

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'hmandu, &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'hmandu? What is the name of each?

Answer.—There are four Nyáyasab'hás; 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-bít'hak*,† the *Daftar Khána*, and the *Chíbhándel*. In the *Kósi*, the *Sirkár*‡ itself administers justice.

* Also called *Bhavadár Sab'há*, or great council of state.

† Also called *Kamári Chok*.

‡ The government, or its representative.

The *Bángya-bít'hák* is the general record-office of the fisc, and a separate *dit'ha** presides over it. It is also a *Mahal-Adálat*.† The *Kót Linga*, *Inta Chapli*, *Taksár*, and *Dhansár*, are the proper *Adálat*s, 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 *Chíbhándel* 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 *Adálat*s are situated in the city of Kat'hmandu, 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'hmandu 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 *Adálat*s 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 *Kót 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 *Bhárádár 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 *bhárádárs* (ministers) assembled in the *Khólcha* (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 *rájá'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 *bhárádárs*, or ministers, assisted in judicial cases by the chief judicial authorities of the capital, when they hear appeals in the *Bhárádár Sab'há*?

Answer.—They are: the *dit'ha*, the *bicháris*, and the *dharmád'hikári*,* sit with the ministers in such cases.

Question VIII.—What concern has the *dharmád'hikári* 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 *dharmád'hikári*?

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, inadvertence, or licentiousness, by which loss of caste is incurred, renders the sinner liable to the censure of the *dharmád'hikári*. He must pay the fine called *Gáo-dán* to the *dharmád'hikári*, who will cause him to perform the *práyaschitta*.† In such matters only has the *dharmád'hikári* 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 *Di'tha*: 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 *bhāradār 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 *káji*?

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 Adúlat*s; 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, *Bráhmahatya*, or slaying a *Bráhma*n; 2, *Gouhatya*, or killing a cow; 3, *Stríhatya*, or killing a woman; 4, *Bálahatya*, or killing children; and 5, *Patki*, 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 *káji*, 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 *sipáhís*, twenty-five *mahánias*, and five *chaprássís*. The *dit'ha* gives orders to the *bichári*, the *bichári* to the *jámadár*; and the *jámadár* to the *sipáhís*

* *Panch*, “ five,” and the Arabic, **خَطَا** “ a crime, sin, fault.”

and *mahánias*, 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 *bahídár*, *araz-begí*, and two *naikiá*. The *dit'ha* (he says) decides; the *bichári* conducts the interrogation of the parties, and ascertains the truth of their statements; the *bahídár* writes the *káil-máma* 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 *mahánias*, inflict the *kórá** 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 *Bhátgúon*,† or do the inhabitants of those places resort to the courts of Kat'hmandu?

Answer.—There are separate courts for *Pátan* and *Bhátgúon*, one for each city; and each court has the following functionaries attached to it, viz. one *dwária*, one *bichári*, four *pradháns* and fifty *mohánias*. 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 *Pancháyet* when given, and that the court or government never volunteers to appoint a *Pancháyet*; 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 *Pancháyet* 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 *Pancháyet*, if it be very dilatory?

Answer.—In such cases the matter is taken out of the hands of the *Pancháyet*, 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 *Pancháyets*, 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 *Pancháyets* invested to enforce the attendance of parties and witnesses, and the production of papers; and to give validity to their decrees?

Answer.—The *Pancháyet* has no authority of its own to summon or compel the attendance of any person, to make an unwilling witness depose, or to secure the production of necessary papers; all such executive aid being afforded by the court appointing the *Pancháyet*: and, in like manner, the decision of the *Pancháyet* is referred to the court to be carried into effect. The *Pancháyet* 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 Kat'hmandu who are regularly employed as members or presidents of *Pancháyets*, or are persons indiscriminately selected for each occasion?

Answer.—There are no permanent individual members of the *Pancháyet*; but in all cases wherein *Parbattias* are concerned it is necessary to choose the *Panch* men out of the following distinguished tribes, viz. *Arjál*, *Khandal* or *Khanal*, *Pandé*, *Parat'h*, *Bóhara*, 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 *Mai ké*, *Bhanil*, *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 *Pancháyets* 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 XXXIX.—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 zámíni*, and *hazn zámíni*, 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, — *Adúlat*s.]

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 *jamadúr* 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 *dit'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 *dit'há* and *bicháris* 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 appraisal 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 acknowledgement the witnesses to which are dead, then the *dit'ha* and *bicháris* 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 "*Béri t'hápó;*" 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 *béri*, 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 *béri* 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 *dit'ha* acquaints the government that the parties in a certain cause wish to undergo the ordeal. The necessary order is thereupon issued from the *Durbár*; but when it has reached the court, the *dit'ha* and *bicháris* 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 *dasórad-bis-ónd*.

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 *púja** 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 *Bráhma*n, and the parties, proceed thither, as also two men of the *Chámákkalak* (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 *Bráhma*n, the parties, and the *Chámákkalaks*, all at this moment enter the water a little way ; and the *Bráhma*n performs *púja* 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 *púja* is over, the *Bráhma*n gives the *tilak* to the two *Chámákkalaks*, and says to them, “ Let the champion of truth win, and let the false one's champion lose ! ” This being said, the *Bráhma*n and the parties come out of the water, and the *Chámákkalaks* 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 *jit'hour*i is then paid by the winner, and that called *harour*i 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 *sabhásúdd'ha* (or purification of the

* *Púja*, worship—adoration.—ED.

† Called *góla*.

‡ This fee is called *narkouli*.

§ 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).

court), from the loser. The above four demands on the parties, viz. *jit'hourí*, *harourí*, *pagrí*, and *sabhásúdd'ha*, are government taxes; and, exclusive of these, eight *annas* must be paid to the *mahánias* of the court, eight *annas* more to the *kotmál*, eight more to the *kumhálnáikias*, and, lastly, eight more to the *khardár* or registrar. In this manner multitudes of causes are decided by *nyáya* (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 *sipáhís* 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 Nepál, 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 *Bhárádár Sabhá* (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 begí*. The latter, taking the prisoners, the *mahá-náikias*,

and some men of the *Pórya* caste* with him, proceeds to the banks of the *Bishen-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 *mahá-náikias*. 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 *vivá voce*, or by written statements?

Answer.—They state their own cases invariably *vivá voce*.

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

Answer.—They tell their own tale — *vakíls* 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 XLII.—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 prevaricating 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 capitally, 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 *Bráhmánicá* Hindú, he is sworn on the *Hari-vansa*; if a *Budd’híst*, 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 hand-writing 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 hand-writing be admitted?

Answer.—If the writer be forthcoming, he must be produced; if not, evidence of his hand-writing 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 *Pancháyét* 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 deposes 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 *Kumári Chók*, and sent there immediately after the causes are decided?

Answer.—The *Kumári Chók* 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 *jit'hour* and *harouri*?—in what proportion and on what principle are they taken?

Answer.—*Jit'hour*i 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-chúáy*i ?

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'hour*i, *harouri*, and *dhúngá-chúáy*i, what other expenses fall on the litigants ?

Answer.—Half as much as is taken as *harouri* is taken as *jit'hour*i; both go to the *sirkár*, and are proportioned in amount to the property litigated. *Dhúngá-chúáy*i is one rupee per cause taken from the loser; *sabhásúdd'há* is one or two rupees per cause, according to circumstances; *dhúngá-chúáy*i 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 *vakíls* 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's* court, or by the council of *bhárádars* ?

Answer.—When the *dásahra* approaches, the *dit'ha* takes to the *bhárádár 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 *bhárádárs*, according to their judgment on the *dit'ha's* report, set down the punishment to be

inflicted on each offender, and return the list to the *dit'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 patrol 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 *patwarí*, nor *mird'ha*, nor *garait*, nor blacksmith, nor carpenter, nor *chamár*, nor washerman, nor barber, nor potter, nor *kandú*, in any village of Nepál.

Question LXXV.—Is the managing *zemíndár* 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 *dwária* is chiefly an official person, and the representative of government or its assignee: the *pradháns* 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 *pradháns* under the *dwária*.*

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 *Bráhma*n or a *Rájpút*, then reference is made to the *gúru* (*ráj gúru*), 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 *Newár*, or *Bhótia*, it is referred to the customs established in the time of *JÁYA T'HITI MÁL RÁJÁ*, for each separate tribe; *dhúngá-chúyá* 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 *Newárs* and *Parbattias* follow the same or different law *sástras*?

Answer.—The customs of the *Budd'ha* portion of the *Newárs* 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 revenual claims directly to its functionaries, and leaving them to collect the amount; while, as judicial follows revenual administration in Nepál, the government feels little concern about territorial divisions: in the whole country westward from *Kat'hmandu*, as far as the *Narayáni* river; and eastward as far as the *Dúd Kósi* river, there is no specific *arrondissement*, district, or *xilla*. 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-*bicháris*.”

† 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 *gúrúngs*, 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*, *Síva-márgi*, and *Budd'ha-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 *Múrmi* 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 *Sástra*, 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 Sástra* 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 *Newárs* 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 *práyaschitta*.*

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 *Bráhmans* are never done to death, but degraded in every possible way, and then expelled the country.]

Question XCVI.—If a *Newár* wife commit adultery, does she forfeit her *srid'hán* † 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 *srid'hán*?

Answer.—If a *Newár* husband divorce himself from his wife, she carries away her *srid'hán* with her: if a *Newár* wife divorce herself, she may then also carry off with her her own property or portion. Adultery the *Newárs* heed not.

* Vide answer to *Question XXX*.

† *Srid'hán*, 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 *Bhárádár Sabhá*?

Answer.—The investigation is conducted in the *dit'ha's* court; but when completed, the *dit'ha* refers it to the *Bhárádár 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.