary has crept into use of late, but is "vox et praetera nihil." The sipáhis, are not regulars, but a sort of militia or provincials, exclusively attached to the courts. H.
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is a badge of conquest; and his function, though by use now understood, is anomalous. Where he is not personally present, the Bicháris are judges. Where he is, they share his judicial functions as assessors; but chiefly enact at present, the part of our barristers. So the military menials of the court are excrescences and badges of conquest. The original ministerial agents were the Mahan Naikiahs and their Mahániahs—the Tol-mals, &c. &c., as set down under Inta Chapli.”

In each of the courts Taksár and Dhansár—

1 Khardár, 2 Amaldárs,
1 Jemadár, and
2 Havildárs, 25 Sipáhis.

These officers serve processes* in civil suits; see to the forthcoming of unwilling* defendants and witnesses in such suits; and carry into execution the court’s judgment.

The following officers belong to the Inta Chapli or supreme criminal court—

1 Bichári or Judge, 40 Sipáhis, 16 Kotwáls,
1 Arazbégí, 2 Mahánaiakiahs, 2 Kumhal-naikiahs,†
2 Khardárs, 128 Mahániahs, 1 Tolpradhán,‡
2 Jemadárs, 15 Tol-mals, 1 Pasalpradhán,
4 Havildárs, 24 Choki-mahániahs, 2 Tehvildárs, and
4 Amaldárs, 1 Kotwál-naikiah, 6 Bahádárs.

The Arazbégí is the superintendent of the jail, and sheriff presiding over and answerable for executions. Immediately under him are the Mahánaiakiahs, or superintendents of Mahániahs§ who search for and apprehend criminals, and execute almost all processes§ and sentences in civil and

* See preceding note touching the military executive of the courts. H.
† The Kumhal-naikiah is head of the craft of potters; each craft has a head, but none has any special connection with the court. H.
‡ The Tolpradhán is not, properly, a judicial functionary; his duty is to levy the fixed tax of ½ rupees upon each Newár merchant returning from Bkońe. H.
§ See preceding remark. Here is plain proof that the military are accessory and mere badges of conquest, all functions being provided for without them. H.
criminal causes, carrying into effect the sentences of the courts, whether whipping or other. The Mālhāniaiks are always in attendance; the Mālhāniaiks attend by turns. They do not perform watch and ward; that duty belongs to the military; but in case of disturbance actually commenced or hue and cry of theft, or other crime committed or attempted, being raised, they apprehend the offenders. There is a Tol-māl to or superintendent of each Tāl, or ward of the city. If the presence of any person is needed in court, it is the Tol-māl’s business to identify the said person, and point out his residence to the Mālhāniaiks, whose duty it is to secure him.

The Choki-mālhāniaiks are the guards of the jail.

The Kotwāls, under their Naikiahs, perform various kinds of menial service for the Ditha and Bichāris during their sitting in court. They attend by turns four at once. The Tehvildār has charge of all monies paid into the court on whatever ground. The Bahidār keeps the accounts of all such monies. The Khardār writes the Kailnāmahs and Rāzināmahs in each cause.

The judges and others attached to the courts receive salaries from the Government and take fees also.

The above courts sit for all the twelve months of the year, with the exception of a week or fortnight at the great autumnal and vernal festivals, Dasahara and Divālī, when only they are closed.

They are always fixed, nor do any of the judicial authorities of Kathmandū make circuits: but the Ditha has the power of sending to any part of the kingdom special judges (Bichāris) to investigate official malversation and other particular cases when such occur.

“'The Ditha, or supreme judge, personally presides over the Kot Singh and Inta Chapli, constantly and habitually, these two being in fact his own courts for the despatch (as we should say, though the term, as we shall soon see, would not actually pourtray the process,) of civil and criminal business respectively, and as well originally, without limit,
as by way of appeal in the last resort. The Ditha also sometimes goes to
preside personally in the Taksdr and Dhansdr when any grave matter
therein arising calls for his presence."

The subordination of the Taksdr and Dhansdr courts to the Ditha is
illustrated at length by Mr. Hodgson in the following manner:—"The
Bichdris of those courts hear, to a conclusion, all civil causes of whatever
amount, that plaintiffs choose to bring before them. They also hear, to
a conclusion, all plaints of wrongs done and suffered, save only such
as entail a punishment touching life or limb, or involving total confis-
cation. But at the close of each day they are obliged to go to the
Ditha and report, verbally merely and summarily, that such and such
cases have come before them, and been heard, and that in their opinion
such and such awards should be made. The Ditha may assent; and
then the awards are made accordingly by the respective Bichdris next
morning in the Taksdr and Dhansdr as the cases may have origin-
ated. Or the Ditha may dissent and direct in any case another
decree, and that without desiring to know more of such case than is thus
verbally set before him by the Bichdrí concerned. The Bichdrí may, in
this event, if he please and be acute, argue the topic and perhaps convince
the Ditha he is right and the Dith wrong. Then again the award propos-
ed by the Bichdrí will hold; else, the Ditha will either immediately
direct another award; or he will do so, after examining any documentary
evidence adduced in the cause and brought to him for perusal by the Bi-
chdrí. But if neither the Bichdrí's verbal report of the case, nor the docu-
ments produced by them for summary examination by the Ditha afford him
satisfaction (as however in 90 cases out of 100 they do) the Ditha will
proceed to such Bichdrí's court and hear the cause anew,* presiding him-
self in that court for the occasion. Such is the mode of the Ditha's

* There is no want of leisure on the part of the Ditha to prevent his doing this, so often
as may be necessary. Arrears of business are unknown to the courts of Nipál, and the
current affairs of every court leave its judges at all times abundance of spare time. H.
ordinary control over the *Taksdr* and *Dhansdr* in cases where both parties assent to the judgments given in those courts. If either party dissent, then there is an appeal from the *Taksdr* and *Dhansdr* to the *Ditha* in the *Kot Singh*, and herein consists another step and degree of subordination in those courts to the *Ditha*. In appeals, as there are, now at least, no records or next to none (formerly recording to a small extent was in use) in any court of primary or superior jurisdiction, the original parties and witnesses must all proceed to the superior court. In regard to the form of the references which are necessarily made by the inferior courts of *Kathmandu* in all cases (and by the provincial courts, in all cases touching life or limb or the substance of a man’s property) to the *Ditha* for his sentiments as to the award, even though there be as yet no appeal to him, judgment not having been in fact had, such references are made by the *Kathmandu Bicharis* by word of mouth simply and summarily, as above narrated; these *Bicharis*, moreover, in all cases, civil as well as criminal, necessarily producing at the same time the written acknowledgment or confession of the losing or offending party, signed by such party. This document has always a principal weight in settling the affair in the *Ditha’s* opinion; but it will not bar the loser’s or criminal’s appeal to the *Ditha’s* own court, either being allowed to allege and prove in appeal undue threats or violence in extorting such acknowledgement or confession.”

The *Bicharis* of the *Taksdr* and *Dhansdr* cannot send any person to jail or put him in irons. They may only detain him in court pending the decision on his case, when if it be necessary to put him in irons or send him to jail it must be done with the sanction of the *Ditha*. They can, in general, fine to any extent by their own authority, but if they please they may refer a grave fine to the *Ditha* or *Bhadradar Sabha* (Council of State.)

The *Ditha* in *Inta Chapli* can imprison a man for any number of months that may elapse from his confinement up to the annual ceremony called *Sraddh-pakhsh*, at which period the *Ditha* must report to the *Bhadradar Sabha*, or Council of State, and take their sanction for each case of
further imprisonment. In general, the Ditha in Inta Chapli can fine to any extent without sanction of the Bhāradār Sabhdā. Now and then a very grave case may be carried by the Ditha himself to the Bhāradār Sabhdā, which then usually awards the fine suggested by him.

But the Ditha cannot inflict any punishment touching life or limb, or extending to total confiscation without first summarily reporting to and obtaining the sanction of the Rāj Bhāradār Sabhdā or Rāja in Council.

§ 4. Other Courts at Kathmandū.

Besides the four courts above described, there are two Courts of Registry—that for houses is called the Chi-bhadé—and that for lands, the Bhū-bhandē. All deeds of transfer of houses and lands are registered in these courts; and copies, with the Lal mohr or State seal attached, furnished to the parties. No sale of house or land is valid till this copy is had. There is another court of special jurisdiction called the Daftet-khāneh, in which the disputes of the soldiery relative to the lands assigned to them for pay are investigated.

None of the above courts has criminal jurisdiction, and whatever penal offences may issue out of soldiers' claims, and claims relating to lands and houses, are carried to the Inta Chapli.

The Bangya-baithak or Kumāri Chok, at Kathmandū, is not a court of justice but the general record office of the fisc. A separate Ditha presides over it.

The whole of the courts of Kathmandū are situated within eighty or ninety paces of each other.

"The territorial limits of the metropolitan courts are the Dūd Cosi, East, and Trisul Ganga, West: but Bhatgaon and Patan have their own courts: and every where there are village courts. Its inaccurate genius is the chief characteristic of the Nēpāl judicial administration, as of that of the whole of Asia, and indeed of Europe until late years."
II. Judicial Administration of the Interior.

§ 5. Local Courts.

The valley of Nepal being assumed as a centre, the interior or mountain districts are divided for judicial purposes into Eastern and Western parts, each of which is sub-divided, or liable to sub-division. At present to the eastward there is only one grand section, called from its boundaries the section of the Mechi and Dud Cosi. To the westward there are two large sections; the former of which is denominated the division of the Kali and Bhéri, and also the Kali-par division: the latter is called the section of the Kali and Marsyangdi, and it is also known as the Manjh-khand circuit.

Two Bichhris, acting together, preside over each of the greater divisions above laid down. Their courts are frequently ambulatory, but there are fixed judicial residences for them. In the greater eastern division there are two, one at Manjh-khand, the other at Chayanpur. To the westward there are four:—two for the Kali-par arrondissement, at Baglung-chour and at Béni, and two for the Manjh-khand, at Pokhara and at Türkú.

The administrators of the Taráî, or low lands, appoint their own judicial authority (called Faujdár), who transacts with other business the administration of justice upon the old Moghel model. The Faujdár's appointment must be ratified by the Darbár.

For all the Taráî there are six Súbahs or general administrators; and under each Súbah, sometimes two, sometimes one, Faujdár.

For the division of Morang, there are one Súbah and two Faujdárs; for Sabtari-Mohotari, the same number; for Bara Parsa, the same; for Routahat, one Súbah and one Faujdár; for Chitwan-Bélvan, the same; for Botwál, the same; for the Doti-Taráî, one Faujdár; for Salliana, the same. Each of the above divisions is independent of the rest.
The powers of the Provincial,* or local, courts are always the same, not being regulated with reference to the rank of the Governor of the Province for the time being. But, in cases touching life or limb, or involving confiscation, breach of the laws of religion and loss of caste, every court of the interior must forward a written report with the offender's confession to Kathmandú to be laid before the Government which refers them to the Ditha. The Ditha reports the customary proceeding in such matters, and according to his report a royal command is transmitted to the local court to award such and such punishment, or to send the offender and witnesses to Kathmandú, as the case may be. No governor of a province or judge of a district court has power to decide cases involving loss of life or limb, or status, or substance of property, (jât and pâni): to the decision of all others they are competent.

Military officers, fiscal officers, "courtiers," and others of 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.

"The village courts of the interior are presided over by one Prajá-naikiah and four Pradhán-Prajás, popular chiefs of the spot, who now act in subordinate co-operation with a government agent or Dwâriâh. Above them come the hill Bichâris of the two divisions already named: and, instead thereof, in Pâlpâ and Dúti, the sudder court of the governor, and in the Tarâ, that of the Sabhâ or revenueal administrator.

The basis of the judicial system in the interior is to be recognized in the village courts, composed of a Naikiah and 4 Pradhâns: the Dwâriâh is merely a badge of conquest.

* The term Provincial rather implies a court of a vice-regal ruler of a large tract: there are none such in Nêpâl save the Governors of Dúti and Palpa, and the Sûbâhs of the lowlands. H.
§ 6. Appeals.

The supreme ordinary appeal court is the Kot Singh, but those who are dissatisfied with its decision can apply through the Ditha to the Mahârâja, who in such cases directs the matter to be investigated in the Kosi or Bhâradâr Sabhâ, (Council of State). The result of this investigation when completed is reported through the chief minister to the prince who issues definitive orders on the case, which are usually such as the report suggests. On such occasions, if the case should be a grave one, relating to loss of caste, and such like, the Bhâradârs are assisted by the Ditha and Bichâris of the Kot Singh; and, if need be, by the Dharmâdhikâri also.

No one is at liberty to carry his plaint in the first instance to the Bhâradâr Sabhâ.

The appeal from the local courts of the interior lies in the first instance to the Kot Singh and thence to the Bhâradâr Sabhâ in the manner above described. But "the circumstance that in appeals from the provinces the parties and witnesses must all repair to Kathmandú; the extreme difficulties of the way; and lastly the impression naturally produced by the known fact that the local court (in all those grave cases wherein alone appeals might be resorted to) has already referred its judgment for sanction to the supreme court, all conspire to render appeals to the supreme tribunal very rare."

The inhabitants of Dûti, and those of Pâlpâ and Salliânah, (which form two large provincial governments, always held by the first subjects of the state with authority to nominate their own judicial functionaries) must first appeal to the sudder courts of their provincial governors, and revenue administrator respectively. In the mountains eastward of the great valley and westward too, with the above exceptions, the people's first appeal from their local courts is to the hill Bichâris, their second to the Ditha of Kathmandú.
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Then there lies an appeal to the Kot Singh at Kathmandú, and finally to the Raja in Council: there is no separation of executive and judicial functions of government.


There are separate courts for the cities of Patan and Bhatgaon. Both places lie within the great valley, the former at the distance of two and the latter of eight miles from the capital.

The Múl-Sabhá or chief court of Patan and that of Bhatgaon cannot try the Panch-khata, or great crimes, involving peril of life or limb, or confiscation of a man’s whole substance; but only offences punishable by trifling whippings or fines. Their local jurisdictions are equivalent with the limits of the lands attached respectively to the towns in question. There is an appeal from these courts to the chief court at Kathmandú and important cases are often referred by them in the first instance to the supreme court of the capital.

The officers attached to the Múl-Sabhá or Pali-Sabhá at Patan, are as follows: the Dwáriáh like the Ditha of Kathmandú is a supernumerary imposed by conquest over the head of the Bichári or true judge, and the Pradháns or chief townsmen, his assessors.

1 Dwáriáh, who presides. 20 Máhániahs.
1 Bichári. 2 Kotwál naikiahs.
4 Pradháns. 24 Kotwáls.
1 Bahídár. 14 Potádár Jaisis.
1 Patwári. 8 Pot Máhániahs.
1 Goshwára Tehvildár. 1 Chaudari.
2 Mahannaiiahs. 1 Si-chandél.

The constitution of the Lám Pati or chief court at Bhatgaon, does not materially differ, except in a few of the titles, as Jua-Pradháns, Thecha Pradháns, Tuér-naikiahs, &c. The functions of the judicial officers have
been mostly described in § 3. The remainder belong to the fiscal. These courts being not merely seats of justice, but the centres of general administration.

The court of Patan called Tūsaal resembles the Bhu-bhandel of Kathmandú, and that called Kund-bali Sabhá answers to the Chi-bhandel of Kathmandú. They are, properly, courts of registration merely, but small actions relative to the boundaries of lands and houses, or to easements attaching to them, and small actions of debt also are tried in them.

The Tūsaal court at Bhatgaon, like that of Patan, answers to the Bhu-bhandel of the capital, and that called Karmi-Sabhá to the Chi-bhandel. When land is transferred by sale, or mortgage, its limits are laid down by the professional measurers attached to the Tūsaal, and the deed of sale is registered in the court, and a copy given to the buyer. As the boundaries of all lands are thus recorded in this court, disputes relative to them are referred to it, at least in the first instance.

It is unnecessary to particularize the establishments of these revenue courts which differ little from those above given.

There is a court at Bhatgaon called Bandya-Pradhán which has the exclusive cognizance of all disputes between the Bandyas* of that city, and their disputes alone can be heard in it.

§ 8. Police.

There is no civil establishment of watchmen in the cities of Nēpāl, but the military patrol the streets throughout the night. Night brawls and disturbances in the city are reported to the Ditha in the Inta Chapli.

The police of the villages is vested in the judicial officers described in § 4, the Dwāriah, 4 Pradhán and from 5 to 10 Maháníahs for each village, according to its size.

* Bandyas are the tonsured and regular followers of the Buddhism faith.
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The Dwáriah assisted by the Mukhiah or head villager* also collects the revenues and settles all the village disputes. He is in fact the principal source of justice in the villages. His cognizance extends over all cases not included in the Panch-khat, nor touching life or limb, or the substance of a man's property. He cannot capitally condemn, maim, mutilate or confisicate. He can imprison, and punish with the corah, and fine. The extent of his local limits is not fixed: sometimes he presides over several villages; sometimes over only one, if it be large.

The Mukhiah is the representative of the community, the Dwáriah of the government, both in matters of revenue and justice. The latter is the responsible person, but he acts with the assistance and advice of the former.

III. FORMS OF PROCEDURE.


In civil suits, if the plaintiff be not forthcoming he is searched for, and if not immediately found, bail is taken from the defendant to appear when wanted, and he is let go; but no decision is ever come to in such circumstances. If the defendant be the absent party, he is not on that account cast. He must be searched for, and until he is found, no decision can he come to.

The parties almost invariably plead vivâ voce, but the plaintiff sometimes begins his suit with a written statement. They also almost universally tell their own tale; but instances of a pleader (Mukshár), being employed have occurred, usually a near relative, and only when the principal was incapable. Professional or permanent pleaders are unknown. So

* The head villager is called by the Párbattiah the Gaon Mukhiáh; by the Newárs, Naikiah and Pradhán Prajá; in the Tardí, the Jéth ráyat. The ryots are called Prajás in the hills both by Párbattiah and Newárs. The Dwáriah is a title of the new dynasty. The duties of this officer and of the Pradhán Praja belong rather to the head of "Courts of Justice." H.
likewise are professional informers and public prosecutors. There are
none of either. The casual informer is sole prosecutor. Evidence of oral
testimony, of writings, of decisory oaths and oaths of purgation and im-
precatio, is admitted in all the four courts of the capital. Ordeal is only
resorted to in grave cases, when oral and documentary evidence are want-
ing, but in such case the cause must be removed to the Inta Chapli if
it should not have originated there.

The proceedings of each court remain in that court, excepting the
accounts of the receipts on behalf of the state from the decision of suits;
these are transferred periodically to the Kumari Chok.

"The first great object of the courts of NepáI, when litigants
come before them, is not trial, but reconcilement. The parties and
witnesses all clamorously urge what occurs to them (never upon oath),
and try their strength 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 shall abide
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 arbitrament, upon a
view of the animated exhibition just described, then, and then only, the
trial in our sense begins: the first step of which is to bind the parties to the
issue: for that is the meaning of tháping the béri, a ceremony which
then takes place, and here, first, oaths are permitted; which very generally
are used, instead of evidence, not to confirm 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. If such are not readily forthcoming to give decisive testi-
mony, the court and country are agreed as to the propriety of at once
resorting to other modes of proof; with which, though we were once fami-
liar with them, justice is now deemed by us to have little connection. These
are,—decisory oaths of the parties, in civil causes, either party taking the oath at their pleasure; purgatory oaths of the accused in some penal causes; ordeals of various kinds, both in civil and criminal matters; and lastly, Panchāyats, chiefly applied, but not exclusively, to civil actions.

§ 10. Course of a Civil Suit.

Whoever has a complaint to make goes into court: the Bichāri asks him against whom his plaint is, where the defendant is, and of what nature the plaint may be. The plaintiff explains, and then asks for a runner of the court to go with him, to whom he may point out the defendant. The Bichāri gives the necessary order to the jemādār, the jemādār to the havildār, and the havildār to the sipāhī. The sipāhī ordered to go immediately demands 8 annas from the plaintiff; which paid, he goes with him and arrests the defendant where the plaintiff points him out.

On the arrival of the defendant in court, the Bichāri interrogates the parties face to face, and usually brings them to such an understanding as prevents the necessity of going to trial, in which case pān phul, or some small fees only, are charged to them.

For instance, in a claim advanced for debt; if the debtor, when called on by the court, acknowledges the debt, and states 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 Bichāri will desire 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 runners of the court is attached to the debtor, with directions to see the producing of the money in court by every means. The debtor must then produce money, or goods, or whatever property he has, and bring it into court. The Ditha and Bichāris then, calling to their assistance two or three merchants, proceed to appraise the goods produced in satisfaction of the debt, and immediately satisfy the debt, nor can the creditor object to their 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, from five per cent. to ten per cent. of the property litigated is taken (see § 14) and no more.

But if the parties cannot be brought to an understanding and persist in positive affirmation and denial, the plaintiff is commanded by the Bichári 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, bért* thápo, 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, or to pledge himself, similarly, duly to attend the court to the conclusion of the trial, which he does by formally denying the claim made against him, 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 are deposited in court. The next step is for the court to take the fee, called karpan, of five rupees from either party. Both bért 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: and accordingly, as soon as the karpan is paid down, the Ditha acquaints the Government that the parties in a certain cause wish to undergo the ordeal. The order for them to undergo it is thereupon issued from the Darbár, but when it has reached the court, the Ditha and Bicháris first of all exhort the parties to come to an understanding and to seek the settlement of their dispute by Panchdyat or other means than ordeal, which if they will not do, the trial by ordeal is directed to proceed. (See § 15.)

* Bért means a chain; the act of "tháping the bért" obliges the parties to persevere to a decree, and prevents them from withdrawing the action: the proceeds go to the Bichári. H.
§ 11. Form of Procedure in a Criminal Cause.

The process in a criminal suit may be illustrated by the following example:

If any one come into court and state that a certain person has killed such another by poison, sword, dagger, or otherwise, the informer is instantly interrogated by the court thus; how? when? before whom? the corpus delicti where? &c. &c. 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 effectually; after which one or more Sipáhis of the court are sent with the informer 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 confess the murder, there is no need to call 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 accused is again asked what he has to say, and if he still refuse 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, &c. are tried in Népal, and the convicts sent to prison. Each prisoner receives a daily allowance of a seer of parched rice and a few condiments.


"The necessity of lustrating the city at the Dasahara, has had the casual consequence of causing a jail delivery to be held at that period. The jail (which is situated within the city,) must then be emptied at all events; and it is usual to empty it judicially, disposing of the convicts who happen to be collected in the jail."
But this is neither the principal nor only delivery held during the year. In fact, the idea of periodic jail deliveries belongs to a system of migratory courts not always sitting, as that of regular deliveries does to an accurate system. The Népálese system of judicial administration is neither ambulatory nor accurate: but it has few and trivial delays, and offenders are speedily dealt with by judges who are always at their post, neither having vacations nor making circuits."

When they amount to twenty or thirty, the Ditha makes out a calendar of their crimes, and adds thereto their confessions and statements of the customary punishments inflicted in such cases. This list the Ditha carries to the Bháradár Subhá (Council of State) whence it is taken by the Premier to the Prince, after the Ditha's allotment of punishment to each convict has been ratified or another punishment substituted. The list so altered or ratified in the Council of State and referred by the Premier to the Prince is, as a matter of form, sanctioned by the Prince—after which it is re-delivered to the Ditha; who makes it over to the Araz-bégi—the Araz-bégi taking the prisoners and the Mahán Naikiahs, and some men of the Prýya caste with him, proceeds to the banks of the Bishenmoti, where the sentence of the law is inflicted by the hands of Prýyas, and in presence of the Araz-bégi and Mahán Naikiahs. Thus are grave offences involving the penalty of life or limb treated.


No fee is taken from a plaintiff on the occasion of his commencing his pleading, or exhibiting a document. In civil causes, wherein the plaintiff's ground of action is not denied by the defendant and consequently it needs only to compel the latter to liquidate a claim of which he does not dispute the justice, dasond-bisond, or five per cent. to ten per cent. according to circumstances of the amount of property, as has been explained in the description of the procedure of a civil cause, is taken from the parties,

* The vilest of the vile.
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Where there is affirmation and denial by the parties and the trial of right must be had, then the charges called brī and karpan, which have also been explained, attach; and beyond these there are no other expenses attendant on the prosecution of civil suits.

The tax called jitauri means what is paid to the government in actions of debt and right from the winner; and what is paid from the loser is called hārauri. Jitauri is ten per cent. upon the property litigated, and hārauri five per cent.; dasond-bisond and jitauri-hārauri are therefore nearly identical expressions; the manner of their application requires more detailed illustration. In matters of debt and contrast in which the defendant (Astami) does not persist in denying the plaintiff's (Sāhu) claim, but only pleads present inability to pay, the Court, after the adducing of the plaintiff's books of account and other documentary evidence, takes dasond, or ten per cent. of the property disputed from the plaintiff, and bisond, or five per cent. from the defendant, on the settlement of the cause in court. If the debtor deny the debt, in any form of allegation, that is, if he say he never borrowed, or that he has paid the sum, and will not recede from his denial, and the debt be proved, by evidence or ordeal, then on the decision of the cause, dasond of the debt is levied (as before) on the plaintiff, and the defendant suffers dānd* (fine) more or less, according to the obstinacy of his falsehood. If the plaintiff, persisting in his allegation of a sum due, be cast; and it be proved that there was no debt; then the plaintiff or false accuser (Pulaka) suffers dānd, proportioned to the mischief or iniquity of the falsehood, and the falsely accused (Saccha)

* Dānd is not by itself a punishment. Punishments (Sazāna) are, death, maiming or mutilating, imprisonment, and whipping with nettles or the corah, a true informer or accuser is not Pulaka; a false and malicious informer or accuser is alone called (after conviction) Pulaka. If in the case supposed the crime be proved, the informer will receive a reward from the government under the name of jitauri, not pay a tax under that name. But if in such case the accusation be proved false, then the accuser will suffer dānd.

Dānd is not double of jitauri, but half of dānd is jitauri; that is, the amount of dānd is that which is first decided according to circumstances, and is that which regulates the amount of jitauri. H.
gets *jitauri* from the government: and thus in all cases of false allegation or accusation of property being wrongfully acquired, or false accusation of other sort or misdemeanor.

In offences involving loss of life or limb, or degradation of a Brahman from his caste, neither *jitauri-hārauri*, nor *dasond-bisond* attach: confiscation of the offender’s property follows. The Sandhuak or convicted felon suffers corporally; and the informer goes free.

In cases of disputes in court between sons by marriage, regarding their shares, the court after awarding equal shares to all, takes *dasond* from all alike; neither *bisond*, nor *jitauri*, nor *dānd* attach. If the son by wedlock give not his share to the son by concubinage, and the matter come into court, the court awards to the latter a sixth share taking *dasond* from him: *phul-pān* or a petty fee is taken from the former, and nothing else. Sons by adoption, if of equal caste with the sons begotten in wedlock, get equal shares with them; if of meaner caste, less. *Dasond* attaches to the portion awarded; but neither *dānd* nor *jitauri*.

Neither *dasond-bisond* nor *jitauri-hārauri* attach in cases of action or prosecutions for creating nuisance, or for injuring or destroying public works of utility.

In cases of slander, and assault and battery, (for which there can be no civil action of damages) the offender suffers *dānd* proportioned to his offence; the complainant does not pay *jitauri* or any tax whatever.


Both in civil and criminal cases the court compels the attendance and deposition in the usual way of the witnesses summoned by the accused. As cases are heard and decided as soon as they occur, witnesses are

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* This *jitauri*, ostensible a present is in many cases actually a small fee or tax. Thus: the party receives a turban worth two rupees and pays for it five rupees. But it is sometimes really a present, when the prosecutor is poor and meritorious; in which case it is rated to cover his expenses during the prosecution, and to afford him a small reward to boot. H.
never obliged to attend long in the court. They therefore have no allowance whatever for food or travelling expenses.

A man of rank is treated with much consideration; but ordinarily he is required to go into court and depose like one of the vulgar. Occasionally however an officer of the court is deputed to wait on him at his house, and to procure his evidence by interrogatories.

Women of rank are privileged from attendance: if their evidence be indispensable, some person who has the entrée of the Zenánah is deputed to hear their evidence and report it to the court.

Oral evidence is never reduced to writing at the time of utterance, nor recorded.

Documents produced in evidence remain in the court pending the dispute, and are returned to the owners when it is over.

Parties can always be witnesses in their own cases and always speak under the same penalties for falsehood as external witnesses.

An oath is never tendered to a witness in the first instance; but if his evidence be contradictory or dissatisfactory to either of the parties, he is then sworn and required to depose afresh on oath. If he is a Sivamárzi or Brahmanical Hindu he is sworn on the Hari Vansa; if a Buddhist, on the Pancha Raksha; if a Masulman, on the Korán.

The form of swearing on the Hari Vansa is thus described. The Bichári of the court, having caused a spot of the ground of the court to be smeared with cow dung,* and spread over with pipal leaves, and a necklace of tuli beads to be placed on the neck of the witness, places the witness on the purified spot of ground, and causes him to repeat a sloka of which the meaning is "whoso gives false evidence destroys his children and ancestors both body and soul, and his own earthly prosperity," holding the Hari Vansa all the while on his head, and thus prepared he

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* This solemn oath is well worthy our attention. Oaths in Népál are used generally as substitutes for evidence rather than to confirm it: and the Bible, &c. prove that this was the primitive notion of an oath. H.
deposes. If there be reason to suppose that a witness is prevaricating or concealing some part of what he knows, he is imprisoned until he makes a full revelation.

Perjurers* and suborners of perjury are fined or corporally, nay even capitally, punished, according to the importance or otherwise of the case, or the extent of the mischief done, and according also to the offender's caste.

In criminal cases, if the prisoner should volunteer a confession, that confession being taken down in writing and attested by himself, entirely supersedes the necessity of his trial; no witnesses are called to prove his guilt; moreover, if the prisoner should be fully convicted by evidence, his confession must nevertheless be had, taken down and signed by himself; and before such confession under his own hand is obtained, he cannot be punished. If he be sullenly silent, he is first scolded and menaced and frightened; if these means fail, he is flogged with the corah, until he confesses; and then his kail-nāmah is written.

He may always demand confrontation with his accuser, and cross-examine the evidence against him.

If in penal cases, he should persist in affirming his innocence, and declare that the accuser and his witnesses are his enemies, then he may have the ordeal, but he cannot purge himself by any sort of oath (sapat kriya).

In cases of signed and attested bonds, &c., if the attesting witnesses are dead, or not forthcoming, and no other satisfactory evidence is procurable, resort is had to ordeal. If in a case of debt the plaintiff produce a note of acknowledgment of the debt by the defendant, and the defendant deny the note to be his, and the fact cannot be ascertained by evidence as to his hand or any other sort of evidence, the defendant is brought by threats and scolding to admit the note as his, but if he persist in a denial,

* Strictly speaking false testimony, not perjury, is the object of judicial vengeance. All objections to testimony go to the credibility—not to the competency; there being no recognised exclusions of evidence. H.
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resort is had to ordeal. So it is in cases where the casual writing is in the hand of a third party, and not that of the defendant; if the parties cannot agree as to the authenticity of the note, and there is no other evidence in the cause, the decision of the case is referred to ordeal.

Tradesmen are allowed to adduce their entries in their books to prove debts to them. In general all mercantile affairs are referred to a Pancháyat of merchants, whose judgment is decisive upon conflicting entries, &c.

§ 15. Ordeal.

The ordeal is called Nyáya,* 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; the balls have púja 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† more are taken from each party. The reeds are then entrusted 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 Brahman, and the parties, proceed to the tank; as likewise two men of the Chámákhalak (or Chumár) caste. Arrived at the tank, the Bichári again exhorts the parties to avoid the ordeal by other settlement of the business, the truth of which lies in their own breasts. But if they insist on ordeal, the two havildárs, each with a reed, proceed one to the east, and the other to the west side of the tank, entering the water about knee-deep. The brahman, the parties, and the Chámákhalak, at this moment, all enter the water a little way, when the brahman performs pújá 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

* The word "Nyáya," "justice, right" is technically applied solely to ordeal. H.
† Called Góla. † Called Narkaudi.
§ This dipping in the Queen's tank is the most popular ordeal at present; but there are many others, similar to those formerly in use below, and indeed, all over the world. H.
inward thoughts and acts are known to the gods, Sūrya and Chandra, and Varuna and Yama, and that they will do right between the parties to this dispute. When the pūjā is over, the brahman gives the tilak to the two Chāmākhālaks 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 Chāmākhālaks then divide, one going to the place where one reed* is erected, and the other, to the other reed. They then enter the deep water and at a signal given both immerse themselves at the same instant. Whoso first emerges from the water, the reed beside him is instantly destroyed with the scroll attached to it. The other reed is carried back to the court where the ball containing the scroll is opened and the scroll read. If the scroll bear the plaintiff's name, the plaintiff wins the cause; if the defendant's, the defendant is victorious. The fine, called jītauri is then paid by the winner, and that called hārauri 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 Sabhā siddhāh (or purification of the court) from the loser. The above four demands on the parties, or jītauri, hārauri, pagri, and Sabhā siddhāh, are government taxes; and exclusive of them eight annas must be paid to the Mahāniahs of the court—eight annas more to the Kotwāls—and, lastly, eight more to the Khardār or register. 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 no documentary or oral evidence to adduce.

§ 16. Panchāyat.

The Panchāyats in use are of two kinds, domestic and public, the latter being called to settle suits come before the courts; the former to settle matters never brought under the court's cognizance.

* "Markat."
† The turban fee is called Pagrí.
Domestic *Pancháyats* are very popular, especially among merchants whose wealth attracts the cupidity of the courts, and the community of whom can, on the other hand, always furnish intelligent referees or *Panch* men.

To the public *Pancháyat*, all matters may be referred (with the exception of cases of life destroyed,) at the discretion of the courts, or at the desire of the parties: but cases of battery and assault are not usually referred to these tribunals.

The *Panch* men are appointed by the *Ditha*, at the solicitation of the parties, with whom solely the selection lies. After selection of their *Panch* men by the parties, the *Ditha* takes from them an obligation to abide by the award of the *Pancháyat*. The court or government never appoint *Pancháyats* of their own motion, except when men of note are under accusation; but if parties expressly solicit 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 *Pancháyat* to sit on the case. But no man can sit on a *Pancháyat* without the assent of both parties.

A *Pancháyat* of this sort often acts the part of a jury when men of note are accused, the government nominating the *Panch* men. In civil actions too the parties, tired of litigating, will sometimes desire the court or the government to nominate a *Pancháyat* to hear and decide without appeal. Ordinarily *Pancháyats* 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 the *Panch* men appears to me to be essentially that of jurors. They find the verdict, and the court, out of which they issue and in which they assemble, merely enforces their finding.

The *Pancháyats* assemble in the court out of which they issue, and officers of the court are appointed to see that the *Panch* men attend daily and fully, with a view to prevent needless delay in the decision of causes.
When such, however, does occur nevertheless, the matter is taken out of the hands of the Panchāyat and decided by the court which appointed it.

The Panchāyat has no power of its own to summon or to enforce the attendance of any person, to make an unwilling witness deposes, or to secure the production of necessary papers. All such executive aid being afforded by the court appointing it; and in like manner the decision of this tribunal is referred for execution to the court. The assumption of any power of their own by the Panchāyat would be a grave offence.

The Panch are required to be unanimous. Such at least is the rule, but a very large majority will suffice in certain cases.

There are no permanent or established individual Panch men, but in all cases wherein Pārbattiahs (Hindus of the mountains) are concerned, it is necessary to choose the Panch men out of the following distinguished tribes:—1st Arjal; 2d Khadal; 3d Pandē; 4th Panth; 5th Boharah; 6th Rana; one person being selected out of each tribe; and among the Newārs, the tribes from which Panch men must necessarily be chosen, are 1st Maikē; 2d Bhanil; 3d Achār; 4th Srisht. In matters affecting neither Pārbattiahs nor Newārs there is no limit as to the selection by the parties of their Panch men; but old, learned, honest and experienced men may be supposed to have the preference. They receive no compensation for travelling expenses or loss of time, or on any account whatever. Indeed the very idea of compensating them is abhorred.

IV. THE LAW.

§ 17. Codes applicable to the different classes of inhabitants.

Custom or precedent is the law in many cases; the Dhārmashāstra, or sacred canons, in many more; and the decision of numerous cases depends almost equally on both.

Infringements of the laws of caste fall under the Shāstras. Other matters are almost entirely governed by the Dēs A'chār, or customary law of the province of Gorkhā.
The customs of the *Baudhaka* portion of Newars are peculiar to themselves; but in general the *Newars* and *Purbattiais* both acknowledge and are subject to the same *Dharmashstra*, although in some points there are appropriate usages for each.

It is not indispensably necessary that the *Dittha* should be versed in the law *Shastras*, but he must be acquainted with the principles of law and justice, and be a man of high respectability.

Neither is it required that the *Bicharis* should receive a regular legal training; but they must always be well educated, of high character, practically acquainted with the law, and conversant with the customs of the country and the usage of its various tribes. And when a *Dittha* or *Bichari* is removed by rotation, or otherwise, he cannot retire till he has possessed his successor with a knowledge of the state of the court, and the general routine of procedure.

§ 18. Adoption, Inheritance, &c.

Whoever would adopt a child must do so with the consent of all his near relations, and with the permission of some court of law, to which he must proceed, and in which he must complete the act. So, if he would alienate any portion of his property, by will, in favor of such adopted child, he must obtain, first of all, the consent of his heirs and perform the act in presence of a *Panchdyat*. In neither case, therefore, can there be, or in fact ever is there, a dispute and appeal to the courts of law. If any one in adopting a son and assigning to him property at his death, hath neglected the above prescribed forms, and a dispute therefrom arise and resort is had to the courts of justice, such dispute is settled by calling together several elders of the tribe to which the deceased belonged and taking their judgment upon the usage of that tribe; which usage governs the court's decree. No man can adopt, or devise, at his own will and pleasure.

With regard to inheritance, also, the custom of each tribe is ascertained by reference to some of its elders, and that custom so ascertained
rules the judgment-seat in all cases of application to it. Amongst the Khás tribe, if a person have a son born in wedlock, that son is his heir: if he have no such son, his brothers and brother’s male descendants are his heirs: his married daughters, or their progeny, never. If he have a virgin daughter, she is entitled to a marriage portion and no more. If he have a son by a concubine, and after his death his brothers and descendants do not conceal the deceased’s wealth, but fairly state it to the bastard son, and give him a reasonable portion, the bastard son must, in such case, take what they give him, and he can get no more in any court; but if they conceal the deceased’s wealth, and put off the bastard son with idle tales, assigning him no share whatever, then the bastard son, if he appeal to the courts, shall have all the deceased’s property assigned to him, to the total exclusion of the family so attempting to defraud him. In short, the son by a concubine must have a reasonable share allotted to him by the family, though the exact amount will rest with them. If a Khás have a son, he cannot alienate a single rupee from him by will, either of ancestral or acquired wealth, save only, and in moderation, to pious uses; neither can a Khás adopt a son not of his kindred and make him his heir, if he have near blood relations. His first choice lies among his brother’s sons and nearest relatives in the male line; his next among his daughter’s sons and their male progeny: a stranger he can never adopt.

The Magar, Gurung, Múrmi, and Kairanti tribes agree with the Khás in respect to inheritance, adoption, and wills.

The Siva-Margy section of the Newárs agrees mostly with the Parbattiahs on all these heads. The Buddha-Margy section have some rule of their own. Among the Newárs of both persuasions, the son by a concubine gets one-sixth of the share of a son born in wedlock.

When cases of dispute on these topics are brought into court, the judge calls for the sentiments of the most respectable of the tribe to which the litigants belong, and follows their statement of the custom of their tribe.
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The great crimes (technically called Panch khat) are those to which some of the following punishments are applied:—1, Confiscation of a man’s entire property. 2, Cutting off ears and nose. 3, Amputating hands and feet. 4, Putting out eyes and emasculating. 5, Susspending by the heels from a tree till dead. 6, Flaying alive. 7, Death by hanging or decapitation, with the enslaving of wives and family, and forfeiture of whole property.* The above punishments can only be inflicted by the chief court of each of the three cities (Kathmandú; Bhatgaon, and Patan.) The lesser adjutants have power to cause the “touching† of the stone,” to fine, to place under restraint, to send to prison, to inflict slight corporal punishments, and so forth.

* A more methodical and complete enumeration of the great punishments, (Panch Khata—the word Khata being used to express as well the assigned penalty as the offence) is the following:

1. Death. 2. Mutilation. 3. Banishment. 4, Enslaving, or making over to some vile caste, the offender’s wives and children. 5, Confiscation.

Nor is this enumeration of the chief offences the technical Sastrika one—but the more useful and practical enumeration derived from present usage modified by the original enumeration of the sacred law books. That enumeration is as follows:

1. Brahm-khatya or brahmanicide.
2. Stri-khatya, or woman killing.
3. Bal-khatya, or infanticide.
4. Gao-khatya or cow killing.
5. Agami-gawan or incest in the peculiar Hindu sense. H.

† The Dhunga Chasyi or touching of a stone is this: When a cause is decided the Bichdrı orders a stone (any one) to be brought, and upon it a few blades of Dúb grass to be put. He then commands the loser of the cause to put a rupee and four dams on the stone and to touch it, observing to him “you have committed an offence against the Mahdrája as well as the other party: that stone is the symbol of the Rája’s feet, touch it, thereby acknowledging your offence, and be freed.” The rupee put on the stone is the Bichdri’s perquisite, and the four dams, that of the Mahádish. This usage is not observed in every cause decided, but only when it is held that sin (pdp) is necessarily attached to the losing party, and never in cases of ordeal. Others say that the stone has the “charan” or foot mark of the God Vishnu graved on it, (the Saligrám) and this account is more in harmony, with the usage of making atonement by an offering to it, than if it represented the sovereign of the state. H.
List of the chief offences above adverted to.

1 Kalyān Dhan, or treasure-trove, i.e. appropriating it. 2, Patricide. 3, Matricide. 4, Killing a Cow. 5, Killing a Brahman. 6, Killing a Woman. 7, Procuring Abortion. 8, Killing a Gārū. 9, Incendiaryism. 10, Poisoning. 11, Theft and Robbery. 12, Taking another's land by violence. 13, Seducing another's wife. 14, Murder. 15, Destroying Houses, &c. devoted to charitable and religious purposes. 16, Agamy-gavan or Incest.

1st.—Kalyān Dhan is treasure-trove of all sorts whatever; including new mines. Secretly appropriating any such (which all belongs to the crown) is equivalent to theft, and is punished with death or confiscation in the chief adhāta. If death be awarded, the Bīchāri delivers the offender to the Mahániah and he to the Poryas, who execute the delinquent; if confiscation be the sentence, then the Mahániah, and the Mahā Naikiah, and the Bahidārs, and others, going to the delinquent's house take the delinquent's own share of the whole family property (lands as well as moveables), but spare the shares of the other members of the family.

To procure conviction in these cases, as in others, an informant (Pulāha) is necessary, and then there are two parties to the cause, the informer (Pulāha) and the accused (Sandhuah) whichever of them establishes his case, gets a khitāat from the sirkār, paying pagri and jītāri. If the informer loses, he is obliged to "touch the stone," and is fined with reference to the offence, and his means, more or less: (it is the custom to demand publicly twice as heavy a fine as is really taken) and the victorious accused, pays to the sirkār as jītāri half the sum paid by the loser as đānd or fine. In the Panch Khat, the Kalyān Dhan above described is held the greatest, and the ultimate decision of cases is peculiar to the Mahārāja.

2nd. Patricide.—If any one, from the wantonness of youth, or selfishness, or avarice, or the instigation of his father's women, should put his aged father under restraint or imprison him, or starve him to death, such a wretch (Sandhuah) must have his property confiscated, and be put to death.
by the *Poryas* (public executioners); if the wretch be a Brahman, his forelock must be shaved off; his thread broken; he must have a stripe of the hair on all four sides of his head shaved off; must be crammed with all forbidden food, and, in a word, utterly defiled and degraded; paraded thus through the whole city; his infamy proclaimed; and finally he must be driven out of the country, with confiscation of all his property.

3rd. *Matricide.*—This is punished like patricide.

4th. *Killing a cow.*—Punishment the same as for patricide; and if a Brahman, also as provided above.

5th. *Killing a Brahman.*—Ditto ditto.

6th. *Killing a woman.*—If any one should kill his wife on suspicion of having defiled his bed, the *Mahâns*, having seized him, bring him before the court and he is beaten till he confesses, when he is obliged to "touch the stone," his property is confiscated, and he is delivered to the *Poryas* for execution. If he has children, his children's rights or shares are exempted, but all the rest of his property is confiscated.

7th. *Procuring abortion.*—If any husband depart on a journey, and his wife commit adultery in his absence; or if a widow become incontinent; or if a man inadvertently marry within the prohibited degrees, and, in any of these cases, the woman prove with child, and she and her paramour procure medicine and destroy the fruit of her womb; the woman, if proved guilty, is seized and maltreated till she confesses, and when by her confession the mediciner and the paramour are known, both are severely fined.

8th. *Killing a Guru, an elder brother, or a child.*—A person committing these crimes is seized and confined, and if on investigation he be proved guilty, he is delivered to the *Poryas* who conduct him through the city, proclaiming his sin and its penalty, and warning the people; and then, taking him forth from the city, execute him. His wife and children are given in slavery to the stranger, and his property confiscated.

9th. *Arson.*—Whoso sets fire to another's house is punished with death.

10th. *Poisoning.*—This crime is also punished with death.
JUSTICE IN NEPAL.

11th. 12th. and 13th.—Theft, robbery, and seduction.—If any one by violence take the property or land or wife of another, such an one is punished with heavy fines.*

14th. Murder.—If any, from avarice, kill a man of wealth (Sahu), he is executed, and his property confiscated, and his wife and children made over in slavery to the stranger.

15th. Sacrilege.—Whoso destroys the religious works of another, as a Dharma-sála, or well, &c., founded for the good of his soul, such an one is severely punished and fined, according to the damage done: sometimes his whole property is confiscated.

16th. Agamy-gavan or Incest.—Whoso has sexual commerce with his Guru’s wife or mother, or his father’s lesser wife, or his son’s wife, his property is confiscated and death is inflicted on him.

Whoso has sexual commerce with his daughter or with his daughter-in-law, he is, first of all, heavily fined or all his property is confiscated: then the male sinner is committed to the Poryas, conducted throughout the city, and expelled with his penis cut off: and the female has her nose and ears and pudendum cut off, and is then expelled the city; or else, she is given to be stuprated by fifty or one hundred or more men and then expelled. Incest with an elder brother’s wife in his life-time is punished with very

* The Hindu prejudice (in this case salutary) disinclines most of my informants to admit the fact that theft is ever punished with death. The ordinary punishment is certainly mutilation, repeated on a repetition of the offence. But it is certain that aggravated cases of theft and robbery (between which there is no technical distinction made) are often punished with death, and this indeed is expressly admitted in the preceding part of this paper. The description of theft in this place is strange enough, as is that of murder in the next paragraph. The just inference from such descriptions of these crimes is, that among these mountaineers, who are for the most part of fierce disposition and habits, the law has been obliged to exempt too many violent takings both of property and life from the ordinary definition and penalty of robbery and murder.—H.

† One branch of this subject is treated at length in a paper published by Mr. Hodgson in the Journal of the Royal Asiatic Society of Great Britain and Ireland, No. I, page 45, entitled “On the law and legal practice of Nepál as regards familiar intercourse between a Hindu and an outcast.” Sec.
heavy fines; after levying which the younger brother may keep, if he will, the defiled wife whom the elder has put away.

To have commerce after his death, with an elder brother's wife is no crime whatever.* In Agamya-gavan, from the father seven steps, and from the mother five grades, are forbidden. If any marry within them, the man's and the woman's father, and the go-between, all are fined, and the woman must be put away.

If any Nevar wife, in her husband's life and whilst he is within NépáI, go astray, she and the adulterer are fined sixty rupees; after which, the woman may go with either her husband, or the adulterer, as she pleases. If she prefers her husband (he willing) then the court shall take pasu pán from him; and if she go with the other, then he shall have a second fine levied on him and take her.

If a Nevar go to Bhote, and his wife remaining at his house or at the house of her father, should elope; or, if her protectors (father, uncle, brother, &c.) should resolve to give her in marriage to another, her husband being (as before) in Bhote, in either case the wife must perform "pachuri" that is, she must go to the Mál Sakhá of the city she belongs to (Kathmandú, or Bhatgaon or Patan), and present two supáris and one mohr (six and half annas) to the judge;† when the judge sends the two supáris by the hands of a Mahan to the house of her husband. The Mahan having reached the house says to the relatives of the husband, "this is the supári of him who is gone to Bhote. His wife is divorced from him, and I therefore return you the instrument of the marriage contract (i. e. the supári.)" Then

* This seems an interesting relic of the old customary law of India, requiring or permitting a younger, "to raise up seed" to an elder deceased brother, by marriage of the widow: such a custom still prevails in Orissa.

† The custom itself would appear to be a relic of the still older and barbarous usage, which made the wife of one common to all the brothers, an usage which I have heard of doubtfully as prevailing in some parts of India, but which is unquestionably prevalent in Bhote.—H.

† Now, under the Gorkhás, a Nevar wife cannot get free without paying two, four, or six, or more up to twenty rupees, according to her means.—H.
the wife returns all the ornaments, &c. given her by her husband, or if she delays in so doing, the Maham compels restitution of them. The wife is then free to do as she wills; but, still she is liable to fine (as all others are), if she have had sexual commerce with one of lower caste than herself.

If any Newâr commits adultery with a Newâr woman, whose husband is gone to Bhote, and the woman perform not pachuki then, supposing the caste of the parties to be the same and no relationship within the prohibited degrees to exist between them, they shall be fined in double the usual amount, or one hundred and twenty* rupees: and then be suffered to go free, unless the adulterer be within the prohibited degrees of relationship to the adulteress. In that case he is put to death, or his whole property is confiscated; or his penis is cut off; and every sort of indignity and hardship heaped on him; or he is let off with a fine proportioned to his means: the punishment being increased or decreased according to the nearness or otherwise of the relationship.

All such an adulterer's relations are obliged to go through the whole ceremonies of purification (prayâschittta), paying all the allotted fees to the Dharmâdhikâri.

If the wife or daughter-in-law of a Brahman is defiled by a Kshatriya, or other of lower degree, such an one (the male) is decapitated and all his property confiscated. The Brahmani cannot regain her caste by performing prayâschittta, but falls into the caste of him who defiled her; and so in case of a female of the Kshatriya, Vaisya, or Sudra being defiled by a male of lower degree. If a Sudra defile the daughter, &c. of a Vaisya, but his caste be such that the Vaisya could take water from his hand, then the Sudra is let off with heavy fines; his life and property, for the rest, being spared. But if the Sudra be so vile that the Vaisya could not lawfully†

* Here, as on all other occasions, this is the fine awarded to be paid, but only half of which actually is levied on the party.—H.

† List of the vile classes from whom no one can take water to drink—
Kasai, Kusalliah, Porya, Dホe, Kami, Damai, Kulu, Chama-khalah, Phugan, Massalman, Sonâr, Sarki, &c.—H.
drink water from his hand, then in such case the Sudra is decapitated and his property confiscated: and in this latter case all the Vaisyas of the city must perform prayaschitta.*

If a Brahman defile a Kshatriya's or a Vaisya's or a pure Sudra's (whose water may be drank) daughter, it is no legal offence. If a Brahman or Kshatriya or Vaisya or pure Sudra violate the daughter of one of the vile classes; then, if a Brahman, his whole property is confiscated and a stripe of hair shaved off all the four sides of his head, and he is expelled the country; and all the four castes must perform prayaschitta. If a Kshatriya or Vaisya or Sudra do so, his life is forfeited as well as his property confiscated. If any one become enamoured of a lovely girl and he give her charms or philters, and medicines whereby he comes to enjoy her; then he shall be made to “touch the stone” and be heavily fined; and the person who sold him the medicine or made the charms for him shall be fined also.

If any one corrupt and seduce the wife of any Parbattiah, (whether of the Brahmanical or other caste) such Parbattiah shall, if the case be clearly so, himself put the adulterer to death, and afterwards cut off the nose and hair of the adulteress, and turn her adrift. The injured husband, if he prove his injury, shall do all this without question, even though the slain adulterer be a Brahman.

But if the woman, when her husband would cut off her nose, can escape and prove her innocence before a court of justice; then the murderer of the pretended adulterer shall be executed, and all his property confiscated. In case the Parbattiah adulteress have sinned with many men, then the Parbattiah husband shall only slay the first adulterer with his wife, and no other.

* When a person is ordered to perform this purification he goes to the Dhármadhikári and learns from him what rites are needful to be gone through. The Dhármadhikári writes him a prescription for their performance, and takes usually two rupees for it.—H.
If the stroke of the injured husband fail to kill the adulterer, and he turn on the husband and slay him, the adulterer shall escape punishment, and keep the woman to boot. Such is the usage among all the Parbattiahs so long as they marry among the Parbattiahs; but if a Parbattiah marry a Newarri, he shall not have the privileges above described in respect to her. If any Parbattiah (Khás or Magar) marry the daughter of his maternal uncle, it is well, and even obligatory on the girl's parents if the man seek it; and the parents must wait his permission to marry her elsewhere. So, also, if the father's sister's son seek the mother's brother's daughter in marriage, the latter must assent, nor can she marry elsewhere till he has declared his disinclination; if such a person there be in existence. But if any Newár have any sexual commerce with the daughter of his maternal uncle, it is totally unlawful (by way of marriage or not), and he shall be severely fined.

Assault.—If two persons disagree, fall out, and one strike the other so as to bring blood, and he who has lost blood go to the court and complain, the court in case the charge is proved, shall make the blood-drawer "touch the stone" and fine him five rupees to the Sirkár.

Fraud.—If any one, having mortgaged his land or property to a creditor, afterwards mortgage it to a second creditor, and the case come before court, the court shall award the land or goods to the first creditor; but if the second creditor agree to pay the debt of the first creditor, the second may keep the pledged land or goods till the pledge is redeemed.

Guti Lands.—If any pledge his Guti* land for money and spend that money, in such case both giver and taker of such pledge shall be fined.

* Guti is land consecrated to the deity, a sort of mortmain remaining in the hand of the mortmainer and his descendants, (ostensibly for the use of such deity, but really for own use; the obligation to the god being liquidated by a petty annual offering to him,) is for security from rapacity of government or the prodigality of heirs. It is deemed more sacred than "birika," which is an offering to Brahmans, not to god himself, and is an alienation too. Whereas Guti is only ostensibly an alienation—in fact, an entail of the strictest kind on the descendants of the Gutiýár. It is neither partible among heirs, nor transferable in any degree.—H.
ON THE ADMINISTRATION OF JUSTICE IN NEPAL.

But if the taker of such pledge upon discovery of its being Guti, give it up, then he shall not be fined.

Forestry.—If any one, claiming under a deceased person, forge a bond of debt due to the deceased, and produce the bond and witnesses in court, demanding payment of debt as the representative of the deceased, and the forgery be proved, the court shall award the forger loss of his right hand and a heavy fine, and make him “touch the stone:” and from the other party they shall take jitaui for the Sirkār.

Swindling.—If any one pretending to be the owner of land, pledge it and borrow money on it, and the taker of the pledge discover the fraud and complain in court: in case the matter is proved, the giver of such pledge shall have his hand cut off; the right owner of the land shall have his own; and the acceptor of the pledge be without remedy.

Disputed Bonds.—If the heirs of a dead man produce an obligation for money, all the witnesses to which are dead, and the debtor deny the bond, and no other evidence can be had;—if such a case be brought before the Adilat, the court refers it to a Panchayat or orders an ordeal, or tenders to the parties the decisorith oath. Thus, if they be Shiva-mārgy Newārs, it orders either of them to put the Hari Vansa on his head, and take up the money contested at his soul’s peril if it be not his; or if they be Baudhāmārgy, it commands either to take the Pancha Raksha and do likewise. The tax on such issues is ten per cent. from the winner and five per cent. from the loser, or dasond-bisond, see § 13.

Nepāl Residency, 29th January, 1831.