

## III.

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ON THE

## ADMINISTRATION OF JUSTICE

## IN NEPÁL,

WITH SOME ACCOUNT OF THE SEVERAL COURTS, EXTENT OF THEIR  
JURISDICTION, AND MODES OF PROCEDURE.

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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 Rájputána, 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 Kathmándu. Another was the present *Dharmádhikári* 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 Hindú 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 Nipálese 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

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 Nepálese 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 Nepálese 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 Nèpál 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 Nèpál 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 expence and delay of justice.

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\* Law is the perfection of reason.

The Nèpál Courts again are always sitting. They have neither vacations nor terms. This, too, and the extreme simplicity of the forms of procedure, which are full of reason and of efficacy, are principal causes of the quick dispatch of business.

The peculiar constitution of the Nepálese *panchayet* might furnish useful hints for its introduction under our Government, where hitherto it has not been found to work well; nor does the extension of the jury system to the Mofussil Courts promise to meet so clearly the habits and ideas of the people, as this simple and primitive organ of the administration of justice.\*

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## ADMINISTRATION OF JUSTICE IN NÉPÁL.

### I. COURTS AT THE CAPITAL.

There are four courts of justice (*Nyáya Sabhá*) 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 Nèpál. 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

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\* 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 Hindú 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 *Taráí*. But all other causes of a criminal or quasi criminal nature, (such as trespass, assault, battery, slander, reviling, &c. which in Nèpál 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*, *Taksár*, and *Dhansár*, 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 <i>Khardár</i> ,	1 <i>Jemadár</i> ,	2 <i>Amaldárs</i> , and
1 <i>Major</i> ,	2 <i>Havildárs</i> ,	40 <i>Sipáhís</i> .†

“The *Bicháris* are, originally and properly, the judges. They were so every where 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 *Dúd Cesi* and *Trisúl 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 Nèpál 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 præterea nihil*.” The *sipáhís*, are not regulars, but a sort of militia or provincials, exclusively attached to the courts. H.

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 *Mahun Naikiahs* and their *Mahániahs*—the *Tól-mals*, &c. &c., as set down under *Inta Chapli*.”

In each of the courts *Taksár* and *Dhansár*—

1 <i>Khardár</i> ,	2 <i>Amaldárs</i> ,
1 <i>Jemadár</i> ,	and
2 <i>Havildárs</i> ,	25 <i>Sipáhis</i> .

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 <i>Bichári</i> or Judge,	40 <i>Sipáhis</i> ,	16 <i>Kótwáls</i> ,
1 <i>Arazbègi</i> ,	2 <i>Mahánaikiahs</i> ,	2 <i>Kumhal-naikiahs</i> ,†
2 <i>Khardárs</i> ,	128 <i>Mahániahs</i> ,	1 <i>Tólpradhán</i> ,‡
2 <i>Jemadárs</i> ,	15 <i>Tól-mals</i> ,	1 <i>Pasalpradhán</i> ,
4 <i>Havildárs</i> ,	24 <i>Chokí-mahániahs</i> ,	2 <i>Tehvildárs</i> , and
4 <i>Amaldárs</i> ,	1 <i>Kotwál-naikiah</i> ,	6 <i>Bahidárs</i> .

The *Arazbègi* is the superintendent of the jail, and sheriff presiding over and answerable for executions. Immediately under him are the *Mahánaikiahs*, or superintendants 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 *Tólpradhán* is not, properly, a judicial functionary: his duty is to levy the fixed tax of 1½ rupees upon each *Newár* merchant returning from *Bhote*. 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 *Máhánaikiah*s are always in attendance ; the *Máhániah*s 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-mál* to or superintendent of each *Tól*, or ward of the city. If the presence of any person is needed in court, it is the *Tol-mál*'s business to identify the said person, and point out his residence to the *Máhániah*s, whose duty it is to secure him.

The *Choki-máhániah*s are the guards of the jail.

The *Kótwdls*, under their *Naikiah*, perform various kinds of menial service for the *Ditha* and *Bicháris* during their sitting in court. They attend by turns four at once. The *Tehvildár* has charge of all monies paid into the court on whatever ground. The *Bahidár* keeps the accounts of all such monies. The *Khardár* writes the *Kailnámah*s and *Rázínámah*s 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 *Diwáli*, when only they are closed.

They are always fixed, nor do any of the judicial authorities of *Kathmandú* make circuits : but the *Ditha* has the power of sending to any part of the kingdom special judges (*Bichári*,) 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 *Taksár* and *Dhansár* when any grave matter therein arising calls for his presence."

The subordination of the *Taksár* and *Dhansár* courts to the *Ditha* is illustrated at length by Mr. HODGSON in the following manner:—"The *Bicháris* 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 complaints of wrongs done and suffered, save only such as entail a punishment touching life or limb, or involving total confiscation. 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 *Bicháris* next morning in the *Taksár* and *Dhansár* as the cases may have originated. 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 *Bichári* concerned. The *Bichári* may, in this event, if he please and be acute, argue the topic and perhaps convince the *Ditha* he is right and the *Ditha* wrong. Then again the award proposed by the *Bichári* 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 *Bichári*. But if neither the *Bichári's* verbal report of the case, nor the documents 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 *Bichári's* court and hear the cause anew,\* presiding himself in that court for the occasion. Such is the mode of the *Ditha's*

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\* 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 *Taksár* and *Dhansár* in cases where both parties assent to the judgments given in those courts. If either party dissent, then there is an appeal from the *Taksár* and *Dhansár* 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 *Kathmandú* 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 *Kathmandú Bicháris* by word of mouth simply and summarily, as above narrated; these *Bicháris*, 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 *Bicháris* of the *Taksár* and *Dhansár* 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 *Bhárádár Sabhá* (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 *Sráddh-páksh*, at which period the *Ditha* must report to the *Bhárádár Sabhá*, 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 *Bhâradâr Sabhâ*. Now and then a very grave case may be carried by the *Ditha* himself to the *Bhâradâr Sabhâ*, 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 *Râj Bhâradâr Sabhâ* or *Râja* in Council.

#### § 4. *Other Courts at Kathmandû.*

Besides the four courts above described, there are two Courts of Registry—that for houses is called the *Chi-bhandêl*—and that for lands, the *Bhû-bhandêl*. All deeds of transfer of houses and lands are registered in these courts; and copies, with the *Lâl 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 *Dafter-khâneh*, 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 *Kumâri Chok*, at *Kathmandû*, 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 *Kathmandû* are situated within eighty or ninety paces of each other.

“The territorial limits of the metropolitan courts are the *Dûd 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 *Nèpâl* 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 Nèpál 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 *Mèchi* and *Dúd Cosi*. To the westward there are two large sections; the former of which is denominated the division of the *Káli* and *Bhèri*, and also the *Káli-pár* division: the latter is called the section of the *Káli* and *Marsyángdi*, and it is also known as the *Mánjh-khand* circuit.

Two *Bicháris*, 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 *Mánjh-khand*, the other at *Chayanpur*. To the westward there are four:—two for the *Káli-pár* arrondissement, at *Báglung-chour* and at *Bèni*, and two for the *Mánjh-khand*, at *Pokhara* and at *Tárkú*.

The administrators of the *Tarái*, 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 *Tarái* 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 *Bára Parsa*, the same; for *Routahat*, one *Súbah* and one *Faujdár*; for *Chitwan-Bèlvan*, the same; for *Botwál*, the same; for the *Doti-Tarái*, one *Faujdár*; for *Salliána*, 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, (*ját* and *páni*): 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 *Dwáriah*. Above them come the hill *Bicháris* of the two divisions already named:— and, instead thereof, in *Pálpá* and *Dúti*, the sudder court of the *governor*, and in the *Tarái*, that of the *Sabhá* or revenue administrator.

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

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\* The term Provincial rather implies a court of a vice-regal ruler of a large tract: there are none such in Nèpál save the Governors of *Dúti* and *Palpa*, and the *Súbahs* of the low lands. 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 *Mahárája*, who in such cases directs the matter to be investigated in the *Kósi* or *Bhárádár Sabhá*, (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 *Bhárádárs* are assisted by the *Ditha* and *Bicháris* of the *Kot Singh*; and, if need be, by the *Dharmádhikári* also.

No one is at liberty to carry his complaint in the first instance to the *Bhárádár Sabhá*.

The appeal from the local courts of the interior lies in the first instance to the *Kot Singh* and thence to the *Bhárádár Sabhá* 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 *Dúti*, and those of *Pálpá* and *Salliánah*, (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 *Bicháris*, their second to the *Ditha* of *Kathmandú*.

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.

§ 7. *Courts of Bhatgaon and Patan.*

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 <i>Dwáriah</i> , who presides.	20 <i>Mahániahs</i> .
1 <i>Bichári</i> .	2 <i>Kotwál naikiahs</i> .
4 <i>Pradháns</i> .	24 <i>Kotwáls</i> .
1 <i>Bahídár</i> .	14 <i>Potadár Jaisís</i> .
1 <i>Patwári</i> .	8 <i>Pot Mahániahs</i> .
1 <i>Goshwára Tehwíldár</i> .	1 <i>Chaudarí</i> .
2 <i>Mahannaikiahs</i> .	1 <i>Si-chandèl</i> .

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*, *Tuèr-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 *Túsaal* resembles the *Bhu-bhandèl* 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 *Túsaal* 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 *Túsaal*, 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 *Nèpál*, but the military patrole 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 *Dwáriah*, 4 *Pradháns* and from 5 to 10 *Mahániahs* for each village, according to its size.

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\* *Bandyas* are the *tonsured* and *regular* followers of the *Bauddha* faith.



The *Dwáriah* assisted by the *Múkhiah* 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 confiscate. 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 *Múkhiah* 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.

#### § 9. *Practice of the Courts.*

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 *vivá 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

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\* The head villager is called by the *Párbattiahs* the *Gaon Mukhiák* ; by the *Newárs*, *Naikiah* and *Pradhán Prajá* ; in the *Tarái*, the *Jèth ráyat*. The ryots are called *Prajás* in the hills both by *Párbattiahs* 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 imprecation, is admitted in all the four courts of the capital. Ordeal is only resorted to in grave cases, when oral and documentary evidence are wanting, 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 *Kumári Chok*.

“The first great object of the courts of Nèpál, when litigants come before them, is not trial, but reconciliation. 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 *bèrí*, 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 testimony, 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 familiar 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, *Pancháyáts*, chiefly applied, but not exclusively, to civil actions.

§ 10. *Course of a Civil Suit.*

Whoever has a complaint to make goes into court : the *Bichári* 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 *Bichári* gives the necessary order to the *jemadár*, the *jemadár* to the *havildár*, and the *havildár* to the *sipáhís*. The *sipáhí* 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 *Bichári* 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 *pán phúl*, 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 *Bichári* 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 *Bicháris* 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 appraisal 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, *béti\* 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 *béti* 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 *Pancháyat* or other means than ordeal, which if they will not do, the trial by ordeal is directed to proceed. (See § 15.)

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\* *Béti* means a chain; the act of "tháping the *béti*" 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 Nèpál, and the convicts sent to prison. Each prisoner receives a daily allowance of a seer of parched rice and a few condiments.

§ 12. *Jail Delivery.*

“ 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 *periodical* jail deliveries belongs to a system of migratory courts not always sitting, as that of *regular* deliveries does to an accurate system. The Nèpálese 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 *Bhárádár Sabhá*, (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 *Pórya\** caste with him, proceeds to the banks of the *Bishenmoti*, where the sentence of the law is inflicted by the hands of *Póryas*, and in presence of the *Araz-bégi* and *Mahán Naikiahs*. Thus are grave offences involving the penalty of life or limb treated.

#### § 13. *Fees, Costs and Fines.*

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-bisonnd*, 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,

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\* The vilest of the vile.

Where there is affirmation and denial by the parties and the trial of right must be had, then the charges called *bēri* 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 *jītauri* 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*. *Jītauri* is ten per cent. upon the property litigated, and *hārauri* five per cent. ; *dasond-bisond* and *jītauri-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 (*Asāmi*) 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 (*Pulāha*) suffers *dānd*, proportioned to the mischief or iniquity of the falsehood, and the falsely accused (*Saccha*)

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\* *Dānd* is not by itself a punishment. Punishments (*Saxāna*) are, death, maiming or mutilating, imprisonment, and whipping with nettles or the corah, a true informer or accuser is not *Pulāha* ; a false and malicious informer or accuser is alone called (after conviction) *Pulāha*. If in the case supposed the crime he proved, the informer will receive a reward from the government under the name of *jītauri*, 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 *jītauri*, but half of *dānd* is *jītauri* ; that is, the amount of *dānd* is that which is first decided according to circumstances, and is that which regulates the amount of *jītauri*. H.

gets *jítaurí*\* 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 *jítaurí-háraurí*, nor *dasond-bísond* attach : confiscation of the offender's property follows. The *Sandhuah* 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 *bísond*, nor *jítaurí*, nor *dánd* 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-pán* 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 *dánd* nor *jítaurí*.

Neither *dasond-bísond* nor *jítaurí-háraurí* 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 *dánd* proportioned to his offence ; the complainant does not pay *jítaurí* or any tax whatever.

#### § 14. *Rules of Evidence.*

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 *jítaurí*, 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 *Musulman*, 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 *pípal* leaves, and a necklace of *tulsi* 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 Nèpál 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 *corak*, until he confesses; and then his *kail-námah* 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,

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\* 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.

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 *Chámákhak* (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 *Chámákhaks*, at this moment, all enter the water a little way, when the brahman performs *pújâ* 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

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\* The word "*Nyáya*," "justice, right" is technically applied solely to ordeal. H.

† Called *Góla*. ‡ Called *Narkauli*.

§ 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, SURYA and CHANDRA, and VARUNA and YAMA, and that they will do right between the parties to this dispute. When the *pújā* is over, the brahman 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 said, the brahman and the parties come out of the water. The *Chámákkalaks* 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 *jítauri* is then paid by the winner, and that called *hárauri* 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 *Sabhá siddhah* (or purification of the court) from the loser. The above four demands on the parties, or *jítauri*, *hárauri*, *pagri*, and *Sabhá siddháh*, are government taxes; and exclusive of them eight annas must be paid to the *Mahániahs* of the court—eight annas more to the *Kotwáls*—and, lastly, eight more to the *Khardár* or register. 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 no documentary or oral evidence to adduce.

#### § 16. *Pancháyat*.

The *Pancháyats* 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.

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\* "Markat."

† The turban fee is called *Pagri*.

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 *Panchayat* and decided by the court which appointed it.

The *Panchayat* has no power of its own to summon or to enforce 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 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 *Panchayat* 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 *Párbattiahs* (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 *Pandè*; 4th *Panth*; 5th *Boharah*; 6th *Rana*; one person being selected out of each tribe; and among the *Newárs*, the tribes from which *Panch* men must necessarily be chosen, are 1st *Maikè*; 2d *Bhanil*; 3d *Achár*; 4th *Srisht*. In matters affecting neither *Párbattiahs* nor *Newárs* 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 *Dharmashástra*, 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 *Shástras*. Other matters are almost entirely governed by the *Dès A'chár*, or customary law of the province of *Gorkhá*.

The customs of the *Bauddha* portion of *Newárs* are peculiar to themselves ; but in general the *Newárs* and *Párbattiahs* both acknowledge and are subject to the same *Dharmashástra*, although in some points there are appropriate usages for each.

It is not indispensably necessary that the *Ditha* should be versed in the law *Shástras*, 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 *Bicháris* 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 *Ditha* or *Bichári* 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 *Pancháyat*. 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*, *Múrmí*, 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.



§ 19. *Crimes and Punishments.*

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, Suspending 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 adálat 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.

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\* 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-hatya* or brahmanicide.
2. *Stri-hatya*, or woman killing.
3. *Bal-hatya*, or infanticide.
4. *Gao-hatya* or cow killing.
5. *Agamya-gavan* or incest in the peculiar Hindú sense. H.

† The *Dhunga Chúayi* or touching of a stone is this: When a cause is decided the *Bichári* 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 *Mahárája* 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 *Bichári's* perquisite, and the four dams, that of the *Mahárája*. This usage is not observed in every cause decided, but only when it is held that sin (*páp*) 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 *Satigrám*) 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 *Kalyán 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 *Gúrú*. 9, Incendiarism. 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, *Agamya-gavan* or Incest.

1st.—*Kalyán 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 *adhlat*. If death be awarded, the *Bickári* delivers the offender to the *Mahániah* and he to the *Poryas*, who execute the delinquent ; if confiscation be the sentence, then the *Mahániahs*, and the *Mahan Naikiahs* and the *Bahídárs*, 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 (*Puláha*) is necessary, and then there are two parties to the cause, the informer (*Puláha*) and the accused (*Sandhuah*) whichever of them establishes his case, gets a *khilaat* from the *sirkár*, paying *pagrí* and *jítaurí*. 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 *sirkár* as *jítaurí* half the sum paid by the loser as *dánd* or fine. In the *Panch khat*, the *Kalyán Dhan* above described is held the greatest, and the ultimate decision of cases is peculiar to the *Mahárája*.

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 *Maháns*, 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.

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. *Agamyā-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

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\* 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 practise of Nepál as regards familiar intercourse between a Hindú 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 *Newár* wife, in her husband's life and whilst he is within *Nepál*, 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 *Newár* 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 "*páchula*" that is, she must go to the *Mál Sabbá* of the city she belongs to (*Kathmandú*, or *Bhatgaon* or *Palan*), 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

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\* 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 *Gorkhas*, a *Newár* 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 *Mahan* 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 *Newár* commits adultery with a *Newár* woman, whose husband is gone to *Bhote*, and the woman perform not *páchuki* 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 (*prayas-chitta*), paying all the allotted fees to the *Dharmádhikári*.

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 *prayaschitta*, 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†

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\* 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—

*Kassai, Kusalliah, Porya, Dhobé, Kami, Damai, Kulu, Chama-khalak, Phugan, Massalman, Sondár, Sarki, &c.*—H.

drink water from his hand, then in such case the *Súdra* 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 *Súdra's* (whose water may be drank) daughter, it is no legal offence. If a *Brahman* or *Kshatriya* or *Vaisya* or pure *Súdra* 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 *Súdra* 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.

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\* When a person is ordered to perform this purification he goes to the *Dhármaadhikári* and learns from him what rites are needful to be gone through. The *Dharmádhikári* 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 *Newární*, 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.

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\* *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 “*birtha*,” 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 *Gutiyár*. It is neither partible among heirs, nor transferable in any degree.—H.



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

*Forgery.*—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 *jítaurí* for the *Sirkár*.

*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 *Adúlat*, the court refers it to a *Pancháyat* or orders an ordeal, or tenders to the parties the decisory oath. Thus, if they be *Shiva-márgy Newárs*, 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 *Bauddha-márgy*, 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.

*Nepál Residency, 29th January, 1831.*