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KUMAUN

LOCAL CUSTOMS.

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By

PANNA LALL, I.C.S.,
Special Officer, Kumaun Division.



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FROM

PANNA LALL, Esq., I.C.S.,
SPECIAL OFFICER, KUMAUN DIVISION,

TO

THE COMMISSIONER, KUMAUN DIVISION,

NAINI TAL.

Dated Camp, the 7th April, 1920.

SIR,

I HAVE the honour to submit the report of my enquiry into the local customs of the Kumaun division. Although you are aware, better than myself, of the history of this question, yet for the sake of completeness I venture to offer the following brief remarks.

2. According to law, cases among residents of Kumaun have always had to be decided in accordance with local customs. This rule looks simple ; but in practice many difficulties have been experienced. First of all, the ascertainment of custom—never an easy matter—is especially difficult in a court of law when the custom itself is in dispute, and the parties are interested in proving it in the way most favourable to them. Only a few days ago J. M. Clay, Esq., O.B.E., I.C.S., who has been for seven years Deputy Commissioner of Garhwal and whose knowledge of local conditions is immense, wrote to me as follows :—

“ These customs have, of course, come frequently to my notice during the past seven years, but on nearly every occasion the custom or the instance in point was the subject of dispute. Such conditions are not at all suitable for ascertaining what a custom really is.”

3. Next, the different points of view of the officers trying these cases have added to this difficulty. Officers who have been long with these hill men and those who come fresh from the plains approach these questions from widely different points of view. While to the former many things are more or less like axioms, requiring no proof, the latter insists upon elaborate proof for every little thing that differs from the Mitakshara. This is especially so in questions of marriage, legitimacy, and inheritance. The bulk of the people have never heard of the Mitakshara and have never been guided by it, yet it is applied to them rigorously. The very term “ illegitimate,” used by writers—even of such experience as Stowell—of many forms of marriage connections (which are

common and are considered perfectly honourable and legitimate by the people) is an indication that the matter has been approached from the writer's, and not the Kumaoni's point of view. This varying standard of courts has led to conflicting rulings.

It must be added in justice to the officers that legal practitioners also have contributed partially to this state of affairs by pressing forward considerations borrowed from the Hindu Law when they suited their clients regardless of local custom. Experienced lawyers agree with me in this view.

4. Finally there is the great hardship under which the hillman has suffered these many years in being asked to give evidence to disprove the rule of the Mitakshara before the courts would give a decision in his favour. On this point I cannot do better than quote your own remarks in *Fateh Singh versus Gabar Singh*—a case which has now become historic, the decision in which is known, and disapproved throughout Garhwal.

“The persons are residents of Northern Garhwal and probably have never heard of the Mitakshara Law. However, calling themselves Hindus they have to abide by it when they come to court. While in the simplicity of their life they have never assimilated the mass of detail laid down in this formidable volume, yet the law strictly requires them to bring down from these hills a mass of evidence to prove that they have not done so.

“To speak plainly, the law imposes an impossibility. Were this the ultimate court of appeal I would not hesitate to hold, what is no doubt held locally, that the son of Daulat Singh is quite legitimate enough to succeed to his father's farm. As however the directions given me are so drawn up, it is impossible for the courts of Kumaun to do so. I regret that I have to concur with the learned lower court and dismiss this appeal and feel that in doing so we are acting quite contrary to public opinion in these valleys from which this case comes. We are however accomplishing a task which could not be performed even by the most zealous of missionaries.”

5. Such in outline are the difficulties of the present state of affairs. In 1915 when the question of placing Kumaun under ordinary civil courts was before the Government it appointed an informal Committee to try and see if the local customs could not be codified. A draft bill was prepared but was not proceeded with. In a way it was a good thing that it was dropped because that draft was only a half way solution of the problem. It only gave a list of customs which the courts might

presume.' Those entitled to speak with authority on these matters assure me that such a bill would not lighten the burden of the hillman at all. It would only shift the burden of proof from one party to the other. And it might make the position in certain cases still more confused by introducing new ideas and conditions into the old problems.

6. Government then deputed Mr. Stowell to compile a list of old rulings dealing with these customs. When the book was published it was found that there were no rulings on many important points, that there were contradictory decisions on several matters, and that some of the rulings were manifestly wrong being contrary to local custom.

7. The question of legislation was again taken up, but it was felt that a full enquiry ought to be held among the people themselves to ascertain the exact customs before attempting to codify them into law. Mr. Stowell drew up a list of questions indicating the scope of the enquiry. It was circulated to district officers, and considered by them to be sufficiently exhaustive.

8. The continuance of the war and the paucity of officers was responsible for the delay in undertaking this important work. In May, 1919, I was appointed to perform this duty. G. O. no. 652/VII—221, dated 10th June, 1919, laid down my instructions. I was to be guided by Mr. Stowell's list of questions but was left a free hand to expand it. Almost from the very start it was found necessary to expand it in many and important particulars.

9. The original intention was to confine the enquiry to the Hindus of the hill tracts of the division, but in compliance with your wishes I have also enquired into the customs of the Bhotiyas and of Tharus and Bhuksas.

10. A word of personal explanation. My method of work has been to collect the people and ascertain from them by reference to actual examples, especially those unconnected with courts, what the actual custom with reference to any particular subject is. I have paid no regard to rulings, or to entries of customs in revenue records, nor again to the question whether the custom is moral or immoral. These questions, I take it, were outside my province. I was required to find out and record the custom as I found it. However, I have added some miscellaneous information on these points also in the commentary on the rules.

11. I have enquired into Almora and Naini Tal districts and Northern Garhwal (twenty-three pattis) myself. My assistant Thakur Saligram Singh, B.A., LL.B., deputy collector, who is a resident of Garhwal, was appointed in January this year. He has worked in Southern

Garhwal (sixty patts) and nine patts of the Almora district. He has followed the same plan of enquiry as myself. I have incorporated his conclusions in the report which may therefore be taken to represent the views of both of us. The number of men examined by us exceeds twenty thousand.

I have the honour to be,

SIR,

Your most obedient servant,

PANNA LALL, I.C.S.,

Special Officer, Kumaun division.

GENERAL CUSTOMS.

[Applicable to the Hindus of the hill tracts of the Kumaun division, excluding certain castes for which rules are given separately.]

The Mitakshara Law applies with the following modifications:—

A.—Adoption.

1. The ceremony prescribed by the Mitakshara is not essential.

A written instrument of adoption is essential.

2. A widow cannot adopt except with the consent of the reversioners. The giving of the permission to adopt by the husband is neither customary nor effective.

3. An adopted son shares the inheritance equally with sons born after the adoption.

4. A person whose mother could not have been married by the adoptive father cannot be adopted as son.

5. An adopted son must belong to a caste with which the adopter's caste can have social or marriage relationships.

6. There is no restriction as to the age of the adopted son.

7. The adoption of an orphan, an only son, an eldest son, or of a person whose *upanyana* or marriage ceremony has been performed is not invalid.

8. A person though he may be called a *dharma putra* (=adopted son) does not inherit to collateral relations of his adoptive father unless he has changed his own caste and *gotra* for his adoptive father's, and observed the necessary funeral rites for the collaterals also.

B.—Gharjawain.

9. A man without sons sometimes takes his son-in-law to live with him, occasionally, in Garhwal, without any formal marriage ceremony having been gone through with his daughter. The son-in-law acquires no rights by the mere fact of this his admission into the father-in-law's family.

The father-in-law transfers his property (wholly or in part), whether ancestral or self-acquired, by a deed of gift which defines the estate taken by the donee.

The transfer is usually in favour of the daughter, but sometimes of the son-in-law, or both jointly, or the daughter's son. There is no condition of continued residence in the home of the donor unless expressly ordained in the deed of transfer.

10. A widow can keep a *gharjawain* but can transfer the family property only with the consent of the reversioners.

11. A *gharjawain* takes only the property transferred to him : he acquires no rights of inheritance in the family of his father-in-law.

Illustration.—*A* and *B* are brothers. Neither has any male issue. *A* keeps a *gharjawain C* and transfers his property to him. First *A* dies, then *B* dies. *C* has no claim to inherit *B*'s property.

12. A person who goes as *gharjawain* to his father-in-law does not lose claim to inheritance in his paternal family.

13. It is presumed that the intention of the giver is that the property is to be enjoyed by the daughter, the son-in-law, and the issue of their union (male issue by right, and female issue by gift from their parents). Failing such issue the property reverts to the nearest heirs of the donor. Unless expressly permitted by the deed the property cannot go to the collateral relations of the son-in-law or to his children by any wife other than a daughter of the donor.

C.—Inheritance:

14. *Sons.*—Sons by a woman kept as wife (whether married or not) inherit fully like legitimate sons.

Illustration.—*A* has a wife *B* married properly in the orthodox way ; a wife *C* married according to the *taka ka biyah*, in which the *Ganesh puja* has been performed but not the *anchal* ; a wife *D*, the relinquished wife of another, who has been kept by *A* without any formalities or ceremony ; a wife *E*, the widow of his brother kept by *A* as wife without any ceremony ; a wife *F*, married by the *Sarol* or *Barha* ceremony with whom the *anchal* has not been performed. The sons of all these inherit equally.

Exception.—Sons by dhanti, or other wives with whom no marriage ceremony has been gone through get no share in the inheritance in castes mentioned in list A.

15. *Widow.*—

(a) A widow inherits her deceased husband's estate even in a joint family.

(b) All women whose sons would be entitled under the preceding rule to a full share are themselves entitled to inherit in the absence of sons.

(c) A widow represents her deceased husband in inheriting to collaterals.

16. A daughter and a daughter's son are not heirs at all.

17. *Brother.*—

- (a) There is no difference between brothers of the whole blood and consanguine brothers (i.e., having the same father but different mothers). On the other hand uterine brothers (i.e., having the same mother but different fathers) are not entitled to succeed as brothers.
- (b) There is no difference between divided and undivided or reunited brothers. They share the inheritance together in equal shares.
- (c) On the inheritance devolving upon brothers, a predeceased brother is represented by his sons, son's issue, or by his widow; and his share is taken by them.

18. *Brother's sons.*—On the inheritance devolving upon the nephews or grand nephews alone they do not take *per capita*. They represent their deceased fathers and take the inheritance *per stirpes*.

19. *Collaterals.*—Sons, legitimate and illegitimate, who are entitled under rule 14 to succeed to their father's property, are entitled to succeed as heirs to collateral relations also. (But see also rule 8.)

20. *Village community.*—In the absence of heirs the inheritance devolves upon the village community, i.e., the *panch hissadars* or the *panch khaikars*, according as the village is a *kachcha* or a *pakka khaikari* village.

21. *Jethon.*—On a division the eldest brother usually gets something more than his share, a field, a piece of jewellery, a cow, or the like. But the custom depends upon the consent of the younger brothers and is not enforceable at law.

22. *Sautia bant.*—There was a custom in old times whereby sons of a father by different mothers did not inherit equally *per capita*, but took their mothers' share *per stirpes*. The custom is obsolete now. Now all sons get an equal share.

23. The estate of the Rajbar of Askot is impartible. Junior members are entitled to maintenance only.

D.—Exclusion from inheritance.

24. Brahmcharis, lepers, blind persons, the deaf and dumb, lame and impotent are not disqualified from succeeding. But a leper who has left home permanently to go to an asylum or elsewhere is excluded.

E.—Stridhanam.

25. The special mode of devolution prescribed by the Mitakshara is not followed. It devolves like other property.

F.—Maintenance.

26. A son, legitimate or illegitimate, is entitled to maintenance until his attaining majority.

27. A daughter, legitimate or illegitimate, though not an heir, is entitled to maintenance until her marriage, and to her marriage expenses, if any, being defrayed out of her father's assets.

28. All women kept as wives, whether married or not, are entitled to maintenance like lawfully married wives or widows from their last husband or his estate.

29. The right of women to maintenance exists only as long as they live in the family home and are chaste. But a woman compelled to leave the home by ill-treatment, or other sufficient cause, does not forfeit her maintenance as long as she remains chaste.

30. The Askot estates being impartible, the relations through males of the Rajbar are entitled to maintenance, males for their lives and females until their marriage.

31. When a man takes to wife the wife or widow of another, and she is accompanied by a child of the first husband, such child—called *Jhantela*—is entitled to adequate maintenance from his foster father or his assests until attaining majority if a boy, and until marriage if a girl.

G.—Hindu joint family.

32. A co-parcener can transfer his share or a part of his share of the family property without the consent of the other co-parceners.

33. But he cannot transfer any specific property unless the same has been in his possession by a *ghar-batwara*.

34. During the lifetime of a man his descendants have no share in or claim to the property, ancestral or self-acquired.

35. Therefore they cannot ask for a partition in his life-time, and the property in the hands of the father is not liable for the debts of his sons, or sons' issue.

36. And the father can transfer his property (ancestral or self-acquired) *inter vivos* in any way he likes.

37. The widow of a co-parcener succeeds to the share of her dead husband if he dies without issue, after the vesting of the property in him.

H.—Widows' estate.

38. A widow includes all women treated as lawful widows under rule 15.

39. A widow succeeding to her husband's inheritance is disinherited if she leaves her home voluntarily and becomes the wife or concubine of another or leads an unchaste life generally.

Explanation (1).—This rule does not apply to widows succeeding to the estate of their sons, or fathers.

Explanation (2).—A widow leaving her home to live with her husband's brother as his wife is disinherited.

Explanation (3).—A widow who does not leave her family home is not disinherited even if she brings a man to live with her as her husband.

I.—Wills.

40. A man can dispose of by will only his self-acquired property, not his ancestral property.

J.—Marriage.

41 Four kinds of conjugal relationships are known—

(a) A *married wife*, i.e., one in respect of whom an ostensible ceremony of marriage has been undergone with the object of making her a wife, whatever the nature of that ceremony may be.

Notes (1).—In Garhwal a married wife may be *asal* or *kamasal*.—*Asal* is one belonging to a caste of equal status and of pure parentage; *kamasal* is one belonging to an inferior caste or one of whose ancestors belonged to an inferior caste or was a *dhanti*.

(2) Intermarriages between different castes are not allowed. Such unions rank as *dhanti* connections for purposes of inheritance, etc., except in Vaishyas who have now a well established custom of marrying Rajput wives and recognizing them as valid marriages.

(b) A *dhanti*, i.e., the widow or the relinquished wife of another kept as a concubine (*dogharia*); or a maiden bought for money and kept as wife without any ceremony.

(c) A *brother's widow*, kept as wife by the deceased husband's brother (usually younger, sometimes elder).

(d) *Tekwa*, *kathwa* or *halya* (=ploughman) is a man kept as a husband by a widow in her old home.

N.B.—Except in castes mentioned in list A there is no difference between the several kinds of wives comprised in rule 1(a), (b) or (c) for legal purposes; In other castes the distinction, if any, is one for social and ceremonial purposes only.

42. A *dhanti* may be taken from any Hindu caste. No ceremonies are essential or even usual at the time of taking a *dhanti*. The connection is of almost a permanent character. If the wife of another is taken, a price is generally paid for her "jewellery and other marriage expenses" and a deed of disclaimer (*la dava*) is generally executed by the husband but is not essential. No price is paid, and no *la dava* deed executed in respect of a widow in Garhwal; in the rest of the division the representatives of the husband sometimes take a price.

43. *A brother's widow*.—There is no difference in her status whether she leaves her home to go to live with her deceased husband's brother or calls him to live with her in her old home. She ranks as a *dhanti*. But her children are considered *asal* (not *kamasal*), in Garhwal.

44. *Tekwa*.—Except with the consent of the reversioners neither the *tekwa* nor the children by him acquire any rights in the property held by the widow employing the *tekwa*. But both she and such children have full rights in the *tekwa's* property, if any.

45. *Different forms of the marriage ceremony in Garhwal*.—At one end of the series is the case of the rich father who does not care to accept any bride price and gives the daughter in gift (*kanyadan*) to a worthy husband; at the other end is the case of the impecunious father who sells his daughter like chattel without any ceremony. Between these two extremes marriages with ceremonies of all gradation are known. Their number is large: the point to note is that (just like the eight kinds of marriage given in the *Mitakshara*) none is the custom of the whole of any community or of all the residents in a locality. It should be remembered that the question of marriage ceremony is of no legal interest whatever (vide rules 14, 15 and 41 above). It is only of scientific interest. As long as a *formal ceremony* of marriage is gone through, nothing more is required to give the bride and her issue full legal status as wife and sons. The following forms have been noticed:—

(1) *Kanyadan, or gift of the bride by her father to the bridegroom*.—

The latter goes to the bride's house for the ceremony, the principal and essential part of which is the *anchal* or the tying together of the couple.

(2) *The taka ka biyah, or marriage for money*.—Some money is

usually paid to the bride's guardians as her price, or for expenses or under some other name. The bridegroom does not go himself to the bride's house for the marriage but sends a party for the purpose. The principal ceremonies are (a) the *mangal ashnan*, or the ceremonial bath of the bride, (b) the putting on of the *kankan* (a bracelet) on the bride, (c) the payment of the price by the bridegroom's party, (d) *Ganesha puja*, (e) the putting on of the bridal jewellery by the bride, chiefly the *nath*, which is the symbol of wifehood. Of these (d) and (e) are necessary and sufficient to constitute a valid marriage. Later (often after a long interval) an *anchal* ceremony is usually performed at the husband's home, the object of which is to purify the wife for social and ceremonial purposes. It does not confer on her any extra legal right.

If the husband were to die after (d) and (e) and before this *anchal* she would become a widow and could not marry again, though she might become a *dhanti*.

- (3) *Kumbh bivah*.—Sometimes when the husband is unavoidably absent, or astrological considerations render his actual marriage with the person of the bride undesirable, she is formally married to a pitcher of water as representing him.

Later on an *anchal* ceremony may be performed with the bridegroom for the purpose mentioned in (2) above, but as stated there is not essential.

- (4) *Pratima bivah*.—Is similar to *kumbh bivah*, an image of god being substituted for the pitcher of water. The image is by some given away to the priest, and by others is worn on the person of the bride.

- (5) *Arak bivah*.—Is similar to the last two. The bride is married to an *ak* tree when astrological considerations forbid marriage with the person of the bridegroom.

- (6) *Temple marriage*.—Occasionally the couple go to certain temples and take each other as wife and husband in the presence of the deity without any formal ceremony. Sometimes the bride goes alone to the temple for the marriage, the groom's presence not being essential.

- (7) *Satnarain marriage*.—A priest is called to recite the *katha* of *Satnarain*. At the close of the *katha* the marrying couple go round the priest and the pedestal on which he is seated.

- (8) *River or Panidhara marriage*.—In the contingency mentioned in (3) above the bride is taken to some sacred place on a river, occasionally even to an ordinary spring, she is publicly "married," and declared to be the wife of the bridegroom. Absentee soldiers are often married in this way as well as that described in no. (3) above.

- (9) *Formal entry marriage*.—Sometimes the only ceremony performed is the formal entry of the bride into her husband's home (whether he is present or not). This entry is usually with an image of *Saligram*, or a pitcher full of water or *dahi* on her head; or holding the tail of a cow.

- (10) *Ekadashi or Sivaratri marriage*.—The father of the bride keeps the Ekadashi or the Sivaratri fast, and at its close gives his daughter away to the bridegroom, of course having taken the price previously.

(11) *Gai Sakshi* marriage.—After the price of the bride has been paid, the bride and the bridegroom go round a cow four or five times and give it away in gift to a Brahman.

(12) Sometimes there is no pretence of performing any ceremony at all. An unmarried girl is bought just like chattel for money, brought home and kept as wife (*chandi biyah hai*).

N.B.—It should be noted that the presence of the bridegroom is not essential in any except nos. (11) and (1).

46. *Different forms of the marriage ceremony in Almora and Naini Tal districts.*—As in Garhwal we get here also the two extremes that of *kanyadan* where the father gives the daughter as a gift with proper puranic ceremonies, and the other where the girl is sold without practically any ceremony. The following forms have been noticed:—

(1) *The anchal marriage.*—The bridegroom goes to the bride's house with a party and there is married to her with proper ceremonies. The principal and the essential ceremony is the *anchal* or the tying together of the couple. The bride's guardian generally takes some money from the bridegroom as the price of the bride, or her jewellery, or under some other name. But occasionally no price whatever is taken and the bride is given as a gift (*kanyadan*). This form of marriage is found in all castes; but amongst Doms the ceremonies are generally performed in a loose kind of way without a Brahman priest—a sister's son or a daughter's son acting as a priest.

(2) *The sarol or the barha or the dola marriage.*—The distinguishing features of this form of marriage are that money is paid for the bride in every case, that it is not necessary for the bridegroom to be present at the marriage, and as a consequence of that the *anchal* ceremony is not performed at the marriage. The price of the bride may be paid in one lump sum or in instalments. In the latter case about half the price is paid in the first instance, *pitha* (red vermilion) is put on the would-be bride's forehead and this operates more or less as a betrothal. After this the remainder of the price is paid as convenient. As soon as the full amount has been paid, a party goes on behalf of the bridegroom (his own presence not being essential) to the bride's house. There the ceremonies (such of them as can be performed in the absence of the bridegroom) are performed. The bride is decked with ornaments and clothes which distinguish a wife from other women. These are (1) the *nath* or the nose ring, (2) the *charew* (a necklace of black

beads), (3) the *ghagra* or the skirt tied at the waist as distinguished from the *jhagula* worn by maidens, which has body and skirt combined like a princess petticoat and (4) black glass bangles. The bride is then taken publicly to the husband's house, may be with music and flare of trumpets. The bridegroom may be away in distant lands when this his marriage is performed and his wife brought home. The proofs of the marriage are the payment of the price, the putting on of the bridal ornaments and clothes and the coming of the bride publicly to the husband's home. This form of marriage corresponds to the *taka ka byah* in Garhwal [see rule 45(2)]. Here as there an *anchal* ceremony is usually performed later on at the husband's home when he is available. This may take place after a long interval—many years in fact. Its object is to purify the wife for social and ceremonial purposes. It does not confer any extra legal right. Once she is brought in *sarol* to the husband's home she becomes a wife with full legal rights. She cannot, e.g., be returned to the parents as "disapproved," or turned out in any other way. If the husband were to die without *anchal* she and her sons would have full status as wife and sons. But whereas in Garhwal such a widow cannot marry again in the orthodox way the residents of Almora and Naini Tal allow her to marry another man in the regular *anchal* form should she so wish, even though she had lived with her first husband for a large number of years.

(3) *Temple marriage*.—Occasionally the couple go to certain temples (e.g., the *Mahadev* at Salt or at Marchula) and take each other as husband and wife in the presence of the deity. This ceremony may be performed after the couple have lived together for several years and even had children. Sometimes the bridegroom does not go to the shrine. The bride is taken round the shrine three times by a *barat* on behalf of the bridegroom. At Salt and at Marchula such marriages are generally on the eve of *Makar Sankrant*.

(4) Occasionally a wife is taken without any ceremony whatever. The price is paid and the bride taken to the husband's home. Marriages of absentee soldiers are often performed in this way by the guardians. But as in this case also, the husband on his return may go through the *anchal* if he feels inclined, this is only a variation of the *sarol* form.

LIST A.

(Referred to in rule 14.)

I.—BRAHMANS.

Avasthis.—Of Askot.

Bhattis.—Of Bisar.

Bishtis.—Of Gangoli.

Joshis.—Of Chinakhan, Dania, Galli, Jhijhar, Latola, Makiri, Masmola, Pokhri, and Silwal sub-castes.

Karnataks.—Of Kadaryakhola.

Pandes.—Barakhola, Dewalia, Mannolia, Palyun, Patia, and Simaltia groups.

Pants.—Bhavdas, Nathu, Sharam, Shinath and Parashar groups.

Pathaks.—Of Pathkeura in Gangoli.

Tewaris.—All legitimate descendants of Saichand Tewari.

Upretis.—Of Almora.

Vaidyas or Misra.—Of Dibdya.

II.—KSHATRYAS.

Legitimate members of the family of the Raja of Kashipur; of Thakur Anand Singh of Almora (the descendant of the Chand Rajas); and of Ram Singh, Thokdar of village Jiba, patti Shor, district Almora.

All Rajbars.

III.—VAISHYAS.

All Banias by birth.

PRIESTLY BODIES.

47. The term priest will in this section include *pandas* and other communities having rights in, or in connection with, a temple, or other sacred place. Their property is divisible into three kinds—

- (i) Ordinary property, movable or immovable.
- (ii) *Jajmani* rights, i.e., the right to perform religious services for, and to receive gifts from, other persons whom we may call their clients.
- (iii) The rights and duties of performing services in, or in connection with, a temple or other sacred place, and of receiving the whole or a share of the offerings made there.

48. *Ordinary property*.—It follows the general customs (rules 1—46) of the district where the property is situate. But it may be noted that it is not the usual custom among the *pandas* to adopt sons or to keep *gharjawains* of castes other than *pandas*, though exceptions are known. *Dimris* adopt only a *dimri*, and do not keep a *gharjawain*.

49. *Jajmani rights*.—These are governed by the same rules as ordinary private property, with the following modifications :—

- (a) These rights can be enjoyed only by persons of the castes to which they belong. Persons of other castes adopted as sons or kept as *gharjawains*, or persons born of *kamasal*, *gangari* or *dhanti* wives or wives of another caste cannot inherit these rights.
- (b) Widows inherit these rights, and nominate an agent on their behalf to exercise them. The agent is usually from amongst the reversioners.
- (c) *Jajmani* rights in so far as they concern the client cannot be transferred except to one of the heirs.

50. *Services in temple, etc.*.—These are also governed by the general rules with the following modifications :—

- (a) These rights and duties can only be exercised and performed by persons of the caste to which the rights and duties belong. Persons of other castes kept as *gharjawains* or adopted as sons, or persons born of *kamasal*, *gangari*, or *dhanti* wives or wives of another caste cannot inherit these privileges.
- (b) These privileges are not inheritable by women.
- (c) These privileges cannot be transferred, except to such persons as can perform the same services.
- (d) The posts of priests, etc., in certain temples are not hereditary, but are by appointment or election.

JOGIS, GIRIS, ETC.

[For miscellaneous information about these sects, see Atkinson's *The Himalayan Districts*, volume III, page 480.]

51. THE principal sects are Naths, Giris, Puri, Ban, Bharti, Gosain, Bairagi and Gudar.

Mr. Pauw in his report of the settlement of the Garhwal district says (page 45) " Among the various castes of *jogis*, known as Giri, Puri, Nath, Bairagi, etc., the succession lies to the *chela* or the disciple, not to the son. This is not improbably a remnant of the time when this class was celibate. At the present day celibacy is seldom observed while a large number, particularly near Srinagar, are mere cultivators, and only to be distinguished from others by their orange coloured dress, and the custom prevailing amongst some of them of wearing large wooden rings in their ears."

52. Celibacy is now non-existent. Nominally it is expected only of the mahants or chief priests of certain temples or other religious institutions. But amongst them also the habit of keeping concubines, and even married wives is rapidly growing. There is nothing now to distinguish the members of these sects from Rajputs. In Almora, they have even discarded the use of the orange coloured dress in daily life. Such of them as are not priests are invariably *grihastis*, i.e. house-holders with wives and children. Naturally therefore the custom of making a disciple who would be entitled to claim the inheritance has died out. Some keep up the tradition by making their own sons disciples. Two brothers often make each other's sons disciples. In any case the old custom of making a disciple and bringing him away to live with one has nearly disappeared. The rule is that if a person on becoming a disciple leaves his father and goes to live with his *guru* (preceptor) he loses all rights in his father's family and acquires in the *guru's* family an equal right with the *guru's* sons, if any. Amongst the *Goshains* of Kamaleshwar at Srinagar Garhwal district a son can succeed to the inheritance only in the absence of disciples. When there are disciples also he has no claim to any share beyond what the father may give him in his life-time.

In other respects the customs of these people are identical with those of the Rajputs (rules 1—46). Succession to the office of the priest of temples and other religious foundations is governed by their own traditions and customs.

NAYAKS.**A. — General.**

[For miscellaneous information about this community see—

Atkinson.—*The Himalayan Districts*, Vol. III, page 448.

Nevill.—*Gazetteer of the Naini Tal district*, page 110.

Walton.—*Gazetteer of the Garhwal district*, page 64.

Walton.—*Gazetteer of the Almora district*, page 102.]

53. The Nayaks are found throughout the Kumaun division. The following are the chief places where they are found at present:—

Naini Tal district.—Patti Ramgarh. These people own a large estate at the foot of the hills near Haldwani also.

Almora district.—Pattis Giwar and Naya; village Katarmal in patti Malla Tikhun; pattis Khasparja Pithoragarh, Son, Seti, Mahar, Gumdesh, Khilpati phat and Regruban; pattis Gangol, Waldia, and Malla Palbilon.

Garhwal district.—Pattis Malla and Talla Kaliphat, Langur, and Udaipur Malla.

The distinctive feature of the Nayaks is that their girls (generally speaking) do not marry but are brought up as dancing girls and courtezans.

B. — Marriage.

54. *Marriage of men.*—Nayaks bring wives generally from the lower orders of the Rajputs, but as they can afford to pay handsomely they have had wives from the higher sections also. The marriage ceremonies are the same as among other Rajputs (vide rules 45 and 46). But, as will be easily understood, there are few instances of a bride being given in gift (*kanyadan*) to a Nayak. Nearly always money has to be paid (*taka ka byah, sarol*, etc.), and in such cases the ceremonies, if any, are performed at the house of the bridegroom when the wife has come there.

55. *Marriage of girls.*—Atkinson in his gazetteer (page 448) says that all the girls are brought up to prostitution, but that is too exaggerated a statement. Marriages of girls are known though they are not common.

The Nayaks of Malla Palbilon, Waldia, and Gangol pattis in Almora district invariably marry their girls. Those of Kaliphat pattis in Garhwal marry some of them and devote others (usually the eldest) to the profession. Nayak girls where married are taken as wives, generally speaking, by Nayaks only, the ceremonies being the same as in other Rajput marriages (rules 45 and 46). Nayaks of Ramgarh who are rather well-to-do have been for some years trying to marry their girls to other

Hindus also, and have given instances of marriages having been performed with men of other castes in the plains as well as in the hills by Vedic rites. It may be added here that among the Nayaks girls have certain special privileges; but girls who are once given in marriage cease to be entitled to them. Their position then becomes the same as those of the girls of other Rajput communities in the district.

C.—Adoption.

56. Adoption, uncommon as it is in Kumaun, is rarer still among the Nayaks—the reason probably being that daughters are valued and treated by these people like sons. Still, as a man has his uses especially in carrying on the cultivation and other business, boys are adopted even when a man has girls of his own. The Nayaks of Kaliphat in Garhwal and of Givrar valley in Almora say that they have no instances of adoption though the latter add that it is permissible. The customs relative to this matter are the same as those amongst other Rajputs except that—

- (a) a sister's or a daughter's son can be adopted;
- (b) a girl may be adopted as a daughter: this was proved to be so particularly in the Champawat tahsil of the Almora district.

D.—Gharjawain.

57. As the girls remain unmarried almost invariably there are hardly any *gharjawains*. In the few cases that marriage of the girls is the custom a *gharjawain* may be kept. The custom in such cases is the same as in other Rajputs. (Rules 9—13.)

E.—Inheritance.

58. The customs of the other Rajputs (rules 14—23) are observed with the following alterations:—

- (a) In the case of Nayak women brought up to the profession
 - a sister=a brother
 - a daughter=a son

(and therefore a sister's daughters and sons are equal to a brother's sons).

Illustration.—*A* dies childless leaving a brother *B*, a sister *C*, *D* and *E* son and daughter, respectively, of a pre-deceased brother; *F* and *G*, son and daughter, respectively, of a pre-deceased sister. The property will be divided into four equal shares, *B* takes $\frac{1}{4}$, *C* takes $\frac{1}{4}$, *D* and *E* together take $\frac{1}{4}$, and *F* and *G* together take $\frac{1}{4}$.

N.B.—A Nayak girl, when married, loses this special right of inheritance.

Exception.—The Nayaks of Nayakana Chhota and Bara in patti Langur palla, Garhwal district, do not observe this rule.

- (b) Half-brothers (uterine, i.e., from the same mother by different fathers) are each other's heirs in respect of property inherited by him from their common mother but not in respect of property inherited by the half-brother from his own father.

Illustration.—*R* and *L* are the sons of a woman *K* by different fathers, *H* and *X* respectively, *R* dies heirless. *L* will succeed to any property inherited by *R* from his mother *K*; but not to any property inherited by *R* from his father (cf. rule 39 a *tekwa's* son is no heir).

(*Diwanu* versus *Lungi*; decided by Colonel Erskine in 1894 approved only to the limited extent stated above. The *obiter dictum* as to the unchastity of Nayak wives strongly resented. Colonel Erskine's remarks are probably due to a confusion of thought. Nayaks train their daughters to prostitution, but expect the same amount of chastity from their wives as other Rajput husbands in Kumaun.)

- (c) The custom of *sautia bant* (division *per stirpes* by mothers, rule 20) still prevails among the Nayaks of village Khilpati, patti Khilpati phat, district Almora. Others observe the *bhaibant* rule, i.e., each son gets an equal share.

F.—Exclusion from inheritance—Stridhan—Hindu joint family—

Wills—Widow's estate.

59. The customs relating to all these matters are the same as in other Rajputs (rules 24, 25, and 32 to 40) always remembering that a sister=a brother, and a daughter=a son.

G.—Maintenance.

60. The customs prevalent among other Rajputs (rules 26 to 31) apply with the following alterations:—

- (a) Daughters are entitled to maintenance until their marriage (where marriage is the rule) or until they can earn for themselves (where they are brought up to the profession).
 (b) A daughter does not forfeit her right to maintenance because of unchastity.

GURKHAS.

61. Gurkhas came originally from Nepal; they are found in a few scattered settlements in the division, e.g., at Kharagdesb near Pithoragarh, at Almora, at Bageswar and at Baijnath in the Almora district; and at Lansdowne in the Garhwal district. The customs of these settlers are the same as those of the Rajputs in the districts where they are found with the following alterations:—

- (a) The custom of keeping a brother's widow as wife is uncommon. It is said to be forbidden in Nepal.
- (b) There is an additional form of marriage ceremony known as the *Kalas puja*. In it the presence of the Brahmin priest is not required. The family *guru* does the *Kalas puja* and that completes the marriage.

BHOTIYAS OF JOHAR AND GORIPHAT.**Almora District.****A.—Marriage.**

62. Marriage is arranged by the parents usually during childhood. A price is generally paid for the bride, usually Rs. 300. But there are cases where no price is charged. Wives can be taken from among the Bhotiyas of Johar, Niti and Mana valleys, but not from Darma, Chaudans and Biyas; nor from Tibet or Almora. If wives are married from amongst the Almora zamindars, their offsprings are considered socially inferior and called *Kunkiya*s (? from Sanskrit Kanchuki). *Kunkiya*s find some difficulty in getting wives or husbands at the regulation price of Rs. 300. A man may have to pay more for a wife, and a girl's father will get less or nothing at all for the girl.

63. As amongst the zamindars of the Almora district, there are two kinds of marriages :—

(a) The orthodox marriage, where the *anchal* (the ceremonial tying together of the husband and wife) is performed at the house of the bride.

(b) The *sarol*, where the bride is taken away by, or on behalf of, the bridegroom, without practically any ceremony.

64. In (a) the puranic ceremony is gone through more or less fully with a brahman priest officiating. There is generally the betrothal about a year or less before the wedding. The presence of the bridegroom at the wedding ceremony is essential. There is a marriage party as usual. The *anchal* is the proof of the marriage. Once this is performed the marriage is complete.

65. In (b), on the other hand, the presence of the bridegroom is neither essential nor usual. A party of friends and relations goes and fetches the bride with, as said above, practically no ceremonies. The intention is to go through the *anchal* ceremony at some later date. But the bride acquires full legal rights as wife as soon as she is taken to the bridegroom's house, even before any *anchal* rites are performed. For instance, she cannot be returned as disapproved of, or turned out, or deprived of her conjugal rights on any other excuse. Again, if the husband were to die before the *anchal*, the woman would have full rights of inheritance, maintenance, etc., as a widow. In this respect the Johari Bhotiyas resemble the zamindars of the rest of the division. It is interesting from a social point of view to note here that in this case, viz. where the husband dies after *sarol* but before the *anchal*, the Johari Bhotiyas and the residents of Garhwal (where the *sarol* corresponds to the *taka ka biyah*) treat the woman as a widow, and she may not marry again, though she may become

a concubine. The zamindars of Almora and Naini Tal, on the other hand, curiously would allow such a woman to marry again, should she so wish, by the regular *anchal* ceremony, even though she may have lived with her husband for a number of years.

66. Occasionally, it is said, a marriage is performed without any intention of doing the *anchal* even later on. But as it is impossible to know what the intention of a man is, these cases come under (b) above, viz., *sarol*. The proof of a *sarol* marriage is the marriage party, music, etc., and the going of the bride to the bridegroom's house.

67. A woman may not have more than one husband at the same time, nor can a widow remarry in the orthodox way. When women whose husbands are alive leave them and go to live with other men, or when widows do so they are called *Dhanti*s. Generally a man has to pay a price for getting a *Dhanti*. When a price is paid there is a written deed of *la dava* by the woman's first husband or other relations where the husband is dead. This deed is ostensibly a discharge for any jewellery which the woman might have in her possession, but it is really intended to operate as a deed of relinquishment of the woman.

68. No ceremonies are necessary when a *Dhanti* is taken, though often the friends are invited and a Brahman priest puts *pitha* (red vermilion) on the forehead of the couple. The children by a *Dhanti* are considered legitimate. There is no difference between a *Dhanti* whose price has been paid and one whose price has not been paid. Nor is there any difference between the children of the two. They have equal social position and legal status.

[On the 3rd July, 1919, Rev. U. S. Rawat and Lal Singh, forest ranger, and on the 30th October, 1919, Babu Dalip Singh, Deputy Collector, stated that the children of a *Dhanti* whose price has not been paid, though having full rights of inheritance like legitimate sons, are yet considered socially inferior; and like Kunkiyas cannot marry at the normal price of Rs. 300. A general meeting of the Joharis, however, held on the 14th January, 1920, with Rev. U. S. Rawat, present, decided that the real custom is not so.]

69. No cases are known of unmarried girls having become concubines. A *Dhanti* is sometimes taken from castes from which a regular wife could not have been taken.

[Village Miam Malla Johar. Dhan Singh has a Garhwal zamindar Rawat *Dhanti*.]

70. *Brother's widow*.—Sometimes a widow takes her deceased husband's younger brother as her husband; she ranks as a *Dhanti*.

71. *Tekwa*.—The custom whereby a widow without leaving her late husband's home brings another man to live there with her as her husband is not known.

B.—Adoption.

72. Adoption is not very common, but still it is practised. There is no prescribed ceremony. The execution of a written deed has now become customary. The Mitakshara restrictions against the adoption of an only son or an eldest son, or about the age of the son to be adopted, are not known. Nor is there any restriction prescribed against the adoption of a son whose mother could not have been married by the adoptive father. A woman cannot adopt except with the consent of the reversioners: the Hindu law custom whereby a husband gives authority to his widow to adopt is not known. An adopted son shares the inheritance equally with sons born after the adoption. An adopted son acquires full rights of a natural son and will thus inherit to collaterals also. He loses all connection with or claim in his natural father's family.

[Village Laspa Malla Johar. Debu Dhapuwal adopted Jai Singh, son of Pirmua.]

C.—Gharjawain.

73. A man without sons sometimes takes his son-in-law to live with him. The son-in-law acquires no rights by the mere fact of this his admission into the father-in-law's family.

The father-in-law transfers his property (wholly or in part), whether ancestral or self-acquired, by a deed of gift which defines the estate taken by the donee. The transfer is usually in favour of the daughter, but sometimes of the son-in-law or both jointly, or the daughter's son. There is no condition of continued residence in the home of the donor unless expressly ordained in the deed of transfer.

74. A widow can keep a *gharjawain*, but can transfer the family property only with the consent of the reversioners.

75. A *gharjawain* takes only the property transferred to him, he acquires no rights of inheritance in the family of his father-in-law.

Illustration.—A and B are brothers. Neither has any male issue. A keeps a *gharjawain* C and transfers his property to him. First A dies then B dies. C has no claim to inherit B's property.

76. A person who goes as *gharjawain* to his father-in-law does not lose claim to inheritance in his paternal family.

77. It is understood that the intention of the giver is that the property is to be enjoyed by the daughter, the son-in-law and the issue of their union (male issue by right and female issue by gift from their parents). Failing such issue the property reverts to the nearest heirs of the donor. Unless expressly permitted by the deed the property cannot

go to the collateral relations of the son-in-law or to the children by any wife other than a daughter of the donor.

[Village Bilju, Malla Johar. Kalyan has been taken as Gharjawain by his mother-in-law, widow of Chamru, of village Bartu. There was a registered *takh*; reversioner's consent obtained. Property transferred in favour of daughter. Kalyan has inherited his father's property and is enjoying with his wife the property of his mother-in-law also.]

D.—Inheritance.

78. The rules of inheritance are almost identical with those prescribed in Mitakshara. The points of difference are noted below—

- (1) *Sons and widows*.—All sons, whether by wives taken with the *anchal* ceremony or without or by *Dhantis* whose price has been paid or not or by brother's widows, get an equal share in the inheritance of their father. All such women are treated equally as widows after the death of their husbands for the purpose of inheritance. In the absence of sons, widows inherit the estate even in a joint family.
- (2) A daughter and a daughter's son are not heirs at all.
- (3) *Brother and brother's sons*.—Brothers and the sons of a deceased brother inherit together, the latter taking their deceased father's share. On the inheritance devolving upon the nephews alone they take not *per capita* but *per stirpes* their father's share by representation.
- (4) *Collaterals*.—All sons, including those of the kind mentioned above, inherit equally to collaterals.
- (5) *Village community*.—In the absence of heirs the inheritance devolves upon the village community, i.e., the *panch hissadars* or the *panch khairkars* according as the village is a *kachcha* or a *pakka khairkari* village.
- (6) *Jethon*.—On a division the eldest brother usually gets something more than his share—a field, a piece of jewellery, a cow, or the like. But the custom depends upon the consent of the younger brothers and is not enforceable at law. In some families certain villages or fields or other articles are specially reserved for the eldest son.

[E. g., village Pache in the family of Rev. U. S. Rawat.]

- (7) *Sautriya bant*.—There was a custom in old times whereby sons of a father by different mothers did not inherit equally *per capita*, but took their mother's share, *per stirpes*. The custom is obsolete now. Now all sons get an equal share.

E.—Joint family.

79. Joint family system is still strong in Johar. A member cannot transfer his share or part of his share without the consent of the other co-parceners, unless there has been a *ghar-batwara*. During the lifetime of a man his descendants have no share in or claim to the property (ancestral or self-acquired). Therefore they cannot ask for a partition in his lifetime, and the property in the hands of the father is not liable for the debts of his sons or son's issue. And the father can transfer his property (ancestral or self-acquired) *inter vivos* in any way he likes. The widow of a co-parcener succeeds to the share of her dead husband if he dies without issue after the vesting of the property in him.

F.—Wills.

80. A man can dispose of by will only his self-acquired property, not his ancestral property.

G.—Maintenance.

81. All sons (legitimate or illegitimate) are entitled to maintenance until their majority.

A daughter (legitimate or illegitimate) though not an heir is entitled to maintenance until her marriage, and to her marriage expenses, if any, being defrayed out of her father's assets. All women kept as wives, whether married or not, are entitled to maintenance like lawfully married wives or widows from their last husband or his estate.

82. The right of women to maintenance exists only as long as they live in the family home, and are chaste. But a woman compelled to leave the home by ill-treatment, or other sufficient cause, does not forfeit her maintenance as long as she remains chaste.

H.—Widow's estate.

83. A widow succeeding to her husband's inheritance is disinherited if she leaves her home voluntarily and becomes the wife or concubine of another or leads an unchaste life generally.

Illustration.—A widow leaving her home to live with her husband's brother as his wife is disinherited.

I.—Stridhanam.

84. There is no such thing as *stridhan* known to these people. Any property (jewellery or the like) possessed by women devolves like other property. It should be noted that in this respect the Joharis resemble the general residents of the Kumaun division and differ from Bhotiyas of Chaudas, Beas and Darma valleys who recognize *stridhan*.

J. — Exclusion from inheritance.

85. The disabilities prescribed in the Hindu law are not enforced. Blind, deaf and dumb and impotent persons are all equally entitled to succeed. Leprosy is said to be non-existent.

[Village Milam, patti Malla Johar. Fateh Singh's deaf and dumb son Mohan Singh has got a full share.]

K. — Special customs.

86. The paths in these valleys are narrow and steep, and the men being traders have to travel a very great deal up and down with sheep and other animals laden with merchandise. Occasionally one animal is thrown down the steep hillside by collision with another, and is wounded or killed or the goods damaged. The rule in such cases is that the person suffering the loss is entitled to compensate himself by taking an animal or goods of equal value belonging to the owner of the offending animal.

87. Traders from Tibet engage in writing to bring their goods to particular men in Johar. They thus become each other's "*Mitr*" (= friend) and the Johari has then the sole right to the merchandise of the Tibetan with whom he has entered into this contract, and no other Johar may interfere. Joharis can sell to one another their Tibetan "*Mitrs*," i.e. to say, can sell the good will. The right to the good will extends not only to the Tibetan "*Mitr*," but to half the goods of any other person who may have received the "*Mitr's*" daughter in marriage as a gift. The right does not extend to sons-in-law who have paid a price for the wife.

88. Joharis have now begun to affect Hindu manners and customs. Some have even taken to wearing the Hindu sacred thread.

L. — Gaon sanjayat.

89. The rule of division is *rakmi sharah*, i.e., each *hissadar* gets a share proportional to the land revenue paid by him, except in villages where a different mode of division is prescribed in the revenue records. In the latter village the presumption is that the entry is correct.

The headman or the co-sharers cannot alienate or create any other interest in the land.

M. — Temple lands.

90. Land assessed to revenue which is assigned to a temple or a god can be sold by the recorded *hissadar* like other private property.

Land held free of revenue on the understanding that the recorded *hissadar* had to perform some service to or in connection with a temple or a god cannot be transferred except to such persons as can perform the same service.

BHOTIYAS OF DARMA, CHAUDAS AND BEAS VALLEYS.**Almora District.****A.—Adoption or chachum.**

91. Adoption is practised, but only from secular considerations. There is no idea of any spiritual services to be rendered to the father by the adopted son. There are no special ceremonies prescribed to make the adoption operative. Generally a feast is given to friends and relations to celebrate the occasion. This is the only proof available of the fact of the adoption in the majority of cases. The difficulty of obtaining stamped paper is responsible for the non-introduction as yet of the custom of executing a *lekhs* (a written deed of adoption). The people are anxious to adopt the use of *lekhs*, and if facilities are provided it will not be long before *lekhs* become as common in these valleys as in the rest of the division. The adopted son must be a Bhotiya of one of these three valleys; no outsider can be adopted. There are no other restrictions. As for example an only son or an eldest son can be adopted, so also a daughter's or a sister's son. There is likewise no restriction of age; a grown-up married man may be adopted.

[Village Marchha, patti Malla Darma. Mallu has adopted his sister's son Khimu. The case is one of adoption, not merely a transfer of property by gift.]

92. A widow cannot adopt except with the consent of the reversioners. The Hindu law custom whereby a husband gives authority to his widow to adopt is not known. An adopted son becomes in all respects equal to a natural born son. He acquires for example the right to inherit to collaterals in the family of the adoptive father, and will get an equal share with any sons born to the adoptive father subsequently. On the other hand, he loses all rights in, or claim to, the property of the family in which he was born.

[Village Dharpanga, patti Chaudas. Nar Singh has adopted his brother's son named Rai Singh. The latter has no share in his father's property.]

B.—Gharjawain.

93. A person without sons sometimes takes his son-in-law into his house to live with him. The latter then becomes virtually a son. He loses all connections with his paternal family and has no claim to its property. On the other hand, he has full rights, like a son, in the father-in-law's family and will inherit to collaterals also. The position of the resident son-in-law in valleys there is thus quite different from that in the rest of the division. A written deed is not essential. A widow cannot keep a *gharjawain*, except with the consent of the reversioners.

[Village Son, patti Malla Darma. Mani's widow Sinor has kept Bishan, son of Shiru of village Dukhtug, as *gharjawain*. Bishan has got no share in his father's property.]

C.—Inheritance.

94. The rules of the Mitakshara are applicable with the following variations :—

(1) *Sons*.—Legitimate or illegitimate, adopted or natural, all get an equal share. Only such illegitimate sons, however, get a share in the paternal inheritance as come over to live in the father's family. For instance, a son is born to an unmarried woman. He will get a share only if and when he is willing to go and live in his father's family.

(2) *Widow*.—Whether married or kept as a concubine (*kolti*) gets an equal share. A widow succeeds to her husband's property even in a joint family.

[Village Kuti, patti Beas. Kukria had two sons, Dhan Singh and Nain Singh. Both were joint when Nain Singh died. His widow got mutation in her favour. Also village Son, patti Malla Darma. Mani and his brother Gajwa were joint when the latter died. His widow Khimuli got mutation in her favour.]

(3) *Brothers and nephews*.—Brothers and the sons of a deceased brother inherit together, the latter taking their father's share. On the inheritance devolving on the nephews alone, they take *per stirpes* their father's shares.

(4) *Collaterals*.—Adopted sons and illegitimate sons count equally with proper sons.

(5) *Daughter*.—Comes last of all in the order of succession. The property will devolve on her only if there is no near male heir. Only an unmarried daughter can succeed and will hold the property for so long only as her marriage is not performed. But if she chooses to continue to live in her father's home and keep a husband there, she will continue in possession.

(6) *Jethon*.—On a partition the eldest brother sometimes gets a little more than his share. The custom depends upon mutual consent and is not enforceable at law.

(7) *Sautiya bant*.—There was a custom in old times whereby sons of a father by different wives did not inherit equally per head, but took their mother's share *per stirpes*. The custom is obsolete now. Now all sons get an equal share.

(8) *Village community*.—In the absence of heirs the inheritance devolves upon the village community, i.e., the *panch hissadars* or the *panch khaikars* according as the village is a *kacheha* or *pakka khaikari* village.

D.—Joint family.

95. The joint family system is in vogue. A co-parcener can alienate his share without the consent of the others. He cannot, however, alienate any specific property unless it has been in his possession by a private partition. A widow succeeds to her husband's estate even in a joint family.

96. Sons have no right in the property while it is still in the hands of the father. He can alienate the property (ancestral or self-acquired) *inter vivos* in any way he likes. The sons cannot transfer it, nor is it liable for their debts. But they can demand a partition. On such partition they generally get the whole of the property from the father and divide it among themselves. The father is either promised maintenance by one or more of them, or a small portion of the property is set aside to meet his needs. If any sons are born after such a partition has been effected there must be a repartition giving them also an equal share.

E.—Wills.

97. A man can dispose of by will only his self-acquired movable property. He cannot bequeath immovable property, nor any kind of ancestral property.

F.—Stridhanam.

98. The jewellery, clothes and other similar articles, the special property of a woman, descend to female heirs only as *stridhan* in the Mitakshara.

In the absence of female heirs males will succeed.

G.—Gaon sanjayat.

99. The rule of division is *rakmi sharah*, i.e., each *hissadar* gets a share proportional to the land revenue paid by him, except in villages where a different mode of division is prescribed in the revenue records.

The headman or the co-sharers cannot alienate or create any other interest in the land.

H.—Temple lands.

100. Land assessed to revenue which is assigned to a temple or a god can be sold by the recorded *hissadar* like other private property.

Land held free of revenue on the understanding that the recorded *hissadar* had to perform some service to, or in connection with, a temple or a god cannot be transferred except to such persons as can perform the same service.

I.—Exclusion from inheritance.

101. Blind persons, deaf and dumb, lepers or impotent are not disqualified from inheritance. There is no idea of rendering spiritual

comforts to one's ancestors as among the Hindus, so these Hindu law disabilities are not recognized.

[Village Duktang, patti Malla Darma. Shinu's son Kishan, who is deaf and dumb, has got an equal share with his other brothers. Village Garbyang, patti Beas. Gobind, deaf and dumb, son of Kampal has got a full share.]

J.—Maintenance.

102. Unmarried daughters, whether legitimate or not, and all women kept as wives, whether married or not, are entitled to maintenance as long as they live in the family home and are chaste. But a woman compelled to leave the home by ill-treatment or other sufficient cause does not forfeit her right to maintenance, provided she keeps chaste.

103. When a man's property is divided by his sons amongst themselves a sufficient portion must be left for his maintenance, or they must guarantee his maintenance in some other way.

104. Sons, legitimate or illegitimate, are entitled to maintenance until they attain majority.

K.—Marriage.

105. Three kinds of conjugal relationship are known:—

(i) A *married wife*.

(ii) A *kolti*, i.e., the widow or the relinquished wife of another kept as a concubine, without a formal severance of her relationship with the first husband or his family. Until a woman is formally released she cannot re-marry, and her connection with another man is considered dishonourable. Both she and the offspring of such union become socially degraded and are termed *telia*. (If the connection has been formally severed she is not regarded as a *kolti* but as a properly married wife.)

(iii) A *brother's widow* kept as a wife by the deceased husband's brother.

N.B.—The custom of *tekwa*, or widows' bringing husbands in their late husband's home, is not known.

106. *Kolti*.—No special marriage ceremonies are performed when a widow or a relinquished wife takes another husband, but a price has generally to be paid. It is particularly heavy when a man runs away with another's wife. It is not customary to execute any deed of separation. But the dissolution of the conjugal bond is expressed symbolically by the ceremony of cutting the *dhaga* amongst the Darma Bhotiyas and giving the *Jejang* in the Chaudas and Beas Bhotiyas. In the former ceremony the husband or, where he is dead, his near heir, takes up two wi-^{ps} of straw, and holding them together in his hand allows the would-be

husband to draw away one. The tie is then considered broken in two, like the two pieces of straw separated from each other.

In the other ceremony a piece of new *garha* cloth (called the *jojang*) about 2 cubits long is delivered by the husband or his heirs to the woman in the presence of the people and operates as a formal dissolution of the marriage tie.

107. *Formal marriage*.—Marriages* are generally arranged while

(a) *Darma val-ley*. the parties are quite young—three or four years old—by the parents. But marriages by the parties themselves are not unknown. Sometimes a girl is left unmarried for some reason. For instance, her betrothed may have died and others would hesitate to betroth their sons to her for fear of similar ill-luck following them. In such cases the girl finds her own husband, when she grows up. In the adjoining valleys of Chaudas and Beas the custom of *rang bang* prevails, that is to say, each village has a common house where young people meet to find mates. In Darma, as said above, marriages are arranged in infancy by parents in almost all cases. But from pure imitation *rang bang* houses are also kept. The primary object of serving as social centres being absent they are only houses of infamy and corruption and the people are anxious that they should be suppressed and not recognized in any way by the courts.

In a marriage the first ceremony is the betrothal (*thochi*), and is performed when the girl is about three years old. Two women relatives of the bridegroom go to the girl's house with a *ghara* (jar) of *chakti* (liquor) and a *roti* (loaf of bread). The girl's people accept these. The betrothal is then considered complete. The girl cannot thereafter be given in marriage elsewhere unless formally released by the other party taking back the *chakti* and the *roti*. She can, however, become a concubine (*kolti*), but in that case she and her children will remain for ever degraded (*telia*).

The second ceremony is called the *Binti Kuln* and is gone through a month or two before the marriage, when the boy and the girl have somewhat grown up. Again, two women relatives of the bridegroom go with *chakti* and *roti* to the girl's house to fix up the date for the marriage. It is the privilege of the girl's party to fix the date. Sundays, Wednesdays, Thursdays and Fridays are auspicious days for the marriage, Monday, Tuesday and Saturday are not. A marriage can be celebrated in any month of the year.

Then comes the wedding itself. The bridegroom goes with a party (*barat*) to the bride's house. A few hours before his going two women relations of his go as before with *chakti* and *roti* to warn the bride's people of the approach of the *barat*. No other women relations go in the

party. It is not usual for the father of the bridegroom to accompany the party. The bridegroom has to give *sattoo* (a kind of coarse *garha* cloth) to the girl's relations, one *than* per man. Where there is not more than one man in the whole family two pieces are given. Five to thirty rupees are given in cash to the bride's parents as the "price of the milk". This giving of *sattoo* and cash completes the marriage and is to be taken as its proof. There are no other ceremonies. There is usually a feast. The persons who have received the *sattoo* cloths generally give presents to the bridegroom by way of return. The bride then goes with her husband to his home. Boys and girls from the village accompany her on this her first journey. The boys return to their homes on the same day, but the girls stay with her for three or four days, during which they are feasted by different families in the village. On the arrival of the bride her father-in-law presents her with some money which is tied up in the hem of her garment (*anchal*) and becomes her peculium (cf. *stridhan* of the Hindu Law).

A man may marry more than one wife, though this is rare : he generally does so because the first one is sonless. But a woman cannot have more than one husband at the same time.

As said before marriages are arranged by the parties themselves. In recent years, owing to greater contact with the outer world, a desire seems to have sprung up among some of the people to have marriages arranged by the parents as in the rest of the province. Only one marriage has been celebrated in this manner so far. Each village has a common house called the *rang bang* house where young men and women meet for social intercourse. It is generally here that the marriages are arranged by the parties. Marriages partake of the nature of an elopement. On the appointed night the young man comes with a number of his friends and carries off the girl from the *rang bang* house to his parents' house. It is usual for some of the young women friends of the girls in the house to accompany the party. The father of the husband, who is usually informed beforehand of the intended elopement, comes out with friends and music and wedding torches to welcome the young lochinvar and his bride to his home. There is general rejoicing and the bride partakes ceremonially of *chakti* from a cup in which a rupee has been put, and eats *dalang* (a kind of powdered food). She thereupon becomes a duly wedded wife. Until she partakes of *dalang* and *chakti* she is not considered married. When the father of the girl comes to know of the elopement, he is furious or philosophical according to his temperament, but nearly always comes round and shares in the general rejoicing.

Occasionally this—like other excellent institutions—is abused. An unwilling or a half-willing girl is carried away by force or under false

pretences, generally with the assistance of the girl's own companions. They assure the lover that they would bring her round. She is brought to his house and they persuade her to partake of the *dalang* and *chak'i*. If she does so she becomes a wife. But sometimes she persistently refuses to do so ; in that case she has to be set free.

Cases have been known of *dalang* and *chakti* having been given to a girl by force or deception, e.g., a girl is invited to the house, a drink is offered to her which she takes and to her horror finds a rupee in the cup at the bottom, and realizes too late that she has been tricked into taking the ceremonial *chakti* or by sheer force *dalang* and *chakti* are put on her lips. An attempt is then made to give out that she has been duly married, and for fear of being considered *telia* she finds it difficult to find a husband. The *panchayat* will declare such giving of *dalang* and *chakti* ineffectual as marriage; and ask that the courts may punish for defamation any persons calling such women *telia*. Also the offenders are liable to punishment under the criminal law for abduction or wrongful restraint, as the case may be.

OF BREACH OF PROMISE TO MARRY.

108. *Darma*.—Once the bride's people have accepted *chakti* and *roti* from the other party in token of assent to the proposal, the betrothal is complete and either party breaking its promise is held liable. Wives are harder to find than husbands, hence custom has made it more difficult for the woman's people to break their promise. They having taking the *chakti* and the *roti* will find it impossible to get another husband unless they can persuade the first betrothed to take them (*chakti* and *roti*) back. They usually thus have to pay him something in cash as a fine when returning them. If he takes them back, well and good; but should he decline to do so he cannot be compelled, and the woman will remain a spinster or become a *telia* or *kotti* elsewhere. The betrothed has thus a powerful weapon wherewith to compel the woman to fulfil her promise.

Should it, on the other hand, be the boy or his parents who wish to get out of their promise, the girl's party does not very much mind for the reason already stated, viz., that husbands are not difficult to find. Only it would expect them (boy's people) to take back the *chakti* and the *roti* immediately and thus set the girl free to marry elsewhere. It is also customary to pay Rs. 22 in cash to the girl's party as damages.

The case of the dishonest man who refuses to fulfil his promise and is also wicked enough not to release the girl in the way described above has not occurred. These simple folk could not imagine such crookedness

until I pointed out the contingency to them. They say that should it come to pass, now that I had pointed it out to them, the courts ought to compel the man's party to follow the custom. As it will be impossible for the court to make the man take back the *chakti* and the *roti*, it should be sufficient if the court compelled him to pay Rs. 22 to the bride, and declared that the girl was thenceforth released from the betrothal and was free to marry again.

109. *Charudas and Beas*.—The marriages, as explained already, partake of the nature of an elopement and come all of a sudden one night. There is no period of engagement. No cases of breach of promise to marry are thus known to have occurred.

DISSOLUTION OF THE MARRIAGE TIE.

110. *Divorce*.—Should a husband take another wife during the lifetime of the first, the first one has the right to ask for a dissolution of the marriage. The husband is called upon to give the wife's *dharm*, i.e., release her. This he does by giving her Rs. 22 and dissolving the marriage tie by cutting the *dhaga*. He further forfeits any claim to have the expenses of his marriage refunded on the wife going to another man. She is free to do so and he has no further claim on her. Up till now the tribe has generally enforced this order itself, but ask that it should be recorded and recognized, and in the case of recalcitrant husbands should be enforced by courts. They should compel the husband to pay Rs. 22 to the wife and declare the marriage dissolved, and the woman free. They say that they would then recognize it as sufficient dissolution of marriage even though the *dhaga* has not been cut, because it is obviously impossible for the court to force the husband to do that. The woman would then become free, not merely *telia*, and calling a woman, thus rendered free by the court, *telia* should be punishable as defamation. The wife cannot ask for dissolution of the marriage on any other ground.

If after her marriage a wife declines to go to her husband or is prevented by her parents from going to him the *panchayat* settles the difference. In case of failure a suit for the restitution of conjugal rights or the recovery of wife will lie with the courts.

The husband, on the other hand, has no power at all of divorcing a wife or dissolving the marriage tie in any other way against her will. Even should she become unchaste, she can continue to be his "wife," though in such a case he is not bound to maintain her. Generally, however, in such circumstances the parties come to an understanding. The husband takes money compensation, and dissolves the marriage by cutting the *dhaga*.

All the above rules apply to Chaudas and Beas as well with this modification that instead of paying Rs. 22 and cutting the *dhaga*, only the *Jojang* has to be given. The people are agreed that if the court in dissolving the marriage is unable to compel the husband to give the *Jojang*, it should decree the payment of one rupee as a substitute for the *Jojang*.

111. *Elopement*.—If a wife elopes with another man the old custom in Darma for the injured husband is to beat the seducer whenever he meets him on the road and to seize his goat and sheep nominally to the value of Rs. 100, seven times, a laden sheet counting as worth three rupees, and an upladen one as worth two and a half rupees. This makes the seducer's trade impossible and his life unbearable, for when beaten he may not retaliate for fear lest the money penalty should be doubled.

Eventually when the offended husband's honour is satisfied he generally dissolves the marriage by taking one *than* of *sattoo*, and one *ghara* of *chakti*, and cutting the *dhaga*. Until this is done the offspring of the guilty couple are considered inferior (*telia*).

In Chaudas and Beas these violent methods are not adopted. The husband generally takes money compensation and dissolves the marriage by giving the woman her *Jojang*. But he may decline to do so thereby keeping the woman for ever a *telia*. And of course everywhere the husband may proceed under the Indian Penal Code.

112. *Widows*.—If a widow wishes to leave her husband's home and to sever all connection with the family she can do so. The husband's people take a *ghara* of *chakti* and a *than* of *sattoo* from her and release her by cutting the *dhaga*. She is then free to re-marry when and where she chooses. But if she leaves the house for the purpose of re-marrying, the prospective husband must pay half the expenses of the former marriage. If a widow has taken her husband's brother as her husband and then leaves to marry another, the latter must pay full expenses.

The custom in Chaudas and Beas is similar, except that instead of cutting of the *dhaga* it is the *Jojang* that is delivered as an expression of the dissolution of the marriage tie.

BHOTIYAS OF MANA AND NITI.

Garhwal District.

113. These men live in the extreme north of the Garhwal district along the trade routes to Tibet. They inter-marry with the Bhotiyas of pargana Johar in the Almora district. The great Hindu shrine of Badrinath and other associated temples lie in these valleys; hence these Bhotiyas have come in contact with the Hindu residents, and assimilated their customs more fully than Bhotiyas elsewhere. They have the same customs as the zamindars of the Garhwal district, except that they do not admit the restriction against the adoption of a child whose mother could not have been legally married by the adopter.

THARUS AND BHUKSAS.

GENERAL.

[For general remarks about these tribes see Atkinson's *Himalayan districts*, volume II, pages 371-2, and volume III, pages 280-1; also Nevill's *Gazetteer of the Naini Tal district*, page 107, and Walton's *Gazetteer of the Garhwal district*, page 64.]

114. The Tharus are found at the foot of the hills in the parganas to the east of the railway which runs from Kathgodam to Bareilly. The principal abode of the Bhuksas is to the west of this railway, in the neighbourhood of Gadarpur and Bazpur. Some Bhuksa families are found as far east as Khatima and others as far west as Kotdwar. The customs of the Bhuksas are nearly the same as those of the Tharus, those of Bhuksas of Khatima being almost identical and those of Bhuksas of Kotdwar being most divergent. It is convenient to describe the customs of the Tharus first in detail and then to indicate the points in which the Bhuksas differ from them. In the absence of any remarks it is to be understood that the customs are the same as those of the Tharus.

Tharus.

A.—Marriage.

115. Marriages are generally arranged in childhood by the parents. There are four stages in a marriage (1) the *apna paraya* ceremony, (2) the *bat kahi* ceremony, (3) the wedding, and (4) the *chala*.

(1) The *apna paraya* ceremony or the betrothal. The representatives of the bridegroom take some fish, one *bheli* of *gur* and some sweetmeats generally worth one rupee to the bride's people. If they approve of the bride and the proposal is agreed to these things are given to the bride's people. The *gur* is divided among the friends and relations of the bride, the sweets are intended for the bride's mother as the price of her milk. This is given even when the mother is dead. The bridegroom's party has also to give liquor to the bride's friends and relations. The amount of this varies with the size and population of the village. After this the parents of the bride and the groom salute each other saying "*Ram Ram samdhi*." From that time the betrothal is complete and binding and either party resiling from the transaction is liable to pay damages. This ceremony can be performed at any time of the year.

(2) The *bat kahi*, or the declaration when the boy and girl are about twelve or fourteen years old the date of their marriage is settled. Eleven or twelve days before the date on which the bridegroom's people wish the wedding to take place they go to the bride's father and ask for a formal declaration of his willingness to perform the marriage and acceptance of the date. He signifies his assent and tells the groom's

people to make the necessary preparations. On this occasion the groom's party takes sweets (generally *paras*) in a *ghara* or a *bheli* of *gur* and fish, and as at the betrothal they have to give drinks to the friends and relations of the bride.

This ceremony can take place only on a Sunday or a Thursday. It is also called the *pichhoncha* ceremony.

(3) *Wedding*.—The wedding can take place only on a Sunday or a Thursday in the month of *Magh* or at *phulora duij*. The bridegroom goes with a party (*barat*) to the bride's house. The presence of Brahmins is not required, nor is any god worshipped, nor any other *puja* performed at the marriage. The bride is annointed with oil and *haldi* (turmeric) and dressed in new unwashed clothes.

In a wicker basket are placed five articles of clothing, fish, *dahi* and a jar full of water. On the jar is placed a small jug and on the top a lighted lamp. This is kept in the courtyard of the bride's house.

The wedding ceremony proper consists of the bride and bridegroom circumambulating round this basket seven times. The bridegroom leads in the first six rounds. In the last round the bride leads. The groom is supported by his sister's husband, and in his absence by his *phupha* (=father's sister's husband). The bride is supported by her brother's wife.

Before this ceremony *chooris* (=bangles) and *bichhwās* (=metal rings for the toes) are put on the bride. The *bichhwās* are the symbols of wifehood, but they can be taken off temporarily if the wife so wishes. But the *chooris* can never be taken off as long as the husband is alive. So strong is this latter rule that should the wife disregard it, the *panchayat* would impose a penalty on her and her people.

After the wedding the bride goes to her husband's house, but stays there only one night; her father fetches her back on the following day.

(4) Two or three months after the marriage, in the month of *Chait* or *Baisakh*, the new wife goes over to the husband's house and commences to live there from that time.

B.—The Kaj.

116. Besides marriage proper, a man often takes to wife the widow or the relinquished wife of another man (including his elder brother) and goes through a ceremony with her. It is called the *kaj*, and the woman so kept is known as *kajkaru* wife. A maiden is not kept as wife by the *kaj* ceremony. She must have the regular marriage. The *apna paraya* and the *bat kahi* ceremonies are not observed at the *kaj*. On the occasion of the wedding, although there are *pheras* (circumambulation), yet there are many differences in matters of detail. Whereas

in the regular marriage the *phas* take place round a basket in the courtyard of the bride's house, in the *kaj* they take place outside the house, generally even outside the village, round a *ber* or a *pipal* tree. A marriage can be performed only in the month of *Magh*, but a *kaj* at any time. The wife is dressed in unwashed clothes as at the marriage, and after the *kaj* is given *chooris* and *bichhwas*. These are put on the bride by the wife of the *padhan* of the village who gets Rs. 1-4 as her fee. There is no difference in the legal status of a married and a *kajkaru* wife, or their children.

C.—Chutkatta.

117. Sometimes a widow instead of going to another man as his *kajkaru* wife prefers to stay on in her deceased husband's family, but invites some man to come into the family as her husband. Such a man is called *chutkatta* or *gharbaitha* or *rasbaitha*. At the time of his adoption as husband there is a ceremony. The *bradri* is invited. The woman cuts a wisp of hair from the man's head (*choti*) with scissors and either wears the same on her person or buries it underground at the threshold of the house. It is from this fact that he is called *chutkatta* from that day. He severs all connections with his natural family, and has no further rights or duties there. On the other hand he is admitted to the full membership of the family of the deceased husband and in every way takes his place. Children by him would be equal in every way for inheritance, etc., to the children, if any, by the former husband. Even if the woman were to die, he would be entitled to stay on in the family with full rights like the first husband. He is entitled to a full share if he is dishonestly turned out by the wife or her people. The justification for this is the fact that he has left all rights in his original family and cannot be re-admitted there. If, however, he willingly leaves the wife and the family he is entitled to nothing.

118. Sometimes after adopting a *chutkatta* the wife and he desire to leave the family home. In such a case they are given 12 maunds of corn a plough, a pair of bullocks, and vessels to cook food and nothing more. They and their children will have no further claim to the consideration of the family.

D.—Disputes in connection with marriages and wives.

119. These are rather of frequent occurrence, but are mostly settled by the *panchayat*. A few typical matters are discussed below:—

(1) If subsequently to the *apna paraya* ceremony the bride's people decline, without sufficient cause, to perform the marriage they have to pay to the other party a cash compensation equal in amount to double of what has been spent by it in the preliminary ceremonies up to date.

(2) In similar circumstances should the bridegroom's party break its promise, it has to pay Rs. 5 by way of damages. The reason for this difference in the two cases is that it is easier to find husbands than wives.

(3) If a man takes away another's wife, the *panchayat* orders the wife to be restored to the husband. But if in the opinion of the *panchayat* the wife has sufficient justification for not going back to live with her husband, or if the husband himself be willing to let her go, then he is entitled by way of compensation to get from the man who has taken her the whole of the expenses incurred by him in connection with the marriage and jewellery, etc., of the wife.

If there is a similar dispute about a widow, her people, i.e., her deceased husband's heirs, are entitled to half the expenses incurred in marriage, etc.

In no case have a woman's parents or parent's heirs any claim to or concern with her after her marriage.

(4) Should the parents of a woman (or their heirs) refuse to send the wife to her husband's home, the *panchayat* orders them (on pain of excommunication) to restore the wife to the husband.

(5) If a *chutkatta* is turned out of the house by his wife or her people he is entitled to get a full share as on partition.

E.—Adoption.

120. This is also practised. The adopted son loses all connection with and rights in his natural family. He acquires full rights like a natural born son in the family in which he is adopted. He thus inherits to the adopter's collateral relations also. The adopted son shares the inheritance equally with any natural sons born to the adoptive father after the adoption. A sister's son or a daughter's son is not adopted. There is no restriction as to the age of the person to be adopted.

121. There is no ceremony of "giving" by the natural father as most commonly it is an orphan who is adopted. The *bradri* is invited and feasted. The adopted son is made to bow his head to the family gods, and this constitutes his admission into the new family and is the proof of the adoption.

F.—Gharjawain.

122. The custom of adopting sons-in-law into one's family is not known.

G.—Inheritance.

123. (1) The inheritance devolves as below, successively :—

- (a) Lineal male descendants, sons of a deceased son representing their father.
- (b) Widow till re-marriage, etc.
- (c) Father and mother.
- (d) Brothers.
- (e) Nephews.
- (f) Collateral male relatives.
- (g) Daughter.
- (h) Daughter's son.
- (i) Sister.

124. *Sons*.—All sons, whether born of married wife or a *kajkaru* wife, or of the union of a widow with a *chutkatta*, inherit equally.

The right of the sons arises on the father's death. In his lifetime they have no right to any share in the property.

The custom of *sautiya bant* is unknown ; all sons get an equal share.

125. *Widow*, whether married or *kajkaru*, has identical rights.

If after succeeding to the inheritance a widow goes away to someone else as his wife, she must give up the inheritance.

If, however, she does not leave the family home but brings a husband to live with her (*chutkatta*), she does not lose the inheritance.

126. *Brothers and sons of a deceased brother* inherit together, the nephews taking their deceased father's share.

127. When the inheritance devolves on the *nephews* alone, they take their respective father's shares *per stirpes*.

128. A *daughter* can get the inheritance only if the father or the mother has given to her as gift, or when there are no male collaterals.

129. Lepers, blind persons, deaf and dumb, and the impotent are not disqualified from succeeding, but a leper who has left home permanently to go to an asylum or elsewhere is excluded.

130. The custom of *śraddh*, i.e., giving oblations to the deceased ancestors, is not known, so it is not a factor in determining questions of inheritance, etc.

131. The peculiar mode of devolution prescribed in the Hindu Law for *stridhan* is not known. It devolves like other property.

H.—Transfer of property.

132. The joint family system is common. The head of the family —*karta*—has full rights to transfer the property for the needs of the family, but is liable to be called upon to give account.

133. (2) No co-parcener (other than the *karta*) has any right to transfer the family property or his share in it until it has been separated

by a partition, regular or informal. Nor can the joint family property be held liable for the debts of a co-parcener.

134. During the lifetime of a father the sons have no claim to or share in the family property. They cannot ask for a partition, or transfer any part of the family property. Nor can the property in the hands of the father be seized in satisfaction of the debts due by the sons.

135. A widow living in the family cannot alienate the property, but a widow living separated from the family can alienate any property standing in her name, in the same way as a male owner.

I.—Maintenance.

136. Widows are entitled to maintenance as long as they live in the family.

137. Daughters (legitimate or illegitimate) are entitled to maintenance until their marriage.

138. Sons (legitimate or illegitimate) are entitled to maintenance until they attain majority.

J.—Partition.

139. Brothers can demand a partition of the family property from one another.

140. On a partition the eldest brother gets something extra as his right of *jethon*. The amount or kind of this extra share is not fixed. If the parties fail to come to an agreement among themselves the *panchayat* settles the dispute.

141. Sometimes when brothers separate some of them have unmarried sons, while others had the marriage of their sons performed before partition at the family expense. In such circumstances the brothers with unmarried sons sometimes get a larger share to make the division equitable. On the other hand, the brother with grown-up sons may claim that their contribution to the earnings of the family property should also be taken into account. In such disputes the *panchayat's* orders are final.

K.—Panchayats.

142. The *panchayat* consists of five persons. There is no standing *panchayat*. Each of the disputing parties nominates two members. The four members thus elected proceed to elect a *sarpanch*. A *sarpanch* may be chosen from the village where the dispute has arisen or elsewhere.

143. The *panchayat* can order either of the parties before it to do or to abstain from doing a specified act, or to pay a fine to the other party. It cannot inflict a fine or any other punishment for its own gain or for the gain of a third party, except that it may demand a feast for the *bradri*. The ultimate punishment for non-compliance with the orders of the *panchayat* is excommunication.

L.—Miscellaneous.

144. The Tharus are divided into six sub-castes :—

- (1) Badvait.
- (2) Batha.
- (3) Birtia.
- (4) Rawat.
- (5) Dahait.
- (6) Maton.

Tharus will give their *narial* to the following castes to smoke, but will not give them the *nigali* (=the mouthpiece) :—

- (7) Buxas.
- (8) Dhangras.
- (9) Khunkas.
- (10) Sansā.
- (11) Rajias.
- (12) Jugias.

Nos. (1) to (6) can marry among each other. Nos. (7) and (8) can intermarry also. Nos. (9) to (12) do not marry in any except their own individual sub-caste. -

Tharus do not wear the sacred thread.

BHUKSAS OF NAINI TAL DISTRICT. POINTS OF DIFFERENCE FROM THE THARUS.

A.—Marriage.

145. The customs of these Bhukasas regarding marriage are the same as those of the Tharus, with the following variations :—

1. *Ayna paraya*.—Bhukasas of Khatima take only *kacha* sugar or *gur*; Bhukasas of Gadarpur and Bazpur do not have this ceremony; they send the orthodox "*tika*" of the plains with a Brahman and a *nai*. Generally a *sikka* (=1 rupee) is sent. The price of the milk is not paid.

2. *Bat kahi*.—Bhukasas of Khatima take only made sweets. Bhukasas of Bazpur and Gadarpur do not observe the restriction as to the day on which this ceremony may be performed. In fact they look upon it as a mere matter of business which can be transacted on any day, not a ceremony. They call it "*mila bheti*."

3. *Wedding—Mandap or the marriage pavilion*.—Tharus and Bhukasas have a *mandap* at the house of the girl only. Dhangras have a *mandap* at the house of the bridegroom also.

In addition to the regular Tharu *mandap* both Bhukasas and Dhangras erect a post made from a *semar* tree in the houses of both parties and make *patlis* (wooden seats) for the couple from a *semar* tree. For this purpose the Dhangras uproot a separate tree for each object, whereas among the Bhukasas the same tree will serve for posts as well as seats.

Pheras (circumambulation).—Bhukasas of Bazpur and Gadarpur have seven *phas* like Tharus at the girl's house, but the bride leads in the first four and groom in the last three. Neither these Bhukasas nor Tharus have any *phas* at the groom's house. The Dhangras and Bhukasas of Khatima on the other hand have *phas* at both houses, seven at the bride's, she leading; five at the groom's, he leading.

After the marriage a Bhuksa bride in Bazpur and Gadarpur can stay for four or five days at the husband's house.

4. *The chala*.—The Bhukasas of Bazpur and Gadarpur call it the *gauna* and perform it within 16 days of the marriage or after three or four months, or even a year or two.

B.—The Kaj.

146. Bhukasas of Bazpur and Gadarpur have no *phas* at the *kaj*, but the husband-elect gives a new piece of cloth and the wife of the *padhan* of the village covers the new wife with it in the presence of the *bradri*, and then puts on *chooris*, etc. She gets Re. 1 as her fee. Brahman priests are not consulted for the *kaj*.

C.—Adoption.

147. The Bhukasas of Bazpur and Gadarpur do not observe the Hindu Law restriction against the adoption of a person whose mother could not have been married by the adopter. In other respects their customs are the same as those of the Tharus.

[Village Mazra, tahsil Gadarpur. Anand Singh Pant adopted Fakira who was an orphan.]

D.—Gharjawain.

148. Bhukasas of Bazpur and Gadarpur have the custom of keeping *gharjawain*. In this respect they differ from the Tharus and resemble the inhabitants of the rest of the division. It is not essential to execute a written deed of transfer. The property is generally transferred to the daughter and if the daughter and the son-in-law die issueless, the property reverts to the donor's family.

[Village Beria, tahsil Gadarpur. Ram Singh has kept a *gharjawain* named Debi.]

E.—Inheritance.

149. *Brother and nephews.*—Amongst the Bhukasas of Bazpur and Gadarpur, sons of a deceased brother do not share the inheritance with their uncles. A brother excludes a nephew altogether.

F.—Transfer of property.

150. Among the Bhukasas of Bazpur and Gadarpur a widow has full right to alienate the property.

G.—Partition.

151. Amongst the Bhukasas of Bazpur and Gadarpur *jethon* is by consent only. It is not enforced by the *panchayat*.

H.—Panchayats.

152. Bhukasas of Bazpur and Gadarpur have four office-bearers, all hereditary. These are called *takhat*, *munsif*, *darogha* and *nai*. Disputes are settled by the *panchayat* under the direction of the *takhat* and the *munsif*. The *darogha's* work is more of an executive and ministerial nature. The *nai* has to go collecting people for *panchayats*, etc.

153. The *panchayat* can order either of the parties before it to do or to abstain from doing a specified act, or to pay a fine to the other party. It cannot inflict a fine or any other punishment for its own gain or for the gain of a third party, except that it may demand a feast for the *bradri*. The ultimate punishment for non-compliance with the orders of the *panchayat* is excommunication.

I.—Miscellaneous.

154. Nevill says in his *Gazette* of the Naini Tal district that Bhukas wear the sacred thread. The proposition, as stated, is likely to be somewhat misleading. The fact is that some Bhukas have now, like many other castes, begun to affect Hindu manners and adopt their institutions, such as the sacred thread. Of 22 Bhukas present at a gathering at Bazpur only four had the sacred thread. According to Hindu ideas a man can be invested with the sacred thread only as long as he is not married. The Bhukas accordingly adopt the sacred thread on the occasion of the marriage. It was a significant fact that one of the Bhukas present who had the thread had a son who had been married, and who had not been invested with the thread. Enquiries showed that only a few men here and there have adopted this custom, but not even they know the formula which every wearer of a sacred thread has to know.

BHUKSAS OF THE GARHWAL DISTRICT.

A.—Marriage.

155. Negotiations are first made through a middle man who is called locally a *salotri*. If the parents of the girl are willing, the father or other near relations of the bridegroom go to the girl's people with some *gur*, which is distributed among the girl's friends and relations. This constitutes the betrothal.

The wedding day is fixed by the Brahman priest. It can be celebrated from Kartik to Phagun or from Baisakh to Asarh, on any day of the week selected by the priest. A bamboo *mandap* is erected at the girl's house from which are suspended four earthen vessels like saucers and three cakes. The bridegroom comes with a party to the bride's house. The essential ceremony is the circumambulation by the couple under the *mandap*. There are seven rounds, in the first three and half the bridegroom leads, in the last three and half it is the bride who leads. The bridegroom's people give presents of cloths, etc., to the bride's near relations. *Nath*, *churis*, and *bichhwas* are put on by the bride as usual. She stays in her husband's home for three or four days and is then taken back to her parent's home. After the lapse of some months she begins to live with her husband.

B.—The jhar phunk phera.

156. If an unmarried girl should become *enceinte* or have given birth to a child she is not married in the orthodox way described above, but by the *jhar phunk phera* ceremony. When her people have succeeded in finding some one willing to marry her, the *panches* are collected, a branch of the *ber* tree is brought, *ghee* poured over it and set on fire. The bride goes round the burning wood three times, holding a knife belonging to her husband. This completes her marriage. Her status is equal to that of any other married wife.

[*Examples* :—Village Haldukhata. Bishan, son of Mohan, married Chhutya, daughter of Siba, in this way. Also village Saneh Malla. Sheri, son of Lal Singh, married Mangli, daughter of Ramwa, by this ceremony.]

C.—The Kari or the Kaj.

157. *Kari* corresponds to the *kaj* of the Tharus. The woman is called *Karauti* or *Kariyan*. Her husband if living or his relations if dead take a price for her from the new husband, but her parents have no right of any kind to give her in second marriage or take a price for her. The new husband gives a *chadar* to the woman before the *panches*, who take Rs. 2-8 as their fee. This is the proof of the *kari*.

158. A man may take to wife in this way the widow of his elder or younger brother.

[*Example*.—Village Haldukhata. Puran took Gadori, the widow of his younger brother, Budhu, to wife.]

D.—The Aidha.

159. Aidha is the local name for the *chutkatta* of the Tharus, or the Tekwa of the hills. He and sons by him succeed to the property in the absence of nearer heirs.

E.—Disputes connected with marriages.

160. Either party breaking its promise to marry is liable to be fined Rs. 32 by the *panchayat*.

F.—Adoption.

161. The Bhuksas of Garhwal follow the same rules in the matter of adoption of sons as the Bhuksas of Bazpur.

[*Example.*—Village Haldu khata. Ramsah adopted Chhajju, son of Mangal.]

G.—Ghar Jawain.

162. In this matter also the Bhuksas of Garhwal resemble those of Bazpur.

[*Example.*—Village Haldu khata. Sibū, widow of Budhu, kept Ramlal as *gharjawain* with the consent of her reversioners.]

H.—Inheritance and maintenance.

163. The rules are the same as for the Tharus, except that sons by an Aidha succeed to the property only in the absence of other heirs.

I.—Joint family.

164. A member of the joint family can alienate his share without the consent of other members.

165. In the lifetime of the father the sons have no claim to a share in the family property. They cannot ask for partition. They cannot alienate any part of the property, nor is it liable to be seized for their debts. The father on the other hand can dispose of it as he likes.

166. On a partition among brothers all get equal shares. The custom of *jethon* or extra share to the eldest brother is not known.

J.—Panchayats.

167. The *panchayat* has two office-bearers. (1) *sarpanch*, (2) *kotwal*. These offices are hereditary provided that the heir is competent. The seat of the *sarpanch* is called *chautra*. The *kotwal* has a stick as an emblem of authority: it cannot be used by anyone else. The powers of the *panchayat* are the same as amongst the Bhuksas of Bazpur.

K.—Miscellaneous.

168. Bhuksas of Garhwal are divided into thirteen *gotras*:—Mudaiya, Chauhan, Meswani, Bhetwal, Chandwal, Gaurbrahman, Jagdepanwar, Baisya, Doyi, Bhawanr, Bhete, Sarwani, Dandwari, Rarya.

They do not wear the sacred thread.

MISCELLANEOUS CUSTOMS.

[Applicable all castes and communities in the hill tracts of the Kumaun division.]

Gaon Sanjayat.

169. The rule of division is *rakmi sharah*, i.e., each *hissadar* gets a share proportional to the land revenue paid by him, except in villages where a different mode of division is prescribed in the revenue records. In the latter villages the presumption is that the entry is correct.

The headman or the co-sharers cannot alienate or create any other interest in the land.

Temple lands.

170. Land assessed to revenue which is assiged to a temple or a god can be sold by the recorded *hissadar* like other private property.

Land held free of revenue on the understanding that the recorded *hissadar* had to perform some service to, or in connection with, a temple or a god cannot be transferred except to such persons as can perform the same service.

Thokdari dues.

171. Thokdari rights and dues are not alienable, nor can shares be claimed in them.

Water rights.

172. Priority of user gives a superior title to the use of such quantity or proportion of water as may have been actually utilized by the prior user.

NOTES ON THE CUSTOMS CONNECTED WITH SERVICE, ETC., IN SOME OF THE PRINCIPAL SHRINES OF THE KUMAUN DIVISION.

GENERAL.

173. The general customs relating to succession, etc., among priestly bodies are described in rules 47 to 50.

174. The functionaries of a temple consist usually of *pujaris*, *purohits*, *pandas*, and other administrative and ministerial officials, such as clerks, storekeepers and menials.

175. *Pujaris*.—They conduct the worship. The chief *pujari* in some temples is called the *Rawal*. Some temples have *purohits* who perform *yajnas* and similar ceremonies for the temple. The *pujaris* are in some temples appointed by the authorities, in others the right belongs to a community who have their own system of doing the work by turns.

Many *pujaris*, especially the *Dakshini pujaris* who are supposed to be celibates, have recently begun to keep concubines from amongst the lower classes. Such concubines and their issue have no rights whatever in connection with the temple or its properties. The *pujaris* may give such private property of their own as they like to their illegitimate children and wives, but they have no claim.

176. *Pandas*.—These men have the exclusive right to act as guides to the pilgrims, and to receive from them gratuities at various holy places. They have no share in the management of any of the temples or claim to their property or receipts. The principal sects among the *pandas* are (1) the *Deoprayagis*, who are connected with the *Badrinath* pilgrimage. Their chief right is at *Tapat Kund*—a hot spring—near the temple of *Badrinath*; (2) the *pandas* of *Kedarnath*, whose field of action is confined to the holy places along the *Mandakini* above *Rudraprayag*. There are other *pandas* also.

177. *Other establishment*.—*Managers, clerks, accountants, storekeepers, and other menial servants*.—Custom has determined which of these offices are hereditary and which not. The rights are inalienable, except that hereditary rights may be transferred among each other, i.e., among the persons entitled to such rights.

178. Gifts are made by the pilgrims usually at the following places:—

(a) A bathing fee is generally given by *Sankalp* before a pilgrim bathes in a holy river or kund. Custom has determined the person or persons entitled to receive these.

(b) An offering is made to the god. It belongs to the authorities of the temple. In some places the authorities allow the *pujaris*.

to appropriate the whole or a part of these offerings towards expenses of *bhog* and *puja* or for their personal use.

- (c) A gift may be made by a pilgrim to a *panda* personally, or to a *pujari* or other attendant. The pilgrim is at perfect liberty to give what he likes to whomsoever he likes. But the donee must be a recognized functionary of the temple. No outsider, for instance, can come in to act as a *panda*.

THE KEDARNATH GROUP.

179. The following shrines and holy places are under the direct control of Kedarnath authorities :—

Kedarnath temple.

The sacred spring called Udak Kund at Kedarnath.

Ukhimath temples.

Gupta Kashi temple and spring.

Madhmaheshwar temple.

180. The following temples are under the general supervision and control of the Kedarnath authorities :—

The temple of Gauri Mai at Gauri Kund.

The temple of Trijugi Narayar

The temple of Tungnath.

The temples at Kalimath.

The Kedarnath group : Gupta Kashi.

181. *Pandas*.—The *pandas* of Kedarnath have the right to act as *pandas* in this place.

182. *Pujaris*.—Are appointed and can be dismissed by the authorities of Kedarnath. They receive pay and have no hereditary or transferable right.

183. The principal objects of veneration are—

(a) The temple of Siva.

(b) The sacred spring in front of the temple.

184. The gifts usually made are—

(i) A fee—usually one pice—before bathing in the spring. It belongs to the temple authorities who at the present time have farmed their right to certain residents of Ukhimath.

(ii) A *gupta dan* (secret gift). The article to be gifted, cash or jewellery, is placed unseen by others in a cocoanut. The pilgrims generally give this at the spring to the *panda* accompanying them.

(iii) An offering to the image of the god in the temple. It is credited to the temple funds. The *pandas* perform no functions inside the temple.

- (iv) Any gratuity given to the *pujari* of the temple is kept by him personally.

N.B.—It has been decided by the courts that the *pandas* have no exclusive right to receive any particular gift at this temple. The pilgrim is free to give what he likes to the temple, the *pujari* or the *panda*. The temple is under the direct administration of the authorities of the Kedarnath temple.

The Kedarnath group: Trijugi Narayan.

185. *Pandas*.—This place is sacred to Vishnu and has its own *pandas* and *pujaris*. The Kedarnath *pandas* have no concern with it. The *pandas* live in the village of Trijugi Narayan and are divided into seven *thoks* or groups. Each year a panel of nine men is chosen—one from each *thok*, and two extras. These nine men appropriate whatever is offered at the various holy places as described below during the year, which commences on the 10th of *Baisakh* every year. These men supply the firewood required in the temple, and clean the temple utensils. Their jurisdiction extends up to Sonprayag on this (Trijugi) side of the river. They are not exempt from coolie *utar*.

186. *Pujaris*.—Are *Jamlogi* Brahmins from the neighbouring village of Rabigaon. They are also divided into seven *thoks*, each of which has one representative working in the temple during the pilgrim season. The total receipts are divided equally among the seven *thoks*. In the slack (winter) season there is only one man by turn, from the entire body of *pujaris* working at the temple. He appropriates everything that is received. Rabigaon village is exempt from coolie *utar*. The right of *pujaris* is hereditary and inalienable, except among each other.

187. *Establishment and accounts*.—There is one *lekhwar* (accountant) and two *mathapatis* (storekeepers): one to keep the cash and the other to keep the grain. They are appointed from among the local *pandas* by the manager of the Kedarnath temple, and can be removed by him. The accounts are submitted to him once every year. The village Trijugi is a *gunth* village, i.e., its land revenue is assigned to the temple. The village Rabigaon is a *muafi* village, i.e., the *pujaris* pay no land revenue in consideration of the services performed at the temple.

188. The gifts are usually made at the following places:—

- (i) *Brahma Kund*.—A bathing fee, as usual, of one pice. It is taken by the *pujaris*.
- (ii) *Rudra Kund*.—The bathing fee of one pice is taken by the entire body of *pandas*.
- (iii) *Vishnu Kund*.—As at Rudra Kund.
- (iv) *Sarasvati Kund*.—*Tarpan* for one's deceased ancestors is generally performed here and the individual *panda* accompanying the pilgrim takes the gifts.

- (v) *Dharm Shila*.—The gifts are taken by the individual *panda* accompanying the pilgrim.
- (vi) Offering to the god in the temple is credited to the temple funds.
- (vii) *Havan*.—A perennial fire is kept up in the temple and the pilgrim generally contributes some wood to it, buying it from the *panda* whose turn it may be to supply the wood to the temple. Any cash offering made at this Havan Kund is taken by the *pujaris*.
- (viii) Pilgrims generally give a separate gratuity to the *pujari* also.

The Kedarnath group : Gauri Kund.

189. The principal places of veneration are—

- (a) The Gauri Kund—a cold spring.
- (b) The Tapat Kund—a hot spring.
- (c) The temple of Gauri Mai.
- (d) A few minor images in the courtyard of the temple.

GAURI KUND.

190. The usual bathing fee of one pice is levied. This spring (like the hot spring) belonged originally to the entire body of the *pandas* of Kedarnath, but in execution of a decree the right of half of them (4 *syanas* and 9 scores) was sold and purchased by one Kirat Ram, whose descendants have now the right. They have leased the right on farm to a third person. The other half of the *pandas* employ a man on their behalf to make the collections, and at the close of the day they are divided equally between these *pandas* and lessee of Kirat Ram's descendants.

The pilgrim may make any other *dan* (gift) to his *panda* at this kund and he will be entitled to receive it and keep it.

TAPAT KUND.

191. The usual bathing fee of one pice is levied. The right to it belonged originally to the entire body of the Kedarnath *pandas*, but has been leased by them to the residents of Rabigaon village, on payment of 11 *kacha* rupees (=Rs. 8-12) annually. This money is paid on the *Rakshabhandhan* day at the temple of Kedarnath. The lessees place the money on a blanket before the eight *syanas* who return one rupee as a gift to the Rabigaon people.

192. It has been decided by courts that all offerings and gifts consisting of pices or other cash or *bhet* belong to the lessees i.e., the *Jamlogi* Brahmans of Rabigaon. Offerings and gifts consisting of gold and silver, i.e., jewellery as distinguished from cash, belong to the *pandas*. (*Tula Ram panda v. Mangsiaru Jamlogi*, decided by Mr. Hamblin on 12th June, 1900.)

THE TEMPLE OF GAURI MAI.

193. *Pandas*.—There are no *pandas* having any concern with the temple.

194. *Pujaris*.—Belong to *Gosain* sect and live in Gauri village. The land revenue has been remitted in consideration of *puja* and *bhog* rendered by these men. No instances of sale of their land by the *pujaris* are known. The right to *puja* is hereditary and inalienable, except among each other.

The men are all *grihastis* (house-holders with wives) and the succession is to sons, not to disciples. If there are no sons a disciple is generally adopted and he succeeds. No instance of the succession of a widow or a *gharjawain* or an adopted son have yet occurred.

These *pujaris* are divided into five families each of which takes the worship and the offerings by turn for one month in the pilgrim season (*Baisakh* to *Bhadon*); one month in the slack season (*Mangsir* to *Chait*); and one-fifth (=12 days) of the remaining two months of the year *Asoj* and *Kartik*. The family taking *Baisakh* in one year takes *Jaith* in the following year, and so on.

195. The offering made to the goddess goes to the general fund of the family whose turn it is. So the pilgrims sometimes give a separate gratuity to the *pujari* in attendance also. That becomes his own.

196. An account of all the receipts and expenditure is kept and submitted to the manager of the Kedarnath temple every year in the month of *Chait*.

MINOR SHRINES.

These are the Uma Maheshwar, Mahadev, and the Ganesh in the courtyard. Whatever is offered is appropriated by the *pujaris*. It is not shown in the Gauri Mai account mentioned above which is submitted to the manager every year. So also any offerings made at the *dhuni* (sacrificial fire) which is kept up at the gate of the temple of Gauri Mai are taken by the *pujaris* and not shown in the accounts.

The Kedarnath group: Kedarnath.

197. *Pandas*.—The *pandas* are known as the *pandas* of Kedarnath (see rule 174). They comprise traditionally "*ath syana, athara bisi*," i.e., 18 score or 360 families with eight chiefs. There are two parties consisting of 9 score families with four chiefs each. They have a right, as described later, to go inside the temple of Kedarnath with their clients, to help them to perform the worship there, including the embracing of the *ling* (the idol of Kedarnath) and to receive gifts from them there. This right is peculiar to the temple of Kedarnath, but is subject to the

right of the temple authorities to make such rules as may be necessary for the regulation of traffic, and to keep order inside the temple premises.

198. *Pujaris*.—The *Rawal* is the chief priest : he is appointed in accordance with the scheme of management for the time being in force. The other *pujaris* are appointed by him and are removable by him. They get a monthly pay. They have no hereditary or transferable right to perform service or to any share in the property or the receipts of the temple.

199. The people of Rabigaon act as *purohits* at the temple and perform *yajnas* as required by the temple authorities. Two men remain in attendance all the time, but get only one man's meal a day from the temple. This duty is hereditary and can only be transferred among each other.

200. Offerings are made usually as follows;—

- (i) A pilgrim generally commences with bathing in the river Mandakini, and pays a fee of one pice to his *panda*.
- (ii) He may perform *sraddha* for his ancestors there, in which case all what he gives goes to his particular *panda*.
- (iii) He then visits the temple. The *panda* usually accompanies him and takes part in helping him to do the worship properly. They generally make him pay something in *Sankalp* for Kamal flowers, and for *Rudra abhishek* (a holy recitation) and take some *dan* (gift) from him either simply as *dan* or by the name of *Brishabh dan*. All these payments go to the pilgrim's particular *panda*. He also has the customary right of making the pilgrims embrace the great *ling* (the idol of Kedarnath) should they wish to do so. Any offering made to the god Kedarnath, or to the minor images inside the temple or outside in the courtyard—all go into the temple funds, except those made at the images of Parvati and Lakshmi, which are claimed by the *Samalia Bhandaris*, and by the *purohits* from Rabigaon respectively.
- (iv) The pilgrim may then visit Udak Kund—a sacred spring to the south of the temple—to drink its water; the fee is usually one pice : it belongs to the temple authorities.
- (v) Near the Udak Kund are two very old shrines, possibly older than Kedarnath itself. They are dedicated to Anna Purna and Nav Durga goddesses. The offerings made there belong to the entire body of *pandas*.

- (vi) Then comes Hans Kund where the hill pilgrims usually perform the *sraddha*. Everything is taken by the pilgrim's own *panda*.
- (vii) Ret Kund is visited next : the fee—usually one pice—belongs to the entire body of the *pandas*, who have at the present time leased the right to one Tota Ram for Rs. 20.
- (viii) Swargdwari, Sankateswar, Vasuki Tal and Chorabari Tal are holy places in the neighbourhood. Anything given there is taken by the *panda* accompanying the pilgrim.
- (ix) The pilgrimage over, the *panda* gives *suphal* (farewell blessings) to the pilgrims, and receives parting gifts from them. This ceremony is sometimes performed at the platform of Isaneswara to the north-east of the Kedarnath temple.
- (x) In addition to these there is the shrine of Bhairab on the rock overlooking Ret Kund. He is the guardian deity of Kedarnath. The shopkeepers give one rupee and owners of herds give one rupee per buffalo, 8 annas per pony and 8 *shwalas*, one quarter seer of *ghi* and Re. 0-3-3 cash for herds of sheep and goat every year to this god, who in return guards them from the attacks of wild animals. The money thus collected is taken by the entire body of *pandas*, and on the last day of *Asarh* food is prepared, offered to the god and then eaten up by the *pandas* present. No individual *panda* can claim his share of the cash proceeds separately. He can only have a share in the food if he is present.

The Kedarnath group : Ukhimath.

201. This place is the headquarters of the authorities of Kedarnath. It is here that the *Rawal* has his abode. There are a number of shrines the *pujaris* of which are all appointed and removed by the Kedarnath authorities. They have no hereditary or transferable rights. All the offerings go to the headquarters authorities.

The Kedarnath group : Madhmaheshwara.

202. This is rather an unfrequented place. In the season of 1919 not a single pilgrim visited it.

203. *Pandas*.—There are no *pandas* having any concern with or rights in this place.

204. *Pujaris*.—Are appointed and removed by the *Rawal* of Kedarnath. There are no hereditary *pujaris*.

205. *Other establishment*.—The work (other than the worship) is performed by *panwars* of village Gondar. They consist of four families

and take the work in turn. They keep the temple accounts, which are signed by the *pujari*. They help in cooking the *bhog*, supply firewood, prepare sandal paste, and do other miscellaneous work. In return they get Rs. 30 per mensem and two persons' meals a day, and get the offerings at the holy places as mentioned below. Their right is a hereditary right, but non-transferable, except among themselves.

206. The offerings are usually made as below :—

- (i) Offering to the god Madhmaheshwar.
- (ii) Offering to the goddess.
- (iii) The bathing fee of one pice at Udak Kund.
- (iv) Offering to the god Gauri Shankar.
- (v) The bathing fee of one pice at Saraswati Kund.

The first three are credited to the temple funds and remitted in their entirety at the end of the season to the manager of the Kedarnath temple. The last two are appropriated by the *panwar* (servants) above-mentioned. The materials for the *puja* and *bhog* are supplied by the manager of Kedarnath.

The Kedarnath group : Kalimath.

207. *Pandas*.—Nil.

208. *Pujaris*.—Bhatts of village Kabiltha who hold in *myafi* land assessed at a land revenue of Rs. 9-4. The land is inalienable. They also receive one man's food daily from the temple. The right to *pujari-ship* is hereditary and inalienable.

209. *Bhog, batti*.—Is supplied by five villages—Kalimath, Kabiltha, Beonkhi, Bedla, Jeogi. They supply $2\frac{1}{2}$ seers rice, $\frac{1}{4}$ seer oil, firewood for cooking, and *dhuni* as required every day.

210. *Establishment*.—Is appointed by the *Rawal* of Kedarnath.

211. The principal objects of veneration are—

- (a) The image of Maha Kali.
- (b) „ „ Lakshmi.
- (c) „ „ Saraswati.
- (d) „ Gauri Shankar.
- (e) „ Mahadeo.
- (f) „ Bhairab.

The offerings at the first four are credited to the temple funds and remitted to the authorities of Kedarnath. The offerings at (e) and (f) are appropriated by the *pujaris* and the *dharia*, respectively.

212. Accounts are submitted in *Chait* and *Asarh* every year to the Kedarnath authorities.

213. Three miles from Kalimath temple is a sacred hill known as *Kala Sila*. Offerings made there are taken by the *pujaris* of Kalimath. The residents of the neighbouring villages of Beonkhi, Bedia and Jeogi

generally supply the pilgrims with rice and milk to offer at the *Kala Sila*. In return the pilgrims usually make a present to these villagers.

The Kedarnath group : Tungnath.

214. *Pandas and pujaris*.—In this temple the *pujaris* and the *pandas* are the same people—Maithanis of village Makku. Their right is hereditary and inalienable. They make their own arrangement for taking the *puja* by turns. They have been allotted in return for their services land paying Rs. 9 land revenue. The other servants have land paying Rs. 2 land revenue. The lands are alienable. The alienees will be bound to pay the land revenue assessed to the *pujaris* and other servants actually doing the work. The Nayaks and *Patars of village Makku have also duties to perform in connection with the temple for which it has given them land paying Re. 1 land revenue.

215. The objects of veneration are—

(a) The sacred springs near the temple.

(b) The temple of Tungnath Mahadeo containing several minor images also.

All offerings made at (a) go to the *panda* accompanying the pilgrim; those at (b) to the temple funds.

216. *The accounts are submitted annually to the authorities of Kedarnath.

THE BADRINATH GROUP : Badrinath.

217. *Pandas*.—There are two sets of *pandas*—

(a) The Deoprayagis, known after their principal village Deoprayag, which is situated in the Tehri State.

(b) The Dimris, called after their chief village Dimar in Patti Kapiri (Garhwal district).

They have the exclusive right of acting as *pandas* to the pilgrims from the plains and the hills respectively.

The *pandas* as such have no connection with the temple, its worship, its receipts, expenditure or management. Nor have they any customary right of accompanying the pilgrims into the temple and helping him to worship. If they go into the temple they go as private persons.

NOTE (1).—The Dimris, however, have certain rights in the temple as Dimris, but not in their capacity as *pandas*.

NOTE (2).—In addition to the *pandas* there is a community called the Brahm-kaplis, whose rights are described in rule 220 (x) below.

218. *Pujaris*.—The *puja* is conducted by the *Rawal*, who is appointed under the scheme of management for the time being in force. He has an assistant (called *Badwa*) nominated by the Dimris from amongst themselves by turns. He stands near by and helps the *Rawal* but he cannot conduct the *puja* or touch the god. He must be a Sarola Dimri of

pure stock. None except these two can enter the shrine where the image of the god is kept.

219. *Other establishment.*—This comprises—

(a) *Office and administration.*—Manager, clerks, accountants, chaprasis, and other ministerial officials. All these are appointed and can be removed by the temple authorities. There is no hereditary and transferable right in respect of any of these posts.

(b) *Semi-priestly offices*—

(i) Cooks—to cook the *bhog* for the god. Their number at present is six, but may be varied by the authorities according to need. Their wages are in cash or kind or both as determined by the authorities.

(ii) One Batwal Char. He is generally employed to take the *parshad* from Badrinath to the Raja of Tehri.

(iii) One brahman Sevakar who remains in personal attendance on the *Rawal*.

N.B.—Persons for the office of (b) (i), (ii) and (iii) are nominated by the Dimris from among themselves. They must be Sarola Dimris of pure stock. They can transfer their right among themselves.

(c) *Other ministerial posts in the temple.*—These are divided in three classes, all recruited from the Duryals of villages Bamni and Pandukeswar—

(i) two *Bhandaris*,

(ii) two *Mahtas* and two *Dharias*,

(iii) fifteen *Katharis*.

The *Bhandaris* have charge of the stores, and appropriate a small share of the stores as they are given out to cook for the god's food, and besides receive presents in cash or kind from the temple.

The *Mahtas* have the duty of keeping order and seeing that no irregularities occur, e.g., nothing is stolen from the offerings or the store or the kitchen. They have no right to any part of the offerings made to the god, but may keep any gratuity given to them separately by the pilgrims.

Dharias have the duty of keeping the utensils, lamps, etc., used in *puja* clean, and preparing wicks for the lamps for *arti* from materials supplied by the authorities.

Katharis have the duty of supplying sufficient firewood for the kitchen, and cleaning the kitchen vessels. Their head is called *kamdi*.

The officials of all the three classes mentioned above receive payments in cash or kind or both from the temple authorities. They are nominated by the Duryals from among themselves by turn. The right

to these offices is transferable among the members of each class, but not from a man of one class to another of a different class. Adopted sons and *gharjawains*, if belonging to the villages Bamni and Pandukeshwar, succeed to these rights, but not those from other villages. Members of classes (i) and (ii) can take *gharjawains* from each other, but do not marry with members of class (iii). There are only four families among the *katharis* entitled to the post of *kamdi*. They take it by turns.

220. Offerings are generally made as follows:—

- (i) Tapat Kund or the hot spring a short distance below the temple of Badrinath. The Deoprayagis have the exclusive right of receiving gifts here, but no exclusive right of property in the spring itself or its management. They give *suphal* (farewell blessings) to their clients at this kund. All offerings made there, whether as bathing fee or *dan* or gifts in exchange for *suphal*, all go to the pilgrim's individual *panda*.
- (ii) Anything given in *sankalp* at the following bathing-places in Badrinath belongs to the whole body of Dimris who give out their right on lease:—

Bathing places are—

- (1) Kurmadhara.
- (2) Prahladdhara.
- (3) Gauri Kund.
- (4) Surya Kund.
- (5) Sivadhara.
- (6) Narad Kund.

Gifts offered at the five holy rocks known as the *panchashila* also belongs to the Dimris.

- (iii) Offerings made at the temple of Lakshmi in the courtyard of the Badrinath temple go to the entire body of Dimris, who claim exclusive right in the temple and who appoint delegates to remain in attendance by turns.
- (iv) Offerings made at the shrine of Badrinath go to the temple funds in their entirety.

Exception.—Offering put in the *kapur arti* lamp in which camphor is burnt is, at present, appropriated by the Badwa.

- (v) The offering known as *gaddi bhet* (the dais on which the *Rawal* sits) goes to the temple funds.
- (vi) Any offerings made to the *Rawal* personally go to him.
- (vii) Any offerings made for *atka* or god's food is credited to temple funds. There is no custom by which it must be converted into raw material and cooked at once.

- (viii) The offerings made at the image of Garud which stands facing Badrinath is appropiated by the Dimris and Duryals; and those made at the image of Ghanta Karan, which is in the courtyard of the temple towards the north-east, are appropriated by the Duryal Bhandaris. These, however, do not appear to be really old rights.
- (ix) Offerings made at *dharamshila* (a stone slab to the south-west of Badrinath) belong to the Dimris. They give *suphal* to the hill pilgrims at this place.
- (x) Offerings made at Rishiganga (the bathing-place near the edge of the town of Badrinath), and gifts given in *Sradh* at Brahmkapali belong to a community called, the *Brahmkapalis*. It consists of Kothyals, Sattis, Nautyals, and Hatwals of villages Maithana, Dadon, Girgaon, and Hat. They are divided into four groups or *thoks*, each of which takes up the duties and the collections for a year by turns. They cannot adopt sons or keep *ghariawains* from any castes other than the four above mentioned.

Other shrines in the Badrinath group.

221. Besides the temples at Badrinath itself, the following temples and shrines are included in this group:—

- (a) Narasimha, Vasudev, Rajrajesri, Durga and Joteshwara at Joshimath.
- (b) Yoga Dhyani Badri at Pandukeshwar.
- (c) Dhyana Badri and Kalpeshwar at Uggam.
- (d) Bhavishya Badri at Subhain.
- (e) Bridha Badri at Animath.
- (f) Narayana at Vishnu Prayag.
- (g) Sita Devi at Chain (patti T. Paikhandia).
- (h) Raveshwar at Regaon.
- (i) The temples of Lakshmi Narayan at Nandprayag, Dimar, Narayan bagar, Dwarahat, Kulshari (patti Badhan), Byala, Gadsir.
- (j) Narasimba at Darmi and at Pakhi.
- (k) Chandika devi at Langasu.
- (l) Mahadev at Bairash Kund.
- (m) Mahadev at Kyonkaleshwar.

2. These temples except (h) and (l) above are under the supervision or control of the authorities of Badrinath, who appoint and can remove *pujaris* and other staff and make regulations for their pay, for meeting the expenditure on *bhog* and *puja*, and for the appropriation of the offerings. There are no *pandas* having any rights in connection with any of these

temples. The temples (*h*) and (*l*) are independent, though they receive assistance from the temple of Badrinath.

KAMALESHWAR.

222. The chief priest or Mahant of the shrine of Kamaleshwar at Srinagar in the Garhwal district belongs to the order of *puris*. He is not a celibate, and may have sons, but they have no claim to succeed him either in the *gaddi* of mahantship, or to any of the temple property. They get only such private property of their father as he may choose to give them in his lifetime. The successor in the *gaddi* is the eldest disciple of the last Mahant. No election is held, unless a disciple is not available, in which case the *panchayat* nominates someone as a "posthumous disciple" of the last Mahant, and he is then entitled to succeed.

223. The *goshains* of Kamaleswar have three kinds of disciples—

- (a) A disciple who stays with the *guru* and serves him.
- (b) A disciple who does not stay with the *guru* to serve him but wanders away independently.
- (c) One who becomes a disciple practically in his last days, and adopts *Sannyas* for the sake of *mukti* or salvation. He is called *atur sannyasi chela*.

SOMESHWAR AND BAIJNATH.

224. The mahants of the Someshwar and Baijnath *maths* in the Almora district are from the sects of *Bharti* and *giri* respectively. Both Mahants are *grihastis*, i.e., householders with families. The eldest son succeeds in the *gaddi* unless he is incompetent, in which case the *panchayat* elects a suitable successor from amongst the near kinsmen of the last Mahant.

GANANATH AND PINNATH.

225. The Mahants of the Gananath and Pinnath *maths* in the Almora district are both *giris*. They are not supposed to marry or to have children; though the present Mahant of Pinnath has a *dhanti* concubine and sons. The *panchayat* has the right of electing the successor of the last Mahant. They can elect whom they like. The Mahants of Pinnath and Gananath have stated in writing that this is the custom and enquiries show their statement to be correct.

KAMA.

226. The sect of *maths* has one of its chief priests, or *pir*, at Kama in *patti* Kairarow of the Almora district. The *pir* is not supposed to marry and the succession to the office is by election by the *panchayat*. In recent times *pirs* also have taken to keeping concubines, but the right of their sons to succeed *qua* sons has not been recognised.

Diwalgarh and Bigadhara.

227. The *naths* of Garhwal have a *pir* at Dewalgarh in *patti* Chalan-syun and a *mahant* at Bigadhara in the town of Srinagar. Both marry, but the sons have no claim to inherit their father's *gaddi*. It is the *panchayat* which selects a successor from amongst the disciples of the last incumbent.

GOPESHWAR.

228. Gopeshwar situated four miles above Chamoli is sacred to Siva. The objects of veneration are—

(a) The temple of Siva.

(b) The sacred spring—called Baitarni—situate at a little distance from the temple.

Offerings made at (a) go to the temple funds, those made at (b) are taken by the *pandas*. There is also a bathing fee of one pice which is taken by the community of Diuli Brahmans. Offerings made as *gaddi bhut* at the Rawal's *gaddi* also go to the temple funds.

229. *Pujaris*.—The *pujari* is called the Rawal. He is elected by the *panches* (subject to the approval of the Commissioner, Kumaun division), from amongst Dakshini Jangams.

230. *Pandas*.—There are no *pandas* for the temple. At the Baitarni spring a community consisting of 12 families of Bhattis, and one of Tewaris acts as *panda* and divides the offerings equally. The Tewaris act as *pandas* for pilgrims from Nepal, Bhattis for all others. Men from this community can be appointed by the Rawal in an emergency to conduct the worship at the temple. For such services they receive payment. These *pandas* have no right to accompany the pilgrims into the temple or to receive gifts there.

Other attendants.—The duty of supplying water for the temple and cooking the *bhog* lies on these Bhattis and Tewaris who are paid Rs. 12 per annum. Firewood and *bael* leaves are supplied by the Diuli Brahmans abovementioned who also have to clean the vessels and do other miscellaneous work. For these services here and at Rudranath the Diulis receive twenty rupees annually. The rights of both communities are hereditary and inalienable except among themselves. *Kamasal* and *dhanti* children cannot inherit these rights.

Treasurer and Lekhwar.—Are appointed and removed by the Rawal. They receive fixed salaries.

231. Accounts are kept properly and are liable to inspection by the Government. Any balance left over after defraying the temple expenses is appropriated by the Rawal.

232. The temple of Rudranath situated about five miles from here is under the control of the Rawal of Gopeshwar, who is *pujari* here also.

He can appoint a *lingayat* priest, or one of the Bhattas of Gopeshwar to work as *pujari*. The offerings made there belong to the temple of Gopeshwar. Sometimes the right is leased to the *pujari*. There is a sacred spring—Baitarni—here also, the rights at which are identical with those at Gopeshwar.

COMMENTARY.

233. *Explanatory*.—The commentary is divided into sections analogous to those of the rules. The remarks are confined mainly to the rules given in the chapter on general customs (rules 1 to 46) which are applicable to the whole of the Kumaun division. Occasionally a reference is made to the customs of special castes also, but not often, as the rules for the special castes have been made more or less self-contained.

The following abbreviations are used :—

K. R.=Kumaun Rulings for Civil Courts by V. A. Stowell, I.C.S.

K. R. C.= Ditto ditto ditto

Commentary.

K. L. T.=A Manual of land tenures in Kumaun by V. A. Stowell, I.C.S., 1907.

G. S. R.=Report of the Tenth Settlement of the Garhwal District by E. K. Pauw, I.C.S., 1896.

M. H. L.=A Treatise on Hindu Law and usage, eighth edition, 1914.

A.—Adoption.

(See K. L. T., page 54, and K. R. C., section 9.)

234. Adoption is not very common in the hills, but the practice is growing. The ceremonies considered as essential for the validity of an adoption in the plains are generally not observed in Kumaun, and are certainly not essential in any caste. This must have made the proof of an adoption a somewhat difficult matter, so the practice has grown up of executing a deed (*lekh*) describing the fact of the adoption, and in most cases transferring the property also to the adopted son. This custom has been in existence for a long time. There were cases, however, in the past where the succession of an adopted son, who had no *lekh* in his favour, was not disputed by any reversioners due to (1) agreement, (2) poverty, or (3) ignorance. Also at settlements adoptive fathers often got the names of their adopted sons entered in their place without any *lekh*. It is, however, now unanimously stated that in disputed cases an adoption without a *lekh* is inoperative.

235. An adopted son becomes a member of the adoptive family and has full rights of inheritance there to collaterals, etc. This is in accordance with the Mitakshara, and is therefore not entered in the rules. In some

backward parts of Garhwal, however (e.g., patti Dasuli and patti Pindarpar), in order to avoid a difficult journey to the registration office the people have invented a system of imperfect adoption : the property is sold for a nominal price to the "adopted" son. He then gets only what property is thus expressly transferred to him ; he does not become a member of the transferer's family, does not acquire any rights there, and does not succeed to collaterals. In South Garhwal also there is a similar practice.

Rule 8. There is a kind of adopted son who does not take up his adoptive father's caste or *gotra*, but retains his own. He does not really become a member of the new family : he does not perform *śraddha* etc., for collateral relations in that family. He therefore naturally is not entitled to succeed to their property. These instances should not be regarded as separate customs and apparent exceptions to the rule given above. The result follows from the fact that the so-called adopted son is not an adopted son at all but a mere transferee of a special property.

236. The rule then of general application is that an *adopted* son proper can only be constituted by a written deed declaring the fact of the adoption, i.e., I make so and so my "Dharma puttra."

237. The only exceptions are the Bhotiyas of the Darma, Chaudas, and Beas valleys of the Almora district who, on account of the difficulty of obtaining stamps, have not yet adopted the custom of *lekhs* universally. If facilities for the purchase of stamps are afforded, *lekhs* will become the rule there also in a very short time.

Stowell's remarks in his books do not mention the necessity for the written deed. The custom seems to have grown up since his time because of the superior value of *lekhs* as evidence in a court of law.

238. The women in the hills had, it seems, in the past a much weaker position than in the plains in respect of the capacity to deal with property. It is well recognized that a widow cannot adopt a son ; and the plains custom of a husband leaving an authority with the widow to adopt has not found its way yet to Kumaun. A widow can, however, adopt if the reversioners give their consent. This can hardly be termed a right ; for of course the reversioners can allow any limited holder to do anything they like. Stowell is silent on this point.

239. The custom in Kumaun gives the adopted son a much better position than he would have in the plains if natural sons are born to the adopter subsequently to his adoption.

Rule 3. Under the Benares school he is entitled only to a quarter of the property. See M.H.L., page 224. In the hills he gets an equal share with the natural sons. Indeed so strong is the feeling that the adopted son (who in such cases is obviously the eldest), gets *jethon* (the elder's right) and cases have

been known where he has even succeeded to the thokdari or padhanship in preference to the natural sons. The custom given in this rule was found to be prevalent throughout the division. Not a single dissentient voice was heard. Stowell does not discuss this subject.

240. The restriction mentioned in rule 4 is enjoined by the Hindu Law in the case of the three higher castes only. Stowell says
 Rule 4. (K. R. C., section 9) that the necessary qualification for

an adoption may be presumed to apply in the hills as elsewhere. Enquiries have shown that this remark is both too wide and too narrow. There are communities, e.g., the Bhotiyas and the Nayaks, who have not adopted this restriction. Even among the Rajputs and Brāhmans I have come across stray instances of the breach of this rule, e.g., there are instances of the adoption of a daughter's son, or a brother. I have disregarded such occasional lapses from the well-recognised general practice.

On the other hand, the admittedly Sudra community of Doms and allied castes in the division have now rigorously bound themselves by this restriction which the Hindu Law enjoins only on the three higher castes.

241. The desire, however, to adopt a sister's son or a daughter's son, specially the latter, is felt frequently, and is met by the expedient of keeping him, and transferring the property to him by a deed of gift—called locally *vishnu priti*, i.e., out of love for God. This is tantamount to adoption in everything but name. But legally it is quite distinct from adoption. The child receiving the *vishnu priti* gift is a mere donee, and acquires none of the qualifications of an adopted child. The two transactions—adoption (*dharma puttra*) and gift (by *vishnu priti*)—should not be mixed up.

242. The custom mentioned in rule 5 will seem to be obviously true in a society like the Hindu society. It should be noted that
 Rule 5. a son can be adopted from a family with which marriage is not possible. For instance, no man can marry in his brother's family, yet it is quite proper to adopt a brother's son. Indeed as far as possible a man would try to adopt a son from amongst his own family, but there is nothing to prevent his going out of his family so long as he does not choose a son from people with whom caste relations are impossible for him.

243. Stowell does not specially discuss the points raised in rules 6 and

7. His general remarks quoted above about the
 Rules 6 and 7. qualifications for an adoption being the same in the hills as in the plains, are wrong in respect of these matters also. The Hindu Law restrictions relative thereto have not been adopted in the hills. I have come across a case of the adoption of a person who was fifty-eight years old and had a wife and five children of his own.

244. No mention has been made in the rules of the right of an adopted son to succeed to *khaikari* tenures, because the latter are a form of occupancy tenancy, the mode of succession to which depends upon the tenancy laws for the time being in force. The question is outside the scope of the present enquiry.

B.—GHARJAWAIN.

(See G. S. R., pages 48 and 44 ; K. L. T. page 55 ; K. R. G., section 9.)

245. The first point to note is that in the Garhwal district a *ghar-jawain* may be kept sometimes without any formal marriage ceremony having been gone through with the daughter. There was a case before the Deputy Commissioner of Garhwal in 1919 in which this was proved to be the custom. Enquiries showed this to be common amongst the poorer people in the neighbourhood of pattis Lobba, Chauthan, Dhajuli, and Badhan, and the practice is not entirely unknown elsewhere, e.g., in patti Malla Dasuli I came across an instance where a Rajput of the Rawat clan kept a soldier as his *gharjawain* in this way without formal marriage. The latter was killed in the War and then his younger brother, also a soldier, succeeded him as *gharjawain* in respect of the same girl in the same way, i.e., without any formal marriage. This need not cause any surprise, because it will be seen from rule 45 that very little ceremony indeed is essential for some forms of marriages. This point is not mentioned in any of the published books.

246. Stowell seems to think that a *gharjawain* would get the inheritance if he merely continued to live in the family, even though, there was no deed of gift in his favour. If this was the custom then, it has now changed. Now no *gharjawain* or daughter can succeed without an express deed of gift. Stowell notices that in the Punjab it was essential before a *gharjawain* could succeed that he should have been actually placed in possession of the property by the father-in-law before his death. This would indicate that the *gharjawain's* position was not altogether a secure one even there. In Kumaun the question has now become simple. A *gharjawain* has practically no *locus standi* as such. He is a mere donee, who takes what is given to him or his wife by a proper deed of gift. He is therefore not bound to continue to live in the father-in-law's home.

It is misleading to talk (K.L.T., page 55) of this custom now as analogous to that of adoption. It has led some people to affirm that, like an adopted son, a *gharjawain* ceases to have any connection with or right in his paternal family. Especially extensive enquiries were therefore made by me on this point, and it was found invariably that a *gharjawain* did not cease to be entitled

Rules 11 and 12.

to a share in his own father's property. The following considerations will show that the custom is right, and they who affirm the contrary are wrong. (a) An adopted son loses his *gotra*, takes up the adopter's *gotra*, and performs his (adopter's) *śraddha*, and observes full mourning for the adopter's collateral relations. A *gharjawain* does none of these things. (b) An adopted son becomes like a natural son and has full rights of inheritance to the property of the adopter's collaterals also. He therefore loses nothing by giving up his rights in his natural family. On the other hand, it has never been suggested that a *gharjawain* would acquire any rights to inherit to the collaterals of his father-in-law. It would therefore be manifestly unjust if he was deprived of a large though uncertain right in his paternal family when he is not given a corresponding right in the new family in exchange. (c) A *gharjawain* does not cease to call his natural father father and has to perform his *śraddha* like a son. If he is required to do that he must get the inheritance also, for as is well-known the inheritance in Hindu Law is intended solely for the purposes of performing the *śraddha*. (d) Very often the property is given in the daughter's name and not the *gharjawain's*. If the daughter were to die childless the property reverts to the donor's reversioners. Suppose the *gharjawain* marries again and has children. What would they be entitled to if not their father's paternal inheritance? But more convincing than all these theoretical considerations is the fact that especially minute enquiries throughout the division have shown that the custom is as given in rules 11 and 12.

247. The mistaken opinion on this matter seems to be due to the fact that nearly always persons who go away as *gharjawains* do so because they get in their father-in-law's house a far bigger inheritance than they would get in their father's home. They therefore do not care to come back to their paternal home, which may be at some distance, to claim a petty share. At other times ignorance of their right or poverty is responsible for their not pressing their claim. Such instances are found: but they do not alter the general custom. Stowell has not noticed this point specifically.

248. A widow's power of transferring the property to her daughter and *gharjawain* is the same as that of adoption, i.e. nil.
 Rule 10. The reversioner's consent is necessary and sufficient.
 The husband's authority is ineffective.

249. The case where the daughter and the *gharjawain* die without issue presented some difficulty in the enquiry. For such
 Rule 19. instances were not to be found sufficiently commonly.
 The general consensus of opinion is in favour of the rule as drafted. If the daughter and the *gharjawain* have male issue inheritance goes to them,

of course, as of right. If they have only daughters the latter have no claim, but they can get the property by gift from their parents in the same way as their parents got it. The original donor's reversioners cannot object to such gifts. Instances of this are not uncommon. But where there are no children the people think that the property must remain in the family of the original owner. The people of Kumaun have a natural objection to landed property passing to persons not resident in the village, and therefore not taking their proper share of the obligation to supply labour and transport (*coolie utar*). Some of the high-caste people, on the other hand, think that the property having been once gifted to the daughter and her husband it is repugnant to Hindu ideas for the donor's family to take it back. The majority, however, say that as a fact the property does come back to the donor's family unless the contrary is enjoined in the original deed of gift. Stowell does not notice this point.

C.—INHERITANCE.

250. One of the principal differences between the Hindu communities in the plains and those in Kumaun lies in the custom of taking wives in ways which would be considered unorthodox in the plains, and treating them as good wives and their issues as good children for purposes of inheritance, if not in social and caste dealings.

Rule 14.

251. The right of married wives and their children to inherit calls for no remarks beyond that inter-marriage between different castes is allowed to a limited extent among the Vaishyas. It is the *dhanti* connections that deserve some notice here. In all castes, except those in list A, they are now all good enough for purposes of inheritance. For the description of these connections see rules 41 to 46 and commentary, paragraphs 297-311. This matter also affords an admirable instance of the development of custom. As stated in the commentary on rule 42 (paragraph 301) the payment of price for the woman is now not so rigorously insisted upon for social purposes. Again, there used to be some difference in old times for purposes of inheritance between the issue of a *dhanti*, whose price had been paid (*dam kati*) and of one whose price had not been paid. But the difference had ceased to exist when Stowell wrote his *Land Tenures*. He says on page 51: "As far as the question of inheritance is concerned, the children of both classes of *dhantis* are equal." Again, it would appear that in the past it was not common for a *dhanti's* sons to succeed to the inheritance, though they did without question if the *dhanti* was one's brother's widow (Pauw, G. S. R., page 44). The custom rapidly became much more common (see Stowell, K. L. T., page 44). He observes that in certain castes which he called Khas Brahmins and

Khas Rajputs (as distinguished from pure Brahmans and pure Kshatriyas) a *dhanti's* sons are equal to legitimate sons (see also K. R. C., section 12). It does not appear likely that there can ever have been a definite cleavage between these two groups, but the courts have held tenaciously to the idea and have been engaged these many years in keeping the distinction alive, and trying to assign the parties before them into one or the other of these two groups. It was a hopeless task. Even in 1906 Stowell wrote: "It thus really becomes a question of fact regarding the status and the caste of the parties in each individual case, and since this is a matter of considerable doubt and obscurity in many cases it is often necessary to enquire into the actual custom regarding such inheritances prevailing in the particular caste in question."

252. The fact is that time has brought about a silent revolution. Economic and social changes have swept away these old landmarks. It is now often impossible to say with certainty whether a caste is Khasya or not. The old test of whether the members of the community ploughed the land or not is not available. Owing to changed circumstances, many are giving up the plough and there are others who having fallen on evil days have begun relations with the ploughing castes if not begun to plough themselves. I know communities which have inter-marriages at once with undoubtedly Khasya ploughing castes, and with the equally undoubtedly pure non-ploughing castes. No one can classify such castes now as Khasya or as pure. In Garhwal, all castes plough.

253. Again, I am given to understand that in former times the lower or Khas Brahmans were called Pitalia, from a brass bracelet which they had to wear. As can be imagined, the use of such a badge of inferiority has now been discarded and we have no means or desire now to compel anyone to keep up its use. Thus the apparently simple classification proposed by earlier writers and persisted in by courts must now be given up. To determine an issue of that kind might now involve elaborate ethnographic research for which courts have no time. My lawyer friends agree with me in this.

254. I have therefore made no attempt to use these time-honoured terms or to classify castes into two such water-tight compartments. I learnt that now there were only a few definite castes the members of which did not recognize *dhanti* connections as good enough for inheritance; and I have attempted to discover them and enumerate them in list A.

255. I might explain that it was urged upon me in some quarters that a *dhanti's* son would not inherit in their family if the inheritance was a large one. Asked to define what was meant by large, they said "paying a land revenue of Rs. 20." It was absurd to consider such a

proposition ; for a man may lose his property and will the custom change with the diminished circumstances ?

256. It was also urged by some men that there had been no instances of *dhantis* in their own family. But I declined to accept this statement as of any value, for a man or a family cannot have different customs in caste matters from his *bradri*. If we were to look for actual examples of every custom in each single family no custom could ever be proved. If therefore a man was found^d having marriage and caste relations with his *bradri* and that *bradri* recognized *dhantis*, I included that man in his *bradri*. And conversely if a man has kept *dhantis*, but the *bradri* have not recognized the custom, I have disregarded his lapse from the general custom, and included the caste in list A. This principle was put forward in a note put by me before the Divisional Conference at Naini Tal at which the Commissioner and the Deputy Commissioner of the division were present and approved by them. I have since discussed it with many experienced Hindu officials and non-officials in the division, and they have expressed their approval of it.

257. In the Naini Tal and Almora districts the people are divisible into two very distinct classes. One who look upon *dhanti* connections with such horror that they would excommunicate anyone keeping a *dhanti* wife, and will have no social dealings with him or his children and others who keep up relationship with them and will not even ask them to any caste functions. Such people will not give the inheritance to *dhanti* wives or children even when there are no legitimate rivals. They would rather see the property go to distant kinsmen than to such relations. The other class consists of castes which do not go to the length of excommunicating persons keeping *dhantis*, and also them who keep up social and caste relations with them.

258. In Garhwal there is no line of such definite cleavage. In all castes, even the highest, there are *dhanti* wives and children; and even if there is a family which has not a *dhanti* wife or child it has caste relationship with others who possess them. There is no caste which disapproves of them so much as to exclude them from the inheritance in favour of distant kinsmen.

259. The Banias in Almora and Naini Tal district are divided into the following sub-castes :—

Chakurait, Gangola, Hawalbagia, Jagati, Jakhwal, Kandyal, Kholbhetaria, Kumayan, Okhalia, Sath-Chaudhri, Salemgaria, Sial, Tamkia, Thulgharia, Tola.

The Okhalias include Tantri and Phat, and the Chakuraites include Jangri and Kalra. Salemgarias are also called old Gangolas.

The term Bania has been used, as I am assured that it is understood better.

260. Under the rules of the Mitakshara there is, strictly speaking, no such thing as succession or inheritance in a joint family.

Rule 15(a). When a member dies his share simply lapses into the common property and other members get it by survivorship. (M. H. L., page 339). Thus his widow cannot succeed to his share. In Kumaun there is no survivorship in this way. The share of a co-parcener always descends to his widow in the absence of male issue, even in a joint family. In this respect (as in one or two others) Kumaun resembles the Dayabhaga school of Bengal rather than the Mitakshara. This practice is general and has been found to exist in the highest as well as the lowest castes.

261. Then comes the question of the succession of *dhanti* widows.

Rule 15(b). Stowell says (K. R. C., section 11) that a *dhanti* widow gets the inheritance only if there is no other married wife, otherwise she only gets maintenance. My enquiries do not confirm this opinion. The practice now is as follows. In castes mentioned in list A, which do not recognize *dhanti* relations as legitimate, a *dhanti* wife will not get anything except maintenance in any circumstance. Thus, when she is the sole widow the property may go to distant heirs but she will only get maintenance. In the other castes her position is identical with that of married wives. She shares the inheritance equally with them. The position is that she is either a complete wife and thus entitled to a full share or a mere concubine and entitled only to maintenance. There is no compromise such as is suggested by Stowell.

262. Instances have been found of a widow representing her husband in inheriting to collaterals. For instance, where there

Rule 15(c). were three brothers and one of them had died and his widow had got mutation in his place. Later when a distant kinsman died to whom these brothers were reversioners the property was divided in three equal shares, one of which was given to the widow. This practice also indicates that strict co-parcenary as understood by the Mitakshara is not to be found here. The members hold their shares more or less in *quasi-severalty* as in Bengal.

263. Again, occasionally it was found that on the death of a man who left behind him a childless wife, and sons by another wife the former had been given mutation in half the property. This however is not recognized as a customary right, but only as a sort of family arrangement with a view to ensure maintenance and some degree of independence for the step-mother. The practice can be traced to mutations

effected at the recent settlements, and Rai Bahadur Dharmananda Joshi, who did this work both in Garhwal and Almora, tells me that he ordered such mutations with the objects abovementioned. There is also the additional idea that by this means the childless widow will not desert the family easily to seek another husband.

264. This fear of a young widow going away as a concubine to others really never leaves the mind of the ordinary Kumauni. Many soldiers who had nominated their wives for purposes of pension, had their names cancelled, and those of their mothers substituted when going to fight in the last War. They told me frankly they did not want to leave the pension to a young woman who would be almost sure to seek another husband if they fell at the front. Cases are accordingly known where on the death of a man mutation has been made jointly in favour of his widow, and his mother. This has been done especially when the widow was young. But all these are merely arrangements for family convenience and not customary rights.

265. The case of the daughter and the daughter's son is discussed fully by Stowell (K. R. C., section 15). There is no doubt that local custom excludes both of them from the inheritance in all castes. The point admits of no further discussion. It should be noted, however, that among Bhotiyas of Chaudas, Beas, and Darma the daughter is an heir to a limited extent.

266. Under the Mitakshara brothers of the whole blood succeed before those of the half blood. (M. H. L., page 798); and undivided brothers are preferred to divided brothers (M. H. L., page 800). In Kumaun these rules are not observed strictly. There are numerous instances of the breach of both of these rules, especially in the Garhwal district. But the custom cannot be said to be invariable. Instances are known—especially among the more enlightened people—where a whole brother has excluded a step-brother. This inclines one to ask whether the opposite custom is not due merely to ignorance. Whatever the cause may be the fact remains that in a large number of cases no difference has been made between whole brothers and half-brothers, or between divided and undivided brothers.

267. The case of the uterine brother, i.e., one having the same mother but a different father, has apparently been overlooked by Mayne. He uses the word half-blood without explaining what he means by it. From a casual remark in the course of the discussion about the common father it seems that he was not thinking of uterine brothers. To the orthodox Hindu the idea of a woman having two husbands is repugnant and this may account for Mayne not noticing the point. In Kumaun however a second husband may almost be said to be the rule. Hence uterine

brothers are common and it is therefore necessary to state that he is not an heir at all.

268. The custom in Kumaun differs from the Mitakshara in respect of the order of succession of brothers and their issue also.

Rule 17(c).

Under the Mitakshara a brother excludes sons of a deceased brother, as he is nearer in relationship. But in Kumaun such nephews take their father's share. So also when there are no brothers, but only nephews, the latter under the Mitakshara share *per capita*

(M. H. L., page 801) but in Kumaun they can take

Rule 18.

only their father's share *per stirpes*. This custom is admitted universally, though it is not mentioned in any of the published books.

269. The custom mentioned in rule 19 seems to be an obvious one.

Rule 19.

It is, however, necessary to state it expressly only because of the decision in *Bachi v. Mahner Singh* (K. R., page

27). That decision was based upon information given to the court by an outsider whom the court seemed to trust; but enquiries have shown that the court was misled by this man. I have discussed the ruling in many villages throughout the division, and have not found even one man to appreciate the proposition there laid down, viz. that a son may be good enough to inherit his father's property yet not good enough to get his uncles' or cousins' estate. The ruling must be discarded as contrary to custom.

270. The right of the village community to succeed to a person who

Rule 20.

has no heirs is recognised by rulings and is recorded in the memorandum of village customs of Beckett's Kumaun Settlement, 1874 (K. R. C., section 16). This is a well-established custom. The property does not escheat to the State.

271. The custom of giving an extra share to the eldest son on a partition is almost universal. But there are no rules

Rule 21.

governing it. The extent of this extra share is not fixed, and depends upon consent. It has been stated universally that the custom depends upon the consent of younger brothers and is not enforceable at law. It is therefore no custom at all so far as law courts are concerned. The fact that the extent of the extra share is not fixed is the real reason why the practice has not died out and is not likely to die out. It is so easy to satisfy it. One may give a piece of jewellery worth a few annas, or an old vessel, or a book, and the rule is satisfied. Stowell discussing this matter (K. R. C., section 14) says that the custom is alleged not unfrequently but seldom established.

272. The custom of *sautia bant* or inheritance *per stirpes* between sons by different wives is another instance of the

Rule 22.

change of custom by lapse of time. There is no doubt that in the past it must have been practised to a fair extent. But when Stowell wrote his Kumaun Rulings it had apparently ceased to be a general custom and was confined to certain families or certain villages. Memorandum of village customs were made in the Garhwal district and in a few *pattis* of the Naini Tal district at the revenue settlements in which it was recorded whether the custom of *sautia bant* prevailed in the village or not. No such memoranda were prepared for Almora or for the bulk of the Naini Tal district. But at my enquiry Garhwal declared unanimously for *bhai bant* (i.e., equal shares for all sons). There was not a single village claiming *sautia bant* as its custom. The reason given for this change in the thought and practices of the people is instructive. It was "Courts disapprove of *sautia bant*!" In Almora and Naini Tal also the custom was not proved anywhere sufficiently well to be recorded. It appears that the people have come to know now that *bhai bant* is the rule prescribed in the *Shastras* and have got an idea that the courts will also support *bhai bant*. Certain rulings are responsible for this belief; notably *Ratan Singh v. Sher Singh* where Sir Henry Ramsay ruled that in the absence of a written agreement or will or the strongest evidence a *sautia bant* ought not to be given. In *Asaru v. Bali Ram* he even quashed a *sautia bant* which had been carried out by a father in his lifetime. In the latter case Sir Henry Ramsay went too far. The right of the father to dispose of his property, ancestral or self-acquired, *inter vivos*, is absolutely unlimited in Kumaun (see rule 36) and if he actually divides the property in unequal shares among his sons and transfers the same to them before his death his action cannot be challenged. So fathers who now wish to divide property *sautia bant* do so in their own lifetime. When a partition is made amongst the sons after the father's death it is always *bhai bant*.

D.—Exclusion from inheritance.

273. According to the strict Hindu Law persons born blind, or deaf and mute, or impotent, or who contract a loathsome

Rule 24.

disease like leprosy, are disqualified from succeeding to property. But once the property is vested in a man, a subsequent disability will not entail forfeiture. None of the published books say what the custom in Kumaun with regard to this matter is. The point seems never to have been noticed and I am obliged to Mr. Wyndham for drawing my attention to it. Enquiries revealed that the custom in Kumaun is opposed to Hindu Law. None of the infirmities mentioned above are recognised as in any way preventing a man from succeeding to the

inheritance. The only case needing notice here is that of leprosy. A leper generally leaves his home to enter a leper asylum or to take up his abode in some holy place and live by begging. In such cases if when the inheritance opened he had permanently left home, he does not then naturally get a share. But if he is at home he cannot be deprived of his proper share.

274. A question sometimes arises as to whether a leper has the power to alienate his property like an ordinary man. In an old case, decided on 16th August, 1887, it was held by the Commissioner. (Mr. Ross) that a leper had only a life interest in the property and could not alienate it. But enquiries made show that the people recognise no such restriction. There are instances of a man selling his entire property on becoming a leper and walking off to a leper asylum with the sale proceeds. The Hindu Law imposes no disability in respect of the power to alienate on men who have been attacked with leprosy subsequently to their succeeding to the inheritance and no such custom seems to exist in Kumaun either. It is not known how it came to be seriously considered in the case mentioned above.

275. Again, there is the case of a person turning a *sannyasi*. A man who renounces the world and takes up "*sannyas*" ceases to have any right in his property, or claim to inherit any property, after his renunciation. The effect of a man turning a *sannyasi* is much the same as if he died. It follows that a *sannyasi* cannot come back to the family and claim his property again from those who may be in possession then. This is Hindu Law and the custom in Kumaun follows it. But there are instances of a *sannyasi* having come back to the world and having been given his old share. These were exceptional cases and depended upon the consent of the members of the family. They prove nothing. On the other hand a *Brahmachari*, (i.e. a religious student who takes a vow of celibacy but does not part with his sacred thread or *shikha*) is not disqualified from inheriting in Kumaun although the orthodox Hindu Law excludes him (see M. H. L., page 844). He is quite different from a *sannyasi*.

276. Sometimes it is found that the name of a man who has renounced the world has been allowed to continue on the revenue registers for many years. Such instances also prove nothing. They are only examples of the notorious fact that people in Kumaun were until quite recently very dilatory about getting mutation of names effected.

E.—Stridhanam.

277. Under the Mitakshara a woman's *stridhan* has a peculiar mode of devolution of its own. This rule does not seem to have taken root in Kumaun. No caste, high or low,

makes any difference between *stridhanam* and other property. A curious puzzle is afforded by the fact that the Bhotiyas inhabiting the highlands of Darma, Beas, and Chaudas valleys have the same rule in this matter as is enjoined by the Mitakshara. They are

Rule 98.

utterly ignorant of Brahmanism or the Mitakshara and the existence of such a peculiar custom in two such different societies is difficult to explain. I am inclined to think that the custom is probably pre-Aryan and the Aryans adopted it from the aborigines. It is therefore found in the Aryan settlers in the plains as in the original residents of the mountains. But the Aryan immigrants into the hills probably discarded it because of the paucity of women among them and the consequent weak position of females generally. But this is pure conjecture. My friend Mr. K. P. Jayaswal, the eminent Hindu lawyer, tells me that in his opinion the custom among the Aryans is of indigenous growth and must have arisen independently in these highland races of Mongolian affinity. It seems, however, too much strain on one's faith to believe that such a peculiar custom could have arisen independently in two such different people. The custom relating to *stridhan* does not seem to have been noticed by Stowell or other writers.

F.—Maintenance.

278. There is no difference between the position of legitimate and

Rule 26.

illegitimate sons in Kumaun except that in a few castes he cannot get the inheritance. In other castes, as is explained later (paragraph 290), a father may, if he so likes, make an unequal distribution of his property in his lifetime and give a smaller share to any of his sons. But in no caste, high or low, can a son be deprived of his right to adequate maintenance until he attains majority. Illegitimate sons are entitled to this as well as legitimate sons.

279. The same rule applies to a daughter. She is not an heir at all

Rule 27..

but is entitled to maintenance until she is given in marriage, and to her marriage expenses. There is no difference between legitimate and illegitimate daughters in this matter in any caste, high or low.

280. So also wives, married or *āhanti*, have the right to be main-

Rule 28.

tained in all castes as long as they live at home and are chaste. If a woman leaves her husband to become the wife of another she forfeits all claim to the consideration of the first husband. This is the local custom and is also commonsense. It is not understood how Stowell has brought himself to say (K. R. C. section 11) that a widow may take another husband and yet remain entitled to maintenance from her first husband's estate. Although the people of Kumaun have not much objection to a woman taking a second husband yet they look

with horror upon the idea that she should have any claim left upon a husband whom she had left. And they assured me that it made no difference even if the two husbands were own brothers. The judgement in *Jamnu v. Manuli* (K. R., page 25) from which Stowell seems to derive his opinion does not seem quite to justify it. Colonel Erskine, the Commissioner, in that case seemed to doubt that the woman had taken a second husband and therefore said " She is the widow of Jaya " (the first husband) " and should look to her sons for support." I have discussed the facts of that case in many a village, and everywhere I have been assured that once a woman leaves her husband's home and takes another husband she forfeits all claim to inheritance or maintenance from that first husband's estate.

231. Again, according to Hindu Law as interpreted in the plains a woman's right to maintenance does not depend upon her living in the family home. She may live outside it and yet maintain a successful claim to a separate allotment in cash for her maintenance (see M. H. L., page 632). In Kumaun, custom does not recognise any such right. It is quite common for widows, especially young ones, to leave the home and go back to live with their parents. In such cases they cannot claim maintenance from their husband's family. As is well-known, a woman does much more work in the fields than a man; and a shrewd villager once asked me pertinently " She gives the benefit of her labour and industry to one family: why should another family be responsible for her maintenance?" There have been recently one or two cases in which courts have, acting on the principle as applied in the plains, given decrees for maintenance to non-resident females; but the decisions are repugnant to the feelings of the people, and contrary to custom.

232. Stowell also says (K.R.C., section 11) that where a man leaves two widows, a married one and a *dhanti*, the latter is entitled to maintenance only. If this was the general custom in his time, it has changed certainly now. Now the question whether a *dhanti* is entitled to the inheritance or to maintenance only does not depend upon the existence or absence of a properly married widow, but upon whether the husband belonged to one of the castes given in list A or not. In the former case she cannot get the estate in any contingency, and must always get maintenance. In the latter case her right is identical with that of other widows, and she gets the inheritance if there are no sons (rule 15) and maintenance otherwise (rule 28.)

233. There are numerous instances of *Jhantelas*, as there must be in a country where it is common for a woman to leave one husband for another. Such children naturally do

Rule 29.

Rule 31.

not succeed in obtaining anything from their own fathers whom their mother had deserted. On the other hand the new husband of their mother nearly always feels some interest—if not actual responsibility—for them. In cases where he gets no children of his own he often adopts the *Jhantela* as a son and gives him his whole estate. And even when he has sons he does not leave the *Jhantela* quite unprovided but gives him a part. Indeed instances are not uncommon where he has been given a share equal to that of the sons. It is difficult to say how far these instances constitute or indicate a right to inherit. I do not go so far as that, but merely conclude that a *Jhantela* has a sufficient share in the foster-father's property for his or her maintenance.

G.—Joint Hindu family.

284. This subject presents the greatest difficulty, for the local customs differ from the Mitakshara more widely than in any other matter. It may be said to start with that the joint family system is still in vogue, though it is losing its hold on account of causes which are well-known, being common to the rest of the province and which therefore need not be stated here. The incidence of a Kumaun co-parcenary is widely different from that of the Mitakshara. As has been already shown in the section on Inheritance (paragraphs 260 and 262), and will be demonstrated further in this chapter, it resembles more the joint family system in vogue in Bengal.

285. There are four matters which deserve notice in this connection:—

- (i) the rights of the father in the joint property ;
- (ii) the rights of the son and son's issue in the lifetime of the father ;
- (iii) the rights of other co-parceners ;
- (iv) the rights of widows.

286. I shall take up no. (iii) first, as it has been noticed in greater detail than the rest by earlier writers. It is hardly necessary to state that the Mitakshara does not permit alienations of the joint undivided property by a co-parcener, and as Mayne points out (M. H. L., page 482), in strict logic of course it should not be possible for him to alienate it indirectly either by incurring a debt and letting the creditors take his (co-parcener's) share in execution of decree. But in respect of the latter matter the contrary rule has been laid down by the Privy Council. The custom in Kumaun is in accord with this decision, i.e., to say a co-parcener's undivided share in joint family property can be seized to satisfy a decree.

287. We come next to voluntary alienations. The Mitakshara, as interpreted in these provinces, does not permit a co-parcener to transfer his

share to an outsider even for valuable consideration. He may not transfer it even to a single member of the family for his own benefit (M. H. L., page 494). The custom in Kumaun has, however, always allowed alienations by a co-parcener. There was no doubt about this matter until a recent decision of the Commissioner. Pauw, writing in 1896 (G. S. R., page 43) said: "... In the hills the *shikmi hissadar* has always been permitted to exercise full proprietary rights over his nominal share of the inheritance." Stowell affirmed this in 1906 (K. L. T., pages 42 and 43). But in 1911 it was held in *Sukhdeo Prasad v. Gauri Datt* (K. R., page 39) by the Commissioner (J. S. Campbell) that the alienation by a younger brother of his share in the joint estate was invalid. The judgment is extraordinarily brief for a matter of such importance, and does not discuss the local custom at all. In the head-note Stowell says that the judgement is in conflict with the local custom prevailing throughout the hills. The draft Kumaun Laws Bill, prepared in 1915, stated that custom allowed such alienations. On account of the existence of this ruling I enquired into this matter specially carefully and have found the custom throughout the division to be as stated in rule 32.

288. But though a co-parcener can transfer his undivided share or
 Rule 32. a part thereof he may not alienate any specific property
 unless the same has been in his separate possession by
 a private partition. Such private partitions are common in Kumaun.

289. The remaining matters, viz., the rights of the father, the son, and the widow in a joint family are disposed of by Stowell (K. L. T., page 43) in a single sentence:—"With the exception noted by Mr. Pauw" (about co-parceners) "the questions arising out of joint holdings are referable to the ordinary rules of Mitakshara law." This is not quite correct. Enquiries show that in the remaining matters also there are points of difference from the orthodox law.

290. To take up first the case of the son and his issue during the
 Rules 34 and 35. lifetime of the father, it should be noted that, according
 to the theory of the Mitakshara law, a man's sons, grandsons, and grand-grand sons, are equal co-parceners with him and have, from the moment of their birth, an interest in the ancestral family property equal to his (father's) own. There are in the Mitakshara two tests of co-parcenary rights (a) the right to have his own share partitioned and separated, (b) the liability of the family property to be seized in satisfaction of his separate debts, whatever their nature, to the extent of his share. In Kumaun a third test is also available, viz. (c) the power to alienate his share. I kept these three tests before me in my enquiry

and tried to find whether any of them were true of sons in Kumaun. I found absolute unanimity on the following points:—

- (a) A son cannot demand a partition of his share against the wishes of the father.
- (b) The family property in the hands of the father is not liable to be seized in execution of decrees against the son for his separate debts, whereas the whole of the property can be attached and sold to satisfy a decree against the father for his debts, thus leaving nothing for the sons.
- (c) The son cannot alienate any part of the property in the lifetime of the father.

Thus the three principal characteristics of a Mitakshara co-parcener are not to be found in the case of the son in Kumaun. Their position rather resembles that of sons in the Dayabhaga. It follows that during his father's lifetime he is not a co-parcener in the sense the term is used in Hindu Law. He has no share in the family property until his father's death.

291. From these conclusions it follows that the sons have no power to

Rule 36.

restrain the father from disposing of the property in any way he likes *inter vivos*. Instances are common in which a father has exercised this power, e.g., when he makes an unequal division of the property among sons by different wives (*sautia bant*) or differentiates between sons of a married and of a *dhanti* wife. I was told that there had been some cases in which the family property had been seized in satisfaction of the son's debts as if he were a co-parcener, and that he was also allowed in other cases to challenge his father's disposal of the family property. But such decisions were mentioned with disapproval, and there are plenty of decisions to the contrary. Many residents of Kumaun with experience of the world have urged upon me the desirability of jealously guarding this special local custom. The rule of the Mitakshara which gives the sons from their birth a definite share in the property which they can borrow against or take away from the father forcibly and squander as they please has frequently led to unhappy results in the plains, and they are not anxious to see them repeated in Kumaun. True that on the other hand a Kumaun father has unrestricted power of disposal which he may abuse, but the chances of a father doing that are less than those of the son. Also polygamy and *dhanti* wives being so common among the people on account of the need of women for agricultural operations it is essential that the father should have the power of making an unequal division among the sons should he consider it necessary. But he must exercise this power in his lifetime. His authority cannot continue so as to take effect after his death. It is for this reason that he cannot make any will with regard to ancestral property

(rule 37). In this respect again the custom in Kumaun resembles the Bengal rather than the Benares Law. Under the former the father in dealing with any property may distribute it as he likes. If he conforms to the rules of partition the transaction will be valid by mutual agreement without actual apportionment followed by possession; but if he does not conform to those rules, then he must deliver the share to each of the sharers, so as to make a valid gift to each. (M. H. L., page 685). The custom in Kumaun is identical.

292. The right of a widow to succeed to her deceased husband's share in the joint property has already been discussed (para-
 Rule 37. graph 259 above) and needs no further elaboration.

H.—Widow's estate.

293. The Mitakshara insists upon chastity as a condition precedent to the taking by the widow of her husband's estate; at the same time once she has obtained the estate, subsequent unchastity will not entail a forfeiture. The custom in Kumaun differs from the Mitakshara in both these points and is at the same time more strict and more lax than the rule of the book. As long as a woman continues to live in the family home unchastity brings no legal penalty with it. It is only when the unchastity is accompanied by the leaving of the family home and protection that legal notice is taken of it. Thus an unchaste widow living in the home will succeed to the property, but not if she had left the
 Rule 89. home. Again, subsequent unchastity will cause forfeiture of property if the widow leaves the home, though in similar circumstances the Mitakshara will not divest her of the estate.

294. Cases are frequent (though strange to say Stowell never came across one) in which widows have brought a man to live with them at their homes openly as husband without losing the property, whereas their going as wife to the man's home entails forfeiture at once.
 Explanation (3).

295. Stowell presumes (K. R. C., section 19)—but without giving any reason for his belief—that the elder brother's widow, when taken to wife by the younger brother, would be an exception to the general rule, i.e., to say she would not forfeit her property. But enquiries show this opinion to be wrong. If a widow subsequently to succeeding to her husband's estate and getting mutation in her name goes to live as wife with a brother of her late husband, she is always required to give up the estate which is then divided up by all the brothers equally. Of course when there is only one surviving brother the question is of no importance. It is a matter of indifference to him whether her name continues to be recorded or not. The property becomes

his for all intents and purposes when she becomes his. The consensus of opinion is that a widow must give up the property on going to a second husband even if he be the first husband's brother.

296. This requirement of chastity by the Mitakshara is confined to widows only. It does not extend to daughters and

Explanation (1). mothers and other female heirs (M. H. L., pages 783 and 784). I have not come across any instances in Kumaun to the contrary, i.e., to say in which a daughter or a mother might have been divested of her estate on account of unchastity. On the other hand, I have seen cases in which a mother has taken a second husband and has yet been allowed to continue in possession of the property. So also there are cases in which a daughter, who had received property from her father by gift (there is no inheritance to a daughter in Kumaun) has taken a second husband without losing the property. Explanation (1) is therefore not in modification of the Mitakshara and is, strictly speaking, redundant, but has been put in for the sake of completeness and to avoid doubt.

I.—Wills.

297. Under the Mitakshara a man has no power to deal with ancestral property by will. The custom in Kumaun is

Rule 40. in accordance with the law. It has been stated in the rule only to prevent any misunderstanding or doubt. The sons, it has been shown, have no share or right in the property in their father's lifetime and lest it be argued from it that a father's power to bequeath was also unfettered it has been considered advisable to state the custom expressly.

J.—Marriage.

298. Stowell says (K. R. C., section 7): "The ordinary form of lawful marriage in the hills calls for no special remark. The essential ceremony of *saptapadi* is always performed." These statements are not quite accurate. First of all marriages between different castes are recognised to a certain extent in Kumaun but are not valid in the plains at all. A Bill is even now before the Viceroy's Council seeking to validate such marriages. In Kumaun, on the other hand, inter-marriages are well established by custom among the Vaishyas and are not infrequent in other castes also, especially in North Garhwal. Again, the statement about *saptapadi* needs considerable modification. There are several forms of valid and legitimate marriages in which the

● Rule 41 (a). *saptapadi* is not performed at all (rules 45 and 46). In the most orthodox form called the *anchal* form of marriage, the *saptapadi* is usually performed but is neither necessary.

nor sufficient by itself to constitute marriage. It is therefore not essential. This is explained more fully in paragraph 309 below.

299. It should be noted that all forms of marriage are equally legitimate, and there can be no question of one being more or less legitimate than the other. Again, although certain forms are more affected by members of a particular community, or residents of a particular locality than others, there is no hard-and-fast restrictions of that kind. A high-caste Brahman may despise the marriage for money, yet his poor brother may go in for that form of marriage without its being considered illegal.

300. The question of inter-marriage presents no difficulty. In all castes, except Vaishyas, such marriages, though performed with the full puranic ritual, rank merely as *dhanti* connections. But Vaishyas take Rajput wives and consider them as properly married wives.

301. It is the commonest occurrence amongst the bulk of the population of the division for a man to take another man's wife or widow to live with him. Miss A. N. Budden, who has worked as a missionary among these people for nearly half a century, thus enumerates the reasons for which a man comes to make these matches.

Rule 41(b).

- (1) Because the married wife dies and if he had another legal marriage he could only get a little girl who could neither be wife; nor an efficient worker in the fields, so he chooses a grown-up woman even if she be somebody else's wife.
- (2) Because his married wife has no son, and again a legal marriage would mean a useless child wife.
- (3) Because he has increased his cultivation so much that no one woman can cultivate it alone, so brings another grown-up wife; or he may be of a caste the members of which do not plough and so brings a Rajput wife. A wife would be cheaper and more faithful than a servant.
- (4) Because his wife deserts him and goes to some one else whom he persecutes and gets the marriage money from him and thus pays for the woman whom he gets in her place.
- (5) Because he himself falls in love with another woman and brings her home to be his second wife really intending to keep them both.

The wife so taken is generally the wife or widow of another, and is called a *dhanti*. The connection is more or less of a permanent nature and amongst the bulk of the people is not considered at all disgraceful.

302. *Price*.—Generally the person who takes a *dhanti* has to pay a price for her to her husband, or, if he be dead, to his relations. Sometimes in the case of a widow who has gone back to live in her paternal family the latter

Rule 42.

take her price. When a price is paid a deed of *la dava* (disclaimer) is executed and the money is euphemistically recorded as having been paid for any jewellery, etc., which the woman may have had in her possession. This is a fairly ancient custom, and I have seen such *la dava* deeds of the time of the Gurkha rule : custom enforced the payment of the price by ruling that the woman and her children would be considered socially inferior until the price was paid. This could be done at any time ; cases are known in which the *dhanti's* children have themselves paid the price of their mother long after the death of the father. This was a simple and effective weapon ; but it followed that the payment of the price was not essential where the *dhanti* was taken from one's own family, e.g., a brother's widow, or any other relation for the woman in such cases was of the same family and therefore of equal status to start with. The custom is now undergoing a change. The inclusion of the *dhanti* and her children in the *bradri* does not now depend quite so rigorously upon the payment of a price. In Garhwal a price is never paid for a widow, or almost never.

Rules 41(c) and 303. On the custom of keeping a brother's wife
43. Pauw writes as follows (G. S. R., page 44):—

“ In all but the very highest castes in Garhwal it is the custom for a man to take into his house as his wife the widow of a deceased elder brother (*bhauj*). In such cases the woman is regarded as equal to a lawful married wife and offspring as legitimate (*ast*) children, but if the *bhauj* continues to live in her deceased husband's house she is looked upon as a mere concubine and the issue is illegitimate (*kamast*).—*Kripal Singh v. Pratap Singh*, Mr. Giles, Commissioner, July 18th, 1891.”

Stowell seems to think (K. R. C., section 8) that this remark is true of the whole of the division. There is no ruling other than the one mentioned in support of this proposition. Enquiries show that the custom has now changed to some extent. First of all, instances of taking a *bhauj* to wife have been found in even the very highest castes in all the three districts of the division. Again, there is now no distinction for purposes of inheritance in any of the three districts whether the *bhauj* goes to live in the home of her husband's brother or cohabits with him in her own home.

304. Again, Stowell says (K. R. C., section 9) that the *bhauj* is not entitled to inherit her second husband's estate, but must look for maintenance to her first husband's estate. He cites *Jammu v. Manuli* as an authority for this statement, but I have already shown (paragraph 279 above) that that ruling does not quite justify this conclusion. The court in that case does not appear to have believed that the woman really and truly took the second husband. It therefore gave her no share in the second husband's

estate. A *bhauj* case is after all a particular form of the more general case of the *dhanti*. No one will suggest for a moment that a woman who deserted one husband and went to live with a second would on the latter's death be entitled to any consideration—share or maintenance—out of the first husband's estate. Writing in 1907 Stowell said clearly (K. L. T., page 54) that this ruling was in conflict with the usual custom. He was perfectly right there. It is not understood how he changed his opinion and in 1916 came to affirm that it was in accordance with the local opinion (K. R. C. section 8). It certainly is not. The people were horrified at the idea of a wife being given a right in the estate of any except her last husband. If she chooses to leave the husband, they say, she must forego all rights in his estate also. This is the custom and it seems in consonance with commonsense.

305. I have spoken all along of *bhauj*, i.e., an elder brother's wife. Occasionally a younger brother's widow is taken to wife by the deceased husband's elder brother, but such instances are not common, except in that portion of the Garhwal district which adjoins the Tehri State where the practice is said to be quite common. There is no difference in the legal status of the two kinds of brother's widows. Earlier writers do not appear to have noticed this point.

306. No ceremonies are essential when a brother's widow is taken as wife. But like a *dhanti* wife she adopts the use of the *charew* (the black beads which are the symbol of widowhood in the hills).

307. Pauw implies (G. S. R., page 44) that the custom of keeping Tekwas was confined to Khasyas. Stowell apparently Rules 41(d) and 44. had never come across any instances of this practice (K. L. T., page 44). Both these remarks are surprising. Tekwas are not very uncommon. Hardly a day passed when I did not come across one or two examples. The custom is not confined to Khasyas; instances have been found in the higher castes also. But, of course, it is impossible to say with certainty of any caste that is not Khasya or mixed with Khasya. There are no rulings available on the subject of Tekwas, the reason for which is obvious. A Tekwa has no *locus standi*. He has no claim to any part of the estate of the first husband of the woman who keeps him. If he gets anything it is by the consent of the reversioners.

308. The different forms of the marriage ceremony do not need Rules 45 and 46. many remarks because they have been described sufficiently fully for our purposes in the rules themselves. A few brief notes are here appended.

309. The *kanyadan*, or the *anchal* form. This is the most orthodox form of marriage—rules 45 (1) and 46 (1). Stowell says of this (K. R. C., section 7) that the essential ceremony of *saptapadi* is always performed.

He must have been misinformed. In the plains no doubt the *saptapadi* or seven times walking round the sacrificial fire is held to be essential and sufficient to constitute a valid marriage. Until and unless that ceremony is performed there is no marriage at all. Suppose the bridegroom were to die in the middle of the marriage ceremonies just before the *saptapadi*, no marriage will have taken place and the bride will not be constituted a widow. The *saptapadi* is performed immediately after the giving of the bride to the bridegroom. In Kumaun the *saptapadi* though nearly always performed is not essential in the same sense. It is the *anchal* or the tying together of the bride to the bridegroom which in Kumaun is the essential ceremony in the orthodox form of marriage in the higher castes. This marriage ceremony is described in some detail in Atkinson's *The Himalayan Districts*, volume II, pages 909 and 910. The father of the girl gives her hand to the bridegroom who holds her thumb, and while he is holding it, a part of her dress (*anchal*) is tied to his and she leaves her father's side and goes to sit by her husband. Then, and not till then, does the bridegroom let go her thumb. This is the real marriage. The parties at this moment receive the congratulations of friends and relations on the successful performance of the ceremony. After that the dowry is given. Later, often after an interval of several hours, the *saptapadi* is performed outside the house of the bride, her father often not being present. I have been assured by experienced householders, and learned pandits in Kumaun that the parties become husband and wife as soon as the *anchal* is tied, and that if the husband were to die in the interval between the *anchal* and the *saptapadi* the girl would become a widow.

310. The *taka ka byah*,—rule 45 (2)—is a common form of marriage in Garhwal and is practised by all castes. It should be noted carefully. The fact that it was not mentioned by Stowell and other earlier writers is to a large extent responsible for the unjust decision in *Fateh Singh v. Gabar Singh* (K. R., page 47).

311. *Temple marriage*.—This is essentially a Garhwal custom and is practised in Almora only in the Salt patti which adjoin the Garhwal district. The following temples have come to my notice as being those where such marriages take place. There must be others also :—

Mahadeo at Salt, and at Marchula; Bilkedar near Srinagar; Hariali Devi at Jasuli, patti Ranigarh; sacred tank at Jhal, patti Badalpur; Mahadeo at Apola, patti Idakot; Bhuvaneshwari Devi at Dandamandi, patti Langur Palla; Thal nadi between Ajmer palla and Udaipur Walla patti. Mahadeo at Mahadeo Chatli between Lachman Jhula and Byasghat; Bhairab at Lingarh, patti Langur palla; Mahadeo at Mabgarh or Ajmergarh path, Ajmer palla; Ramjis temple at Ramjani,

patti Udaipur palla; Jamkeshwar Mahadeo in patti Udaipur walla Banchuri Devi in patti Udaipur walla; Lachmanji's temple in patti Sitonsyun; Raghunathjis temple at Deoprayag in the Tehri State.

This form of marriage is not confined to any particular community.

312. *Formal entry marriage*.—This form also is not confined to any particular caste, instances have been found in some of the high class families amongst the Rajputs and the Brahmans.

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*The references throughout are to paragraphs. The letters (a), (b), (c) etc. within brackets after the number of the paragraphs denote the sub-sections of the paragraphs while the capital letter C without brackets refers to the paragraphs of the commentary.

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