

# Custom, law and John Company in Kumaon.

The meeting of local custom with the emergent formal governmental practices of the British East India Company in the Himalayan region of Kumaon, 1815–1843.

Mark Gordon Jones, November 2018.

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Mark Jones

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## Abstract

The meeting of Indian custom and law with the emergent formal legal, revenue and administrative practice of the British East India Company has long been a central subject of South Asian historical studies. Overwhelmingly, this vast corpus of scholarship has been centred on and contextualized by the experience and conditions of the Indian heartlands. This thesis takes the study of the meeting of local custom with the Company's formal governmental practices out of the Indian heartlands up into the peripheral Himalayan region of Kumaon.

Kumaon is the little patch of the Himalaya tucked up where today India, Nepal and Tibet all meet in a tangle of green hills, plunging valleys and icy peaks to the northeast of Delhi. The contrast of the region's mountainous landscape to the awesome flatness of the adjacent North Indian plains could not be more extreme. Within Kumaon's very different landscape, the population had remained light and widely scattered, a monetized economy based on specialization of production focused on urban centres had only emerged to a limited degree, and the people had persisted with and developed cultural practices that were distant and distinct from the orthodoxies of India's heartland. Crucially, the Indo-Islamic empires of the plains had never been able to conquer and hold territory in these hills and, as a consequence, the region had had no experience with the legal, revenue and administrative practices of the Mughal empire.

The British East India Company invaded and held Kumaon in 1815. Here they found a matrix of economic, political and cultural conditions very different from everything they knew from the plains below. Aware that its regulations—the embodiment of its formal governmental practices—were a palimpsest written on the pre-existing conditions of the plains and the vestiges of late-Mughal machinery of government, the Company chose not to impose its regulations in Kumaon. Rather, Kumaon would be an Extra-Regulation province where much of the everyday practices of government were in the hands

of the local Commissioner. Within this space beyond the regulations, the meeting of local custom and the Company's formal governmental practices took on a trajectory that was distant and distinct to the trajectory of the meeting on the plains. This thesis brings to light the early years of Kumaon's meeting with the practices of the British India Company in the period 1815 to 1843.

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## Chapter 1, Introduction



**Figure 1.1. Nanda Devi massif from the ridge above Kumaon's geographic and cultural heart, the town of Almora.**

Kumaon is a little patch of the Indian Himalaya tucked up where India, Nepal and China all meet just to the north-east of Delhi. The contrast of the region's landscape of green hills, plunging valleys and icy peaks to the awesome flatness of the adjacent North Indian plains is profound. Indeed, so profound that, despite the two spaces physical proximity, they had remained economically, politically, and culturally distant and distinct in the pre-colonial era.<sup>1</sup> Even today, when Kumaon is indivisible from the Indian nation-state, this distance and distinction is reflected in the terms used to refer to the two spaces and their peoples. Kumaon is part of the Pahar (the hills), and its people often refer to

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<sup>1</sup> Aniket Alam, *Becoming India: Western Himalayas under British Rule* (New Delhi: Cambridge University, 2008), rear cover.

themselves and their language as Pahari.<sup>2</sup> In contrast, the plains are the Desh (the land, home or country) and its people often refer to themselves as Deshi.<sup>3</sup>

In the early hot season of 1815, the British East India Company invaded and occupied Kumaon as part of a wider campaign against the similarly expansionary Gurkha Empire. In capturing Kumaon, the Company took its empire into a space that was very different from everything it knew from the plains below.

Aware of the region's distance and distinction, the Company chose not to apply its regulations—the embodiment of the new modes of governmental practice founded in positivist law that were emerging in the Indian heartlands—in this mountainous region. Rather, Kumaon would become an Extra-Regulation province, a space beyond the Company's regulations. Within this alternate space, the meeting of Kumaoni custom and the Company's emergent formal, state-centred, textually mediated, legal, revenue and administrative practices took on a different trajectory to the meeting on the plains. This thesis will bring to light the early years of this little-studied meeting with an emphasis on the adaptations and transformations seen in both Kumaoni custom and the Company's modes of governance between 1815 and 1843.

## **The clash of empires**

The rise of the two antagonistic empires—the Gurkhas in the Himalaya and the Company on the North Indian plains—had roughly paralleled each other from the middle of the eighteenth century onwards.

During the seventeenth century, the Company, focused on trade, had largely remained confined to its factories. On the North Indian plains, this was essentially Calcutta and a few trading posts such as Kasim Bazar. However, from the middle of the eighteenth century onwards, the Company transformed from being primarily a trading enterprise to a colonial power focused on acquiring sovereign rights over territory and the land revenues that came with those rights. The symbolic moment of this

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<sup>2</sup> Pahari is a broad, but widely accepted term for the ethno-linguistic kaleidoscope running from Kashmir in the west to Eastern Nepal. Gerald D. Berreman, *Hindus of the Himalayas: Ethnography and change*, 2nd ed. (Berkeley, Los Angeles, London: University of California Press, 1972), p. 14.

<sup>3</sup> OED.

transformation was the well-known battle of Plassey in 1757.<sup>4</sup> By the early years of the nineteenth century, the Company had extended the territories it controlled, either through conquest or treaty, all the way westwards along the Ganges plain to Haridwar where the river emerges from the hills. In 1814, this expansion put the Company's Governor-General, Francis Edward Rawdon-Hastings gazing up at the cool heights of Kumaon contemplating the natural limits of the Company's empire and the possibility of finally realizing the Company's long-held desire to trade directly with the lands beyond the snowy mountains.<sup>5</sup> In particular, the Company wanted direct access to the fabulous low-bulk/high-value shawl wool only available from 'Tartary' that they believed could be used to transmit their profits back to England efficiently. The Gurkhas blocked the Company's access to this product with tariffs so high that the trade was unprofitable while to the west, Ranjit Singh of the Punjab held a monopoly in the shawl wool trade that flowed through Kashmir and the Sutlej Valley.<sup>6</sup>

Similarly, early in the eighteenth century, Gorkha was just one of the many hundreds of unstable petty Hill States found across the Himalaya. However, by 1736, the Shah dynasty of Gorkha had established hegemony over the Chaubisi, the twenty-four petty lordships of the Gandaki basin.<sup>7</sup> From this power base, the dynasty progressively extended its domain incorporating nearby kingdoms including the three kingdoms of the Nepal valley—Kathmandu in 1767, then Patan and Bhatgaon in 1769.<sup>8</sup> With this rich rice bowl and its land revenues in their possession, the Gurkha Empire rapidly expanded across the Himalaya, eventually reaching Kangra in the west and Bhutan in the east. As part of these conquests, the Gurkhas occupied Kumaon in 1790 with the denizens of Almora, the region's capital, offering no resistance after many years of chaotic rule under the Chand dynasty.<sup>9</sup>

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<sup>4</sup> Here, complex historical events are reduced to three sentences. However, as these events are not the focus of this thesis these three sentences are sufficient to carry the narrative.

<sup>5</sup> Francis Rawdon-Hastings Hastings and Marchioness Sophia Frederica Christina Chrichton-Stuart, *The Private Journal of the Marquess of Hastings*, vol. 1 (London: Saunders and Otley, 1858), p. 251.

<sup>6</sup> John Pemble, *Britain's Gurkha War: The invasion of Nepal, 1814–16* (Barnsley: Frontline Books, 2008), pp. 30–89.

<sup>7</sup> Francis Hamilton, *An Account of the Kingdom of Nepal: And of the Territories Annexed to this Dominion by the House of Gorkha* (Edinburgh: Archibold, Constable and Company, 1819), pp. 237–90.

<sup>8</sup> Pemble, *Britain's Gurkha War*, 2008, p. 10; Ludwig F. Stiller, *The Rise of the House of Gorkha: A study in the unification of Nepal, 1768–1816* (Ranchi: The Patna Jesuit Society, 1973), pp. 125–33.

<sup>9</sup> Pemble, *Britain's Gurkha War: The invasion of Nepal, 1814–16*, pp. 14–15.

Gurkha ambitions even extended north of the main Himalaya and included the sacking of Lhasa in Tibet in 1788 and 1791.<sup>10</sup> This last adventure drew the ire of the Chinese Government who sent an army to chastise the Gurkhas in 1792.<sup>11</sup> With a Chinese army before the walls of Kathmandu, the Gurkhas surrendered and returned both prisoners and loot to Tibet, along with agreeing to pay a quinquennial tribute to Beijing.<sup>12</sup> The implications of this agreement by Nepal to pay tribute for broader political relations are not clear. However, the Company's perception was, that as a tributary state, the Gurkhas could expect at least some level of military and political support from the Qing Emperor.<sup>13</sup>

By the early 1800s, the Company and Gurkhas' parallel expansion had resulted in the two empires sharing a border at the intersection of the Pahar and the Desh over a thousand kilometres long. Much of this liminal space was heavily forested, unmapped and unsighted by both Gurkha and Company officers who were anxious to claim all revenue yielding lands as their own. This was especially the case for the royal court at Kathmandu as nearly all the lands in the hills had been allocated directly to the support of the army while the revenue of these new lands would flow to the court. Complicating the picture, much of the lands along the border on the Company's side were held by treaty states such as Avadh who were equally keen to claim any land revenue they could. As treaty states, they looked to the Company to assert their interests.

Disputes and conflicts arose at many places along the border between the two empires. With the Company agent in Ludhiana Colonel David Orchterlony spoiling for a fight and a more assertive stance put forward by the Gurkha Commander Amar Singh Thapa desperate for funds, a collision between the two empires became inevitable.<sup>14</sup> After five years of tension, matters came to a head in April of 1814 when the Company sent troops to reclaim the disputed police posts of Butwal and Siuraj on the border north of Gorakhpur and far to Kumaon's east.<sup>15</sup> This adventure did not go well for the

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<sup>10</sup> Ibid., pp. 67-68.

<sup>11</sup> Ibid.

<sup>12</sup> Stiller, *The Rise of the House of Gorkha: A study in the unification of Nepal, 1768-1816*, p. 212.

<sup>13</sup> Ibid., p. 213.

<sup>14</sup> Pemble, *Britain's Gurkha War*, pp. 41-42.

<sup>15</sup> Ibid., pp. 47-48.

Company, and resulted in the execution of the troop's senior officer, which locked Governor-General Rawdon-Hastings into the process that led to open war with Nepal.

Hostilities had to wait, however, both for the rains to finish and for the ponderously slow assembly of troops under Major-General Robert Rollo Gillespie before the Gurkha fort of Kalanga above Dehradun in late October.<sup>16</sup> A direct assault on Kathmandu was not considered prudent by the Company. The Gurkhas had sent a much-publicized deputation to Beijing to pay their quinquennial tribute only the year before, and the Qing Emperor had reciprocated with a substantial donation to a Nepali temple which arrived escorted by a large contingent of Imperial troops in mid-1814. With Sino-Gurkha relations on a high, the Company did not want its troops to meet Qing forces in the Nepal valley.<sup>17</sup>

Given the Company's concerns about the potential negative impact of a direct assault on Kathmandu for their relations with the Chinese, at least initially, the ensuing war played out in a series of often inconclusive encounters on the periphery of the Gurkha Empire.<sup>18</sup> These battles included the expulsion of the Gurkhas from Almora on 31 April 1815 and the retreat of their forces east of the Kali River which today forms Nepal's western border. The Company sued for peace at this point and negotiated the Treaty of Sugauli, which left much of the territory of current day Nepal under Gurkha control. However, Kathmandu delayed ratification of the Treaty, and the outcome of the war was eventually decided at the battle of Makwanpur Gadi in February 1816.<sup>19</sup> Here, Major-General David Orchterlony defeated the main Gurkha forces defending the passes leading to Kathmandu and forced the ratification of the Treaty on 4 March 1816 without Company troops entering the Nepal Valley.<sup>20</sup> Crucially for future events in Kumaon, Article V of the Treaty formalized the Company's existing *de facto* control over Kumaon and all other Gurkha territories west of the Kali River.<sup>21</sup>

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<sup>16</sup> Ibid., pp. 139-40.

<sup>17</sup> Ibid., p. 52.

<sup>18</sup> 'Secret letter from Bengal dated 14 December' in East India Company, *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War* (London: J.L. Cox, 1824), p. 261 para. 47.

<sup>19</sup> 'Secret letter from Bengal dated 30th March 1816' in *ibid.*, pp. 946-52.

<sup>20</sup> Pemble, *Britain's Gurkha War: The invasion of Nepal, 1814-16*, pp. 300-23.

<sup>21</sup> Treaty of Sugauli, 2nd December 1815 between East India Company and the Kingdom of Nepal. See <https://web.archive.org/web/20060528083207/http://www.nepalicongress.org.np/contents/nepal/treaties/2.php>. Accessed 15/02/2018.

The Pahar was not a space to take an empire of the plains if the aim was immediate financial gain. Earlier exploratory and intelligence missions through the rugged landscape of the newly ceded territory had convinced the Company that it could not generate land tax sufficient to cover the cost of occupation. Indeed, Company intelligence was so precise that it often assessed Nepali receipts drawn from the region to within a few rupees of actual receipts.<sup>22</sup> Rather than taking on the financial burden these mountainous spaces would have presented, the Company consigned the mosaic of over 30 petty Hill States, stretching from the Sutlej valley in the west to Teri Garhwal in the east, to the control of the region's putative erstwhile rulers. These petty Hill Chiefs, although nominally independent regarding internal matters, were required to allow the free passage of traders and Company troops, as well as to pay tribute in cash, kind and labour.<sup>23</sup> The exceptions to this policy were Kumaon and the eastern half of Garhwal. Here, the Company chose to hold and administer its newly-won territory directly.

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<sup>22</sup> Hamilton, *An Account of the Kingdom of Nepal: And of the Territories Annexed to this Dominion by the House of Gorkha*, pp. 291-308.

<sup>23</sup> Adam, J. - Secretary to Government to Orchterlony, Major General, 28/4/1815, KDMLR, vol: 7; Adam, J. - Secretary to Government to Orchterlony, Major General, 8/7/1815, KDMLR, vol: 7. Adam, J. - Secretary to Government to Orchterlony, Major General, 17/8/1815, KDMLR, vol: 7.

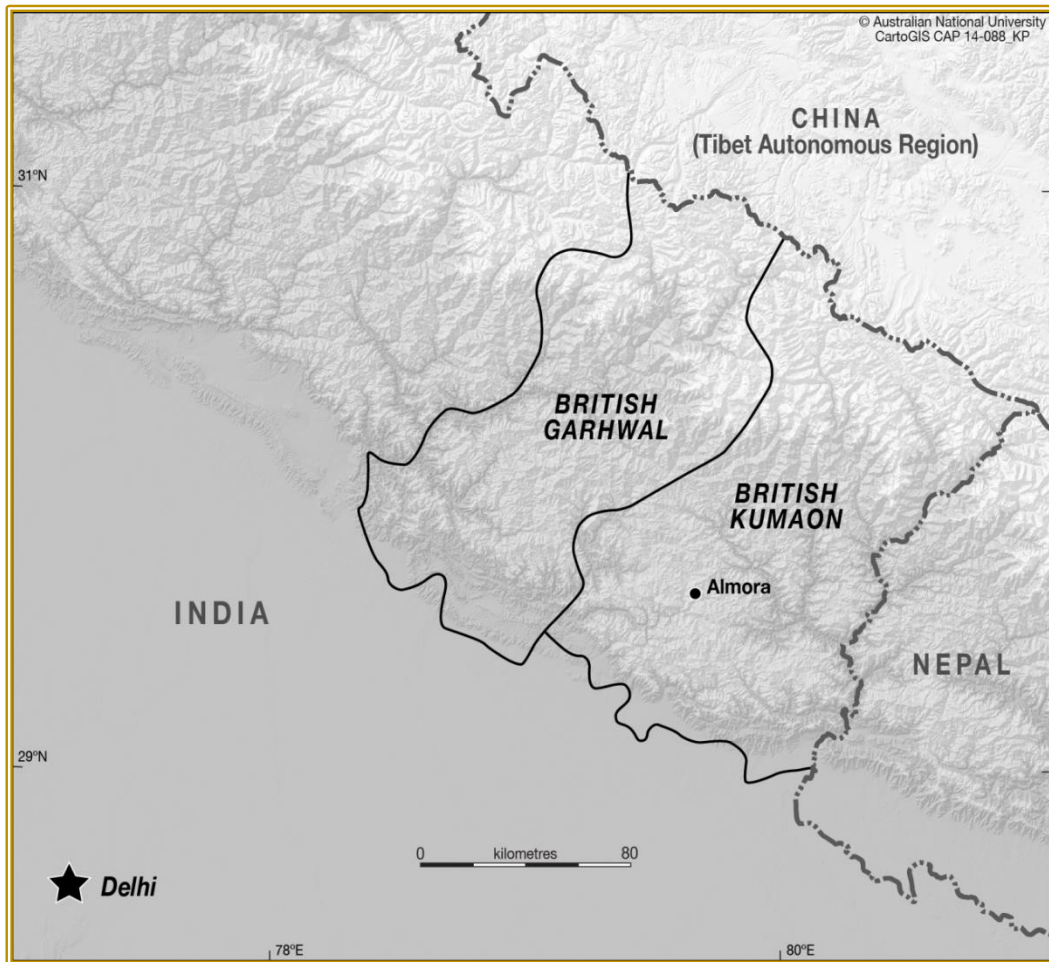


Figure 1.2. Kumaon Division 1872.

While Kumaon proper presented the Company with the best prospect of any of the Hill States of at least breaking even on such a venture, the alternative policy of direct administration was motivated by a number of factors other than immediate financial gain.<sup>24</sup> First, there was a desire to ensure the possibility of a trade route to far-off Tartary.<sup>25</sup> The Company also hoped to exploit Kumaon's reputed mineral wealth, a project that went through cycles of boom and bust over much of the nineteenth century, but which ultimately came to nothing. Without a doubt though, the main factor leading to direct Company control and administration of Kumaon was the desire to control the

<sup>24</sup> Lushington, G T to Elliot, H M - Secretary to the Suddar Board of Revenue N.W.P. – Allahabad, 9/7/1842, KDRLI, vol: 14.

<sup>25</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 18/5/1815, KDMLR, vol: 3.

space from which the Company's own mercenary troops could face down the still unpacified Gurkha forces garrisoned just across the Kali River.<sup>26</sup>

## Distant and distinct

In choosing to administer Kumaon directly, the Company took its empire into a space that was very different from everything it knew from the plains below.<sup>27</sup> As briefly mentioned earlier, despite Kumaon's physical proximity to the Indian heartlands, the region, like much of the Pahar, was economically, politically and culturally distant and distinct from the empires and civilisations of the North Indian plains.<sup>28</sup> This distance and distinction was primarily a product of the Pahar's mountainous geography. The transition from the awesomely flat expanse of the North Indian plains to the heights of Kumaon is not announced by hills. Rather, it is announced by a band of dense swampy forest interspersed with open grassland between 15 and 50 kilometres wide called the Terai that extends across the southern edge of much of the Himalaya. This geographic feature is a product of the drainage pattern produced as the Indian tectonic plate slips under the Tibetan tectonic plate. The Terai is twinned with the Bhabar, a band of alluvial deposits found at the foot of the hills in which rivers suddenly disappear underground and then reappear some kilometres away.

Until recent times, the Terai-Bhabar was so malarial for much of the year that, apart from the Bhoksa and Tharu peoples who show resistance to malaria, the region was essentially uninhabitable.<sup>29</sup> As one nineteenth-century commentator put it, 'plainsmen and Paharis generally die if they sleep in the Terai before November 1 or after June 1.'<sup>30</sup> This caution applied equally to any invading army crossing the Terai-Bhabar, and there are many historical examples of military forces arriving at the foot of the hills debilitated

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<sup>26</sup> Ibid.; Adam, J. - Secretary to Government to Orchterlony, Major General, 28/4/1815, KDMLR, vol: 7; Adam, J. - Adjutant General and Secretary to Government to Nicholls, Colonel-Commanding the forces before Kumaon, 23/3/1815, KDMLR, vol: 3; Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 18/5/1815, KDMLR, vol: 3; 'Secret Letter from Lord Moira, dated 11 May 1815' in *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War*, p. 551, para. 3.

<sup>27</sup> 'Extract from the instructions to Major Paris Bradshaw', 20/11/1814, KDMLR, vol: 4.

<sup>28</sup> Alam, *Becoming India: Western Himalayas under British Rule*, rear cover; Gyanesh Kudaisya, *Region, Nation, 'Heartland': Uttar Pradesh in India's Body Politic* (New Delhi: Sage Publications, 2006).

<sup>29</sup> Ramachandra Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya* (Berkeley: University of California Press, 2000), p. 9.

<sup>30</sup> Arjun Guneratne, *Many tongues, one people: The making of Tharu identity in Nepal* (Ithaca: Cornell University Press, 2002), p. 22.



by disease. The Company had learnt this lesson well in 1767 during its much earlier and disastrous foray against the Gurkhas led by Capt. George Kinloch.<sup>31</sup>

The Himalaya, a product of the same tectonic forces that created the Terai, comes in three bands. The most southerly band is the low Sivalik hills. These are barely discernible in front of Kumaon but are quite prominent to the west in Garhwal where they form the southern boundary of the wide and flat Dehra valley. Further north is the *ghagar* or middle Himalaya. This is a complex system of steep-sided heavily wooded hills that rise to between two and three thousand metres that are cut by fast-flowing rivers in deep valleys. High rocky abutments can impede the flow of goods and people along these valleys, often to the extent of breaking the valleys into small isolated patches. The bulk of the population in Kumaon lives within this middle zone in small scattered villages surrounded by croplands and forests. The forests were an integral part of the village economy and heavily exploited for timber, firewood, fodder and other forest products such as herbs and resins.

After around 120 kilometres, the hills of the *ghagar* rise abruptly. First to a band of alpine meadows above the tree line used for seasonal pasturage and then to the snowy peaks of the Great Himalaya. In Kumaon, these range from six thousand to just short of eight thousand metres in elevation.<sup>32</sup> The passes to the north between the peaks are generally only open from June to the end of September when the annual monsoon is at its peak.

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<sup>31</sup> Nandalal Chatterjee, *Verelst's Rule in India* (Allahabad: The Indian Press, Ltd., 1939).p. 31

<sup>32</sup> George William Traill, 'Statistical Sketch of the Kumaon,' *Asiatic Researches* XVI (1828): p. 138. Nanda Devi seen in figure 1.1 is currently estimated at 7,816 metres and the highest mountain in the region.

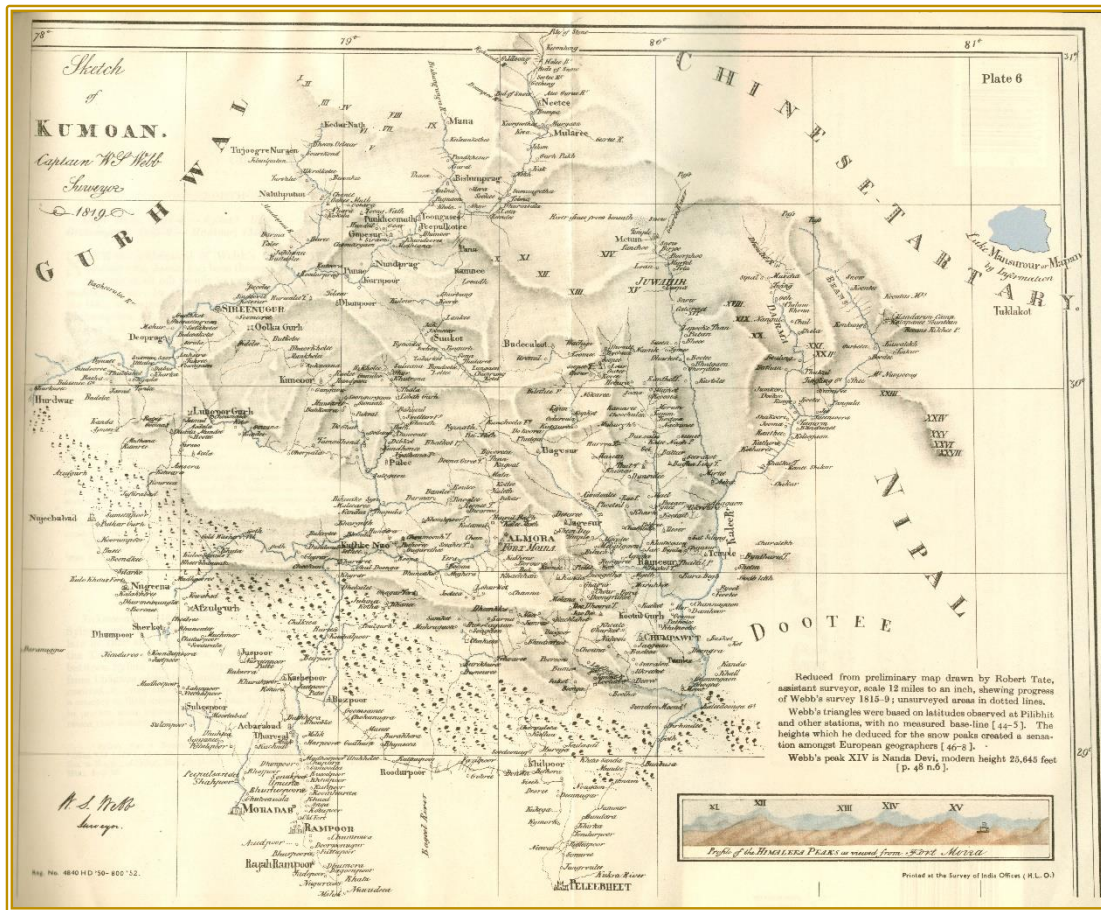


Figure 1.3 Captain Webb's 1819 map of Kumaon. Source PAHAR-MCADD.

The intensity of Kumaon's mountainous landscape astonished all Company officers who came to gaze on it. The earliest account of this astonishment comes to us today through F. V. Raper's 'Sources of the Ganges' published 1810 drawn from his intelligence mission to the region in 1808.

Until one o'clock we had been gradually ascending, when we came to a small space of table land, whence we beheld a sight the most sublime and awful that can be pictured to the imagination. We were now on the apex of one of the highest mountains in the neighbourhood; and from the base to the summit the perpendicular height could not be less than four thousand feet; probably it far exceeded this calculation. From the edge of the scarp, the eye extended over seven or eight distinct chains of hills, one rising above the other, till the view was terminated by the *Himalaya*, or snowy mountains. It is necessary for a person to place himself in our situation, before he can form a just conception of the scene. The depth of the valley below, the progressive elevation of the intermediate hills, and the majestic splendour of the 'cloud-capt' *Himalaya*, formed so grand a

picture, that the mind was impressed with a sensation of dread rather than of pleasure.<sup>33</sup>

Indeed, the geography of the Kumaon hills is so intensely complex that the Nanda Devi Sanctuary, a vale deep within the Nanda Devi Massif (see Footnote 31 above), was not known to have been visited by any human, local or foreign, until 1934.<sup>34</sup>

### *Economically distant*

The distance and distinction of the plains from the hills was not simply a product of the difficulties the Terai-Bhabar and the hills presented to communication. More significantly, the Pahar's rugged landscape imposed limits on the size and nature of the region's pre-colonial economy. These limits meant that a complex, monetized, political economy focused on the specialization of production in urban centres had not emerged in most of the Himalaya. Without the presence of such an economy, the empires and civilizations of the plains had not been able to extend their hegemony into this mountainous landscape.

The North Indian plains offered a vast expanse of rich, easily irrigatable, arable lands that supported a large and dense population. Even with this population burden, in most years there was a significant agricultural surplus over the bare subsistence needs of the producers. Efficiently concentrating this surplus in cities and town, usually through the agency of commodity dealers, was facilitated by the many navigable rivers and roads that crossed the landscape. The non-agricultural specialist populations of these urban centres—potters, weavers, merchants, warriors and priests, etc.—paid for this grain and other trade goods in cash which facilitated capital accumulation. These circumstances had, in turn, facilitated the rise of the rich and complex civilizations and empires that people everywhere recognize as premodern North India.

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<sup>33</sup> Capt. F. W. Raper, 'The Sources of the Ganges,' *Asiatic Researches* .XI (1810): 469. Original emphasis.

<sup>34</sup> E. Shipton, H. W. Tilman, and C. Houston, *Nanda Devi: Exploration and Ascent* (Seattle: The Mountaineers Books, 2000), Preface.



**Figure 1.4. Terraced fields Kumaon. Photo courtesy of Ramwik Creative Commons.**

In contrast, in the Pahar, irrigatable arable land, *talaon*, was limited to small, widely scattered pockets on valley floors.<sup>35</sup> As an alternative, the Pahari had turned to terraces, *upraon*, constructed on the relatively less steep slopes that were usually dependent on rainfall alone.<sup>36</sup> Built and maintained at a great cost in labour and material, these pocket handkerchief sized fields offered only a marginal input to output ratio, and there was little by way of an agricultural surplus.<sup>37</sup> Even with terracing, however, most land in the Pahar was unsuitable for agriculture, and the population was both small and scattered.<sup>38</sup>

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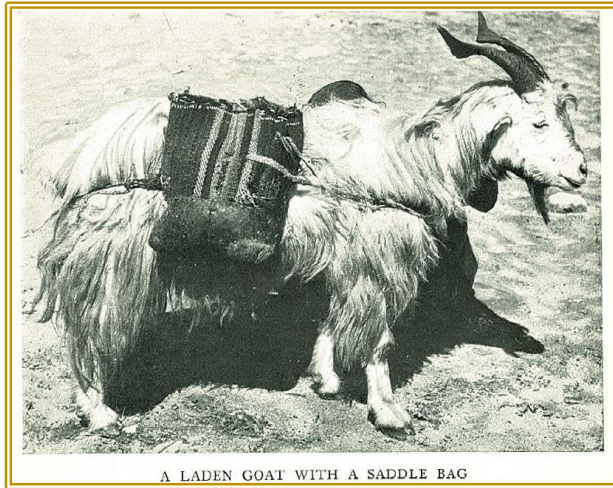
<sup>35</sup> S. D. Pant, *The Social Economy of the Himalayas: Based on a Survey in the Kumaon Himalayas* (London: Allen & Unwin, 1935), pp. 103-19.

<sup>36</sup> *Ibid.*, pp. 90-102.

<sup>37</sup> British Parliamentary Papers, 1890–92, *East India (Scarcity in Kumaun and Garhwal)*, vol. 85 (London: Her Majesty's Stationary Office, 1891), p. 15

<sup>38</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 217.

Just as significant to shaping the economy of the Pahar, the small and slender surplus that was available could not be efficiently or reliably concentrated in urban centres.<sup>39</sup> The Pahar had no navigable rivers and transport by water was not an option. Construction and maintenance costs of roads were at least an order of magnitude higher than on the plains, and roads suitable for beasts of burden and wheeled transport had



A LADEN GOAT WITH A SADDLE BAG

**Figure 1.4. Transport in Kumaon circa 1932,**  
**Source: S. D. Pant, 1935, p. 224.**

either not been constructed or had so rapidly fallen into disrepair as to be useless.<sup>40</sup> As an alternative, transporting bulk commodities like grain was largely conducted using flocks of sheep and goats.<sup>41</sup> These, however, had to follow droveways and the seasons and could not be easily bent to the needs of urban traders. The alternative of using porters was equally inefficient. Coolies consumed much of what they could carry while

getting the surplus grain to any market.<sup>42</sup>

A further factor that imposed limits and conditions on Kumaon's economy was the low level of monetization. Most exchange of goods and labour was conducted through cashless reciprocal obligations within localized family and *bhaichara* (brotherhood or clan) networks.<sup>43</sup> Trade in essentials unobtainable locally such as metals and salt, as well as the international trade that passed through Kumaon between Hindustan and Tibet, was similarly conducted largely through cashless barter at customary, not market rates of exchange.<sup>44</sup>

With barter-based trade a poor source of cash for taxation, the revenue base for the state 'consisted solely of persons connected with agriculture, the source from which

<sup>39</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 32-97.

<sup>40</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 16, 141-4; 'Statistical Report of the Bhotia Mehals of Kumaon,' *Asiatic Researches* XVII (1832): pp. 4-5.

<sup>41</sup> Traill, 'Statistical Report of the Bhotia Mehals of Kumaon,' p. 12.

<sup>42</sup> James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009), pp. 43-44.

<sup>43</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 44.

the payments were made, was necessarily the same.’<sup>45</sup> This meant that taxation was primarily collected in goods or *corvée* that took a variety of forms and names such as ‘*coolie utar, bardaish, begar, godam*.’<sup>46</sup> Some taxation was collected in specie, but the bulk was in the form of either perishable goods such as oil, ghee, grass (for the Raja’s elephant) and grain; or in the form of labour supporting such activities as policing, military service, road construction and carriage of goods. Sophisticated financial services such as banking, banker’s bills of exchange and currency exchange services—all essential to supporting efficient long-distance trade—appear to have been absent from the hills in pre-colonial times and there were no stockpiles of cash or bullion.<sup>47</sup> In parallel, there were few commodity dealers, particularly grain-dealers, and there were no large granaries.<sup>48</sup>

Given the difficulties in concentrating grain, an economy focused on the specialization of production in cities and towns had not emerged to any great extent, and the only urban centre in Kumaon resembling a city was the region’s capital Almora with a population of fewer than 3,500 people. Outside of Almora, only four towns boasted a permanent bazaar or a collection of more than 120 houses.<sup>49</sup>

### ***Politically distant***

Kumaon, along with most of the Pahar, had also remained politically distant and distinct and had never been conquered and held by the Indo-Islamic empires that had dominated the North Indian heartlands for much of the second millennium.<sup>50</sup> This was not simply a product of the physical challenges that the malarial Terai-Bhabar and rugged mountains presented to military invasion, and the several brief incursions that occurred showed that these challenges were not insurmountable. Rather, it was the economic conditions of the Pahar that prevented sustained domination of the hills by an empire of the plains. Any plains empire that forced their way into the hills soon found that there were no fat granaries to feed the occupying troops nor were there rich treasuries to

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<sup>45</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 188

<sup>46</sup> Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, p. 25.

<sup>47</sup> Raper, ‘The Sources of the Ganges,’ p. 451. Alam, *Becoming India: Western Himalayas under British Rule*, p. 78.

<sup>48</sup> British Parliamentary Papers, 1890–92, *East India (Scarcity in Kumaon and Garhwal)*, p. 15

<sup>49</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 146.

<sup>50</sup> Traill, ‘Statistical Report of the Bhotia Mehals of Kumaon,’ p. 19.

plunder and pay them.<sup>51</sup> In the longer term, the tiny surplus of the Pahari economy could not support a privileged class in the manner that they desired. These circumstances meant that those empires of the plains that had tried to sustain an occupation such as the Afghan Rohillas soon ‘retired, disgusted with the poverty of the country and the rigours of the climate.’<sup>52</sup> With only limited influence from the empires and civilizations of the plains, a distinctive alternative political model had emerged and persisted in the Pahar that was a response to both the region’s complex geography and the limits to capital accumulation this geography imposed.

For most of the second millennium, the hills were a political fracture zone with hundreds, possibly thousands, of unstable petty microstates. This chaotic patchwork included spaces that recognized no sovereign at all. Rather than aristocratic states focussed on a sovereign, the social order was primarily structured around patriarchal lineage systems centred on the collective authority of the relatively egalitarian *bhaichara* (brotherhood) embodied in a clan deity.<sup>53</sup> These *bhaichara* were relatively stable and often held sway over spaces that extended much further than the confines of a single valley. Aristocratic states did rise from time to time in the hills. However, limited by the constraints the region’s geography imposed on capital accumulation, few of these states could raise a standing army, and their sovereignty was primarily asserted through leveraging the greater spiritual and ceremonial status that their supposedly high caste orthodox Hindu and plains origins bestowed on them. Until the rise of the Gurkhas, none of these hill states took on the aspect of a strong central authority and always existed in dynamic tension with the *bhaichara* and the ambitions of the petty chiefs of each microstate.

No written history of Kumaon derived from contemporary sources is available to us today from pre-colonial times.<sup>54</sup> Much of what we know of the region’s aristocratic past is drawn from oral traditions collected over the nineteenth century that come to us

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<sup>51</sup> Alam, *Becoming India*, p. 78.

<sup>52</sup> William Stevenson Meyer, Sir, 1860-1922. et al., *The Imperial Gazetteer of India*, vol. v (Oxford: Clarendon Press, 1908), p. 252.

<sup>53</sup> Alam, *Becoming India*, pp. 60–72.

<sup>54</sup> Edwin Felix Atkinson, *Kumaon Hills: Its history, geography and anthropology with reference to Garhwal and Nepal* (Delhi: Low Priced Publications, 2002 [1886]), pp. 498–499.

through British sources.<sup>55</sup> These traditions vary wildly, sometimes include fantastical happenings and cannot often be resolved to a single coherent narrative. Writing in the 1870s, Atkinson suggests that this should not seem strange. Few of the old dominant families had remained in the region after the Gurkha invasion of the late eighteenth century, and their family archives did not survive the chaos or various calamities such as fires that ensued.<sup>56</sup>

One of the earliest of the available traditions is that much of Uttarakhand (Northern Land) was controlled by the Katyuri kings between the 8<sup>th</sup> and 11<sup>th</sup> century.<sup>57</sup> However, only six textual items recording their reign have survived to modern times, and none of the names on these stone and copper inscriptions can be cross-referenced to the various traditional genealogies of the kings.<sup>58</sup> Tradition suggest that the Katyuri kings played a significant role in the process of the suppression of Buddhism in the region that was begun by Adi Shankara in the 8<sup>th</sup> century.<sup>59</sup> The imposition of Brahminical practices over Buddhist and local spiritual practices was far from complete, however, and their penchant for building stone temples dedicated to Brahminical deities in the North Indian style only achieved a temporary and limited hegemony. The decline of the Katyuri after the 10<sup>th</sup> century saw a resurgence in local spiritual practices along with the installation of Buddhist monuments such as the Thiri and Gopeshwar tridents with grants to Buddhist temples by the Malla kingdom of western Nepal.<sup>60</sup> The collapse of the Katyuri empire late in the 11<sup>th</sup> century saw the region return to its default political position as a space dominated by a multitude of petty microstates.

The next aristocratic state to rise in the hills of Kumaon were the Chands. The originary traditions of the Chands vary wildly and range from the dynasty being founded by Som Chand in 720 CE to being founded by Thohar Chand in 1261.<sup>61</sup> A significant common thread in all of these traditions is that the dynasty claimed to be Rajputs from

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<sup>55</sup> Ibid. pp. 499, 503.

<sup>56</sup> John Hallet Batten 'Notes on the Kumaon and Rohilcund Turee', in John Hallet Batten *Official Reports on the Province of Kumaon* (Agra, Secundra Orphan Press, 1851), p. 162.

<sup>57</sup> Ajay Arora, *Administrative History of Uttarakhand* (Delhi: Eastern Book Linkers, 1996), pp. 10–11.

<sup>58</sup> Atkinson, *Kumaun Hills*, pp. 511–515.

<sup>59</sup> Omacanda Hānda, *History of Uttaranchal* (New Delhi: Indus Publishing. Company, 2002), p. 31.

<sup>60</sup> John Hallet Batten 'Notes on the Kumaon and Rohilcund Turee', in John Hallet Batten *Official Reports on the Province of Kumaon* (Agra, Secundra Orphan Press, 1851), p. 162.

<sup>61</sup> Atkinson, *Kumaun Hills*, pp. 499, 503.



Jhusi on the plains near current day Allahabad. Interplaying with the rise of a Khasa identity embedded in Hinduism and caste, the Chands used the greater ritual and spiritual status that came with these origins to differentiate themselves from the equalising forces of the *bhaichara* and the region's geography. This tactic, grounded in elaborate genealogies supplied by Brahmins, became widely used by all families in the region with aristocratic pretensions. Perhaps the most elaborate of these constructed genealogies was used by the Sahi family to assert their authority over the tiny Rajwarship of Askot towards the current day border with Nepal. In the 1860s the family possessed a textual genealogy that showed their descent through a line of Rajputs that went back for 221 generations to Sri Uttanapannapatra, the founder of the mythical solar dynasty of Ayodhya.<sup>62</sup>

The Chands first established a power base in the eastern province of Kumaon with a capital at Champawat. Here they began to evolve the apparatus of government that, in broad terms, was still in place when the Company occupied Kumaon in the nineteenth century. Atkinson, working through the conceit that Som Chand was a historical character, relates that this founding Chand reviewed village rights and astutely distributed power by reviving the ancient system of village headmen who were responsible for both the police and fiscal responsibilities of each locality.<sup>63</sup> General civil and military administration was entrusted to the Joshi clan while roles such as the office of *guru*, *purohit*, *pauranik*, *baid* and *basayo* were given over to the Bisht and Pande clans. All of these clans 'were Brahmins of a superior caste.'<sup>64</sup>

Over the next few centuries, the Chands engaged in raids and small wars against the plethora of other microstates in the region until finally under the reign of Kirati Chand 1488–1503 the dynasty established hegemony over much of central Kumaon. Around 1560, Bishma Chand moved his capital to the more central and defensible location of the Khagmara hill and founded the town of Almora. From here, his successors continued to raid and occupy the many microstates and independent spaces that continued to resist Chand control. Bishma Chand also made grants of land to

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<sup>62</sup> Ibid. p. 531.

<sup>63</sup> Ibid. p. 508.

<sup>64</sup> Ibid.

Brahmanical temples such as the temple complex at Jageshwar and the Mahadeo temple at Maleswar to emphasise his high caste status.

Chand influence grew under the long reign of Rudra Chand 1565–1597, and he extended the dynasty's influence to the Terai, establishing towns and marts including Rudrapur and Kashipur.<sup>65</sup> This expansion beyond the hills brought the Chands into relations with the Mughal emperor Akbar, and Rudra Chand used a visit to Lahore and the rumour of a personal relationship with the emperor to enhance his status further. The factual basis of the rumour must be questioned however, and the Muslim historian Abdul Kadir Budauni relates that 'neither he [Rudra Chand] nor his ancestors (the curse of God be on them) could ever have expected to speak face to face with an emperor.'

Chand power reached its zenith under Baz Bahadur Chand 1638–1678 who eliminated all other rival power centres in Kumaon including occupying the Bhotiya controlled valleys of the high Himalaya.<sup>66</sup> Like Rudra Chand, Baz Bahadur maintained relations with the Moghuls and similarly claimed a personal relationship with Aurangzeb.

The Chand dynasty went into decline after the rule of Debi Chand 1720–1726 and the Rajaship passed through many hands. Atkinson relates a complex narrative for the period with many assassinations, conspiracies and rebellions in which real power was often held by regents, advisors and players in the shadows.<sup>67</sup> So unstable was this period that all control over the Terai was lost and the Rohilkhand Afghans raided as far as Almora in 1743–1744. These invaders were soon expelled, but more by the cold mountain weather and the disease that spread amongst their troops than force of arms controlled by the Chands. Rent by political instability, Kumaon was easy pickings for the Gurkhas who invaded in 1790.

### ***Culturally distant***

Kumaon's minimal economic and political interaction with the civilizations of North India in pre-colonial times had also allowed a range of distant and distinct cultural practice to emerge and persist. The following section highlights four prominent cultural

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<sup>65</sup> Ibid. pp. 542–556.

<sup>66</sup> Ibid. p. 561.

<sup>67</sup> Ibid. pp. 582–606.

aspects of this distance and distinction—the region’s ethnic and linguistic makeup, its spiritual practices, its marriage practices and its caste structures.

*Ethnic and linguistic makeup*

With respect to the origin of the inhabitants, recourse can only be had to vague traditions and conjectures.<sup>68</sup>

G. W. Traill, 1828

The historical process that led to the ethnolinguistic-cultural makeup of Kumaon in pre-colonial times is both extremely complex and contested.<sup>69</sup> It is likely that the region saw many waves of immigration and invasion from groups that included speakers of Austro-Asiatic, Tibeto-Burman and Indo-Aryan languages. The result of this process is most commonly represented as the northern districts of Kumaon being dominated by the Bhotiya people of Tibetan origin, the middle Himalaya being dominated by Indo-Aryan Khasa who held the regions aboriginal Rajis/Rajyas as slaves with the Terai-Bhabar in the South dominated by the Austro-Asiatic Bhoksa and Tharu.<sup>70</sup> However, this triptych grossly oversimplifies the matter. Many other groups had entered and merged into the region. These included remnants of one of Timur’s warrior bands composed primarily of Turco-Mongol people that had fought their way into the hills to dominate the valley of Bageshwar, South Indian Brahmins who had established theocratic entrepôts at Badrinath and Joshimath, migrants from the plains who had installed themselves in various aristocratic and theocratic roles and invaders such as the Gurkhas.<sup>71</sup> Each of these groups, both melded and fragmented, had their own cultural-linguistic dynamics and exchanged locations and traditions over time.<sup>72</sup> Static maps detailing the ethnolinguistic diversity of the region such as Grierson’s below have been drawn to try

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<sup>68</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 159.

<sup>69</sup> D. D. Sharma, *Formation of Kumaoni Language. Part I (Phonology and Morphophonemics)* (New Delhi: Bahri Publications, 1985), pp. 4-11.

<sup>70</sup> Atkinson, *The Himalayan Gazetteer*, p.270; Shekhar Pathak, ‘Kumaoni Society Through the Ages,’ in *Kumaon: Land and People*, ed. K.S. Valdiya (Nainital: Gyanodaya Prakashan, 1988), pp. 97-110; Surya Mani Adhikary, *The Khasa Kingdom* (New Delhi: Nirala, 1997), p. 21; Dharendra Nath Majumdar, *The Fortunes of Primitive Tribes* (Lucknow: The Universal Publishers, 1944), p. 112.

<sup>71</sup> Traill, ‘Statistical Report of the Bhotia Mehals of Kumaon,’ p. 19.

<sup>72</sup> D.D. Sharma, ‘Kumaoni Language and Dialects,’ in *Kumaon: Land and people*, ed. Valdiya K.S. (Nainital: B.L. Consul for Gyandaya Prakashan, 1988), pp. 119-36.

and capture this complexity, but these cannot display the layering and dynamics generated by caste, gender or the impact of transhumance.

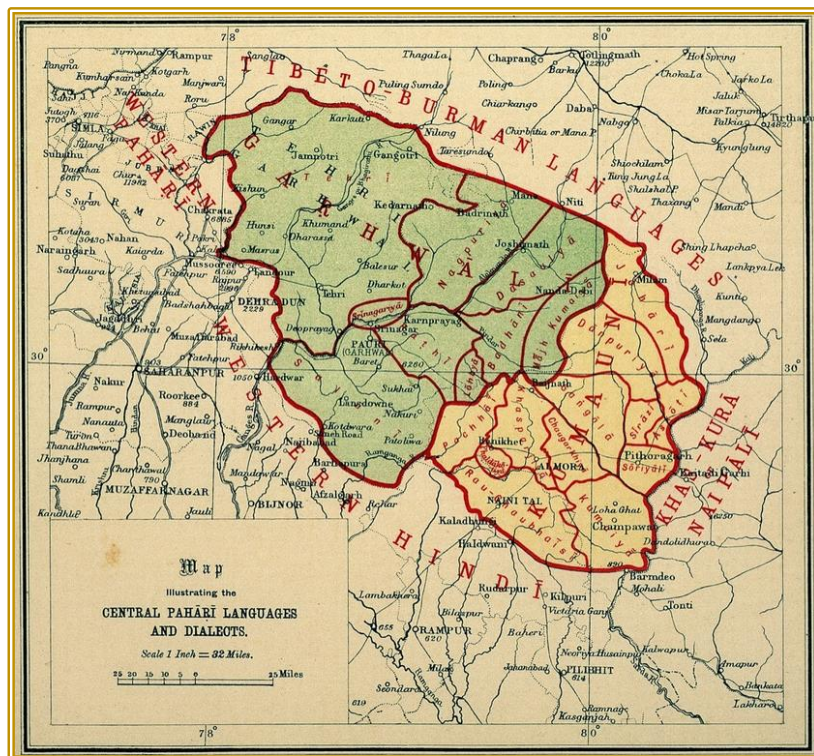


Figure 1.5. Linguistic map of the Central Himalaya. Source: G. A. Grierson, 1916, map insert before p. 101.

Perhaps, then, it best to understand the ethnolinguistics of the region as a dynamic fractal always ready to turn on the beat of a butterfly’s wing. However, as with most fractal objects, stability was apparent.<sup>73</sup>

In pre-colonial times, the area around Almora was dominated demographically by people who self-identified as Khasa, and it is this group who have ‘exercised greatest influence on Kumauni culture and language.’<sup>74</sup> Given the demographic dominance of the region by the Khasa, this thesis will focus on the meeting of their customs, and the customs of the aboriginal Rajis/Rajyas people that they held in servitude, with the emergent governmental practices of the Company.

Linguistic and literary sources suggest that the Khasa are descendants of an Aryan group that arose in the region of the Caspian Sea and migrated to Kumaon, indeed to

<sup>73</sup> James Gleick, *Chaos: Making a new science* (New York: Viking, 1987).

<sup>74</sup> Sharma, ‘Kumani Language and Dialects,’ p. 121.

much of the Western and Central Himalaya, somewhere between 1000 and 500 BCE.<sup>75</sup> While they have drawn from the language and cultural traditions of the plains, they are, as Ramchandra Guha put it, ‘a fascinating exception that one is unable to fit into existing conceptualizations of...India.’<sup>76</sup>

One of the earliest accounts of the language of Kumaon comes from Fraser’s experience in the region in 1815. He notes, regarding the language spoken in one small pargana, that:

The Hindoostanee language almost ceases to be understood; and our people could not communicate with the peasants here without an interpreter. It is not that the provincial dialect obscures the language; it seems that the people here are accustomed to one, which is totally different from Hindee...for it is as distinct from the language of the Bhotas...as from Hindee.<sup>77</sup>

In broad terms, in pre-colonial times the bulk of Kumaoni people, especially those of the middle hills, spoke dialects of a language group known to linguists as Kumaoni and to the local people as Pahari or simply *gaon bhaasha* (village language).<sup>78</sup> This language group is, in turn, a sub-group of the broader Pahari language group that litters the Himalaya from Kashmir in the West to Eastern Nepal.<sup>79</sup> With its distinct origins and limited external interactions, Kumaoni had a vocabulary and grammar distinct from the languages of the North Indian plains and showed little sign of the Arabic and Persian influences so prominent in the North Indian *lingua franca* Hindustani.

### *Spiritual practices*

The Khasa are referred to in the Puranas and in the Mahabharata where they were understood by the ‘dominant form of Hinduism’ to be degenerate foreigners who were physically and spiritually outside the borders of the land of the Aryans. This distance and distinction is expressed most clearly in the *Mānavadharmasāstra*, *The Laws of Manu*, where

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<sup>75</sup> Ibid.

<sup>76</sup> Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, p. 14.

<sup>77</sup> James Baillie Fraser, *Journal of a tour through part of the snowy range of the Himalā Mountains, and to the sources of the rivers Jumna and Ganges* (London: Rodwell and Martin, 1820), p. 350.

<sup>78</sup> Mark Jones, ‘From Zomia to Cosmopolitanism’ (Australian National University 2014), p. 92.

<sup>79</sup> Jervoise Athelstane Baines, *General report on the Census of India, 1891* (London: Her Majesty's Stationery Office, 1893), pp. 136, 39, 57; G. A. Grierson, *Linguistic Survey of India* vol. IX, part IV. ‘Specimens of the Pahari Languages and Gujuri’ (Calcutta: Superintendent of Government Printing, 1916), pp. 108-58.

Khasa are identified as ‘twice-born’ (high caste), but because they did not accept Brahmins as priests and did not perform Vedic rituals, were foreign and degenerate.

But by failing to perform rituals or to seek audiences with priests, the following castes of the ruling class have gradually sunk in the world to the rank of servants: ‘Sugarcane-boilers’, ‘Colas’, ‘Southerners’, ‘Kambojas’, ‘Greeks’, ‘Scythians’, ‘Quicksilvers’, ‘Persians’, ‘Chinese’, ‘Mountaineers’, ‘Precipice-dwellers’ and ‘Scabs’ 10.42–44.<sup>80</sup>

Surprisingly, it is not the mountaineers or precipice-dwellers mentioned in this passage that are identified as Khasa, but rather the final ‘Scabs.’<sup>81</sup>

The Khasa have a genesis myth expressed in a distinct local oral form of the final days of the mythic Pandava brothers, who are the central characters of the Hindu epic *Mahabharata*.<sup>82</sup> Within this myth, the Pandava moved from the plains to the Himalaya late in life with their common wife Draupadi, eventually ascending to heaven via the five peaks of the Panchachuli massif where their five (*panch*) cooking fires (*chuli*) still smoulder and burn when the west wind blows.

While the Khasa claimed to be Hindus, they practised and continue to practise a range of social, spiritual and cultural traditions that ‘do not identify them with the Hindus of the plains.’<sup>83</sup> While the worship of mainstream Hindu gods is a component of their repertoire, the Pahari are primarily focused on the propitiation of wrathful ancestors, various queer and fantastic demons, fairies and spirits, along with stones, weapons, dyed rags and symbols.<sup>84</sup> These practices are often hyper-localized with the worship of an entity limited to small areas or, more commonly, to a single village.<sup>85</sup> Their modes of worship in a *mandir* (temple) did take on aspects of the practices of the plains, ‘the dim lighting, the burning of incense, the mysterious incantations and sing-song monologues,’ but this form of worship was secondary and largely only practised with vigour by the

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<sup>80</sup> Manu, *Mānavadharmasāstra: The Laws of Manu*, trans. Wendy Doniger and Brian K. Smith (London and New York: Penguin Books, 1991), pp. 240-41.

<sup>81</sup> Ibid.

<sup>82</sup> Berreman, *Hindus of the Himalayas: Ethnography and change*, p. 102.

<sup>83</sup> Ibid., p. 80.

<sup>84</sup> Dharendra Nath Majumdar, *Himalayan Polyandry: Structure, functioning and culture change: a field study of Jaunsar-Bawar* (Bombay: Asia Publishing House, 1962), pp. 249-84; E. Sherman Oakley, *Holy Himalaya; the religion, traditions, and scenery of Himalayan province (Kumaon and Garwhal)*, (London: Oliphant Anderson & Ferrier, 1905), pp. 162-231; Traill, ‘Statistical Sketch of the Kumaon,’ pp. 220-25; Atkinson, *The Himalayan Gazetteer* pp. 699-934.

<sup>85</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 221.

region's aristocracy.<sup>86</sup> Indeed, Traill reported that 'the temples dedicated to the Hindu deities, in the interior, are with few exceptions, deserted and decayed.'<sup>87</sup> Much more significant to the Khasa were a kaleidoscope of sacrifices and ceremonies focused on local demons and spirits that had no relation to the practices of the 'dominant form of Hinduism' as it is understood on the plains. These ceremonies took on the form of trance and prophesy, dances, sliding down enormous ropes on saddles, pelting each other with rocks, and many other arcane rituals.<sup>88</sup> New forms of these ceremonies and new deities were regularly invented while old ones quickly disappeared.<sup>89</sup>

### Marriage practices

They unanimously admitted the universality of the custom, that it was usual always to purchase wives, and that the zeminders were too poor to be able to give from ten to twenty rupees for a woman, and therefore contributed their quota, and each enjoyed their share of the purchase.<sup>90</sup>

James Baillie Fraser, 1820

A distinctive feature of Kumaoni and the Pahari culture zone more generally that marked it out from the culture of the plains were its heterodox marriage practices.<sup>91</sup> Known as *reet*, a Pahari term that translates simply as 'custom', at least for the bulk of the population, marriage involved no religious ceremony, dowry was not paid, and formalities were limited to a verbal contract to purchase the woman from her father, husband or the heirs of these men. Orthodox understandings of chastity and faithfulness were not relevant concepts within *reet*, while divorce, remarriage and widow remarriage—all

<sup>86</sup> Majumdar, *Himalayan Polyandry: Structure, functioning and culture change: a field study of Jaunsar-Bawar*, p. 249.

<sup>87</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 161.

<sup>88</sup> Gerald D. Berreman, 'Brahmins and Shamans in Pahari Religion,' *The Journal of Asian Studies* 23 (1964): 53-69; *Hindus of the Himalayas: Ethnography and change*, pp. 80-121; James Kennedy, *Life and work in Barmans and Kumaon: 1839-1877* (New Delhi: Asian Educational Service, 1993), pp. 236-39; Majumdar, *Himalayan Polyandry: Structure, functioning and culture change: a field study of Jaunsar-Bawar*, pp. 249 -84; Raper, 'The Sources of the Ganges,' p. 504 -05; McComas Taylor, 'Village Deity and Sacred Text: Power Relations and Cultural Synthesis at an Oral Performance of the Bhāgavatapurāna in a Garhwal Community,' *Asian Ethnology* 70(2): 197-221 70, no. 2 (2011): pp. 197 - 218; Traill, 'Statistical Sketch of the Kumaon,' pp. 220 -25.

<sup>89</sup> H. A. Rose, *A glossary of the tribes and castes of the Punjab and North-West Frontier Province* (Lahore: Printed by the Superintendent, Government Printing, Punjab, 1911), pp. 400-83.

<sup>90</sup> Fraser, *Journal of a tour through part of the snowy range of the Himalā Mountains, and to the sources of the rivers Jumna and Ganges*, p. 360.

<sup>91</sup> Yogesh Snehi, 'Conjugalinity, sexuality and shastras: Debate on the abolition of *reet* in colonial Himachal Pradesh,' *The Indian Economic & Social History Review* 43, no. 2 (2006), pp. 170-173; Alam, *Becoming India*, pp. 88-96, 235-236; Gerald D. Berreman, *Hindus of the Himalayas: Ethnography and change*, 2nd ed. (Berkeley, Los Angeles, London: University of California Press, 1972), p. 75; Dhirendra Nath Majumdar, *Himalayan Polyandry: Structure, functioning and culture change* (Bombay: Asia Publishing House, 1962), pp. 77-80.

anathemas to the orthodoxies of the plains—were common. Payment, usually in the form of cash but sometimes in labour or kind, accompanied each occasion where the woman passed from the possession of one man to another. In some localities, particularly in British Garhwal to the west of Kumaon proper, *reet* took on the form of polyandry and polygynandry with the marriage of one or more women to a group of brothers.<sup>92</sup> *Reet* marriage found no grounding in either the *mitakshara* or *dayabhaga* traditions that dominated Hindu family law on the plains and beyond.<sup>93</sup> Within these traditions *kanyadaan* is the only valid form of marriage and is always marked by a religious ceremony where the father ‘gives’ his virgin daughter to the groom. Under *kanyadaan*, women never remarry, divorce is impossible and, although less common in pre-colonial times, often included payment of dowry.

### Caste

It appears that the principal casts into which the hill-inhabitants are divided are Brahmins, Rajepoots, Kunnoits and Cooleys or Chamars. We did not find any of that minute subdivision of tribes which exists on the plain...When a Pahria is asked what cast he is, the answer at first is, in general, a ‘Rajepoot;’ but on more minute enquiry, he may confess that he is only a ‘Kunnoit’.<sup>94</sup>

James Baillie Fraser, 1820

Caste in Kumaon had quite a different form and function to that found on the plains in pre-colonial times.<sup>95</sup> On the plains, the system reflected and reinforced the complex religious hierarchies, highly specialized and diverse occupational modes, and complex political structures of plains society. These found expression in the four *varna* plus Dalit (Brahmin, Kshatriya, Vaisya, Shudra and Dalit), with each of the *varna* divided into occupationally hyper-specific *jati*. In contrast, the caste system in the hills reflected

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<sup>92</sup> Majumdar, *Himalayan Polyandry*, p. 72.

<sup>93</sup> *Ibid.*, p. 91.

<sup>94</sup> Fraser, *Journal of a tour through part of the snowy range of the Himalā Mountains, and to the sources of the rivers Jumna and Ganges*, p.273.

<sup>95</sup> The sharpness of the distinctions shown between caste in the hills and caste on the plains has been quantified by D. E. Sopher. Using data from the 1931 Census, Sopher showed that caste in Almora and Garhwal demonstrated a high degree of homogeneity with an index of only 0.08 and ‘...considerably lower than for any pair of contiguous plains districts.’ In contrast, the difference across the hill/plain boundary reached 0.81, a full order of magnitude higher. D. E. Sopher, ‘Rohilkund and Oudh: An ‘Exploration of Social Gradients Across a Political Frontier,’ in *Realm and region in traditional India*, ed. R. G. Fox (Durham: Duke University, Program in Comparative Studies on Southern Asia, 1977), p. 289.



and reinforced the region's relatively simple egalitarian society.<sup>96</sup> The most obvious and immediate difference between caste on the plains and caste in the hills was the almost complete absence of both the Vaisya (merchant-trader) and Shudra (peasant farmer) castes.<sup>97</sup> The absence of Vaisya is generally explained as a product of the absence of urban centres, the unmonetized economy and the limited need for literate bureaucrats. Vaisya, most conspicuously grain merchants, simply had no place in the political economy of Kumaon.<sup>98</sup> The absence of Shudra is a more complex matter though. There were certainly large numbers of peasant farmers in Kumaon with peasant farming being the primary source of sustenance for well over 80 per cent of the population.<sup>99</sup> However, in sharp contrast to the peasants of the plains, Pahari peasant farmers had largely acquired the much higher caste status of Kshatriya/Rajput and even, in a small number of cases, Brahmin.

This state of affairs can be attributed to the relatively more powerful position of Pahari peasants vis-à-vis plains peasants at the time that Kumaoni culture acquired and accepted the concept of caste. Popular oral tradition, consistent with descriptions in the epic Hindu literature, has it that the Khasa were once without caste or class distinctions and they only accepted the construct of caste after coming into contact with Brahmins and 'true' Rajputs who immigrated to the region after the Islamic conquest of the plains.<sup>100</sup> This process is generally accepted as occurring around the middle of the second millennium with the rise of the Chand Raja dynasty with some supporting documentary evidence to be found in the text *Trailavarnik Dharma Nirmanam* by Rudra Chand Deva who ruled parts of Kumaon in the late 16<sup>th</sup> century.<sup>101</sup> At that time, and as continues to be the case today, the overwhelming majority of Kumaoni peasant families held proprietary rights to the land they worked and, as equal members of the *bhaichara*

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<sup>96</sup> Vasudha Pande, 'Stratification in Kumaun circa 1815–1930,' *NMML Occasional Paper* New Series, no. 37 (2013): pp. 1-84.

<sup>97</sup> A Dictionary of Sociology, (Oxford, UK; New York, NY: Oxford University Press,) p.64, [ISBN 978-0-19-860987-2, http://books.google.com/books?id=id8iAQAAIAAJ&pg\\_p](https://books.google.com/books?id=id8iAQAAIAAJ&pg_p), retrieved 10 August 2012.

<sup>98</sup> G. and E. Tukral, *Garhwal Himalaya* (Leicester: Cordee, 1987), p. 20.

<sup>99</sup> W. Chichele Plowden 'Report on the Census of British India taken on the 17th February 1881,' (London: Eyre and Spottiswoode, 1883), p. 164.

<sup>100</sup> R. D. Sanwal, *Social Stratification in Rural Kumaon* (Delhi: Oxford University Press, 1976), p. 23.

<sup>101</sup> Tara Dutt Garrola, 'A note on the Castes and Sub-Castes of Garhwal,' in *Himalaya: Past and Present* ed. Maheshwar P. Joshi, Allen C. Fanger, and Charles W. Brown (Almora: Shree Almora Book Depot, 2000), pp. 235-38; Adhikary, *The Khasa Kingdom*, p. 27; Pande, 'Stratification in Kumaun circa 1815–1930,' pp. 1-2.

(brotherhood, clan or lineage structure), held sufficient agency to resist any attempt to be cast as subordinate and inferior Shudra.

This ability to effectively assert a caste status at odds with pattern and structures that pertain on the plains is a process found in the contemporary historical record. The Johari Bhotiya of northern Kumaon, a relatively wealthy and vigorous people, were largely of Tibetan descent and, before the religion's prohibition by the Chand Rajas, were nominally of the Tibetan Buddhist faith. This would normally put them outside the bounds of the Hindu caste system, and yet, by the early 1800s, they began to assert a Hindu identity and '...had affected to imitate the niceties and scruples of *Hindus*, in regard to food, and have assumed the designation of '*Sinh*,' suggesting that they were of Rajput caste.<sup>102</sup> This campaign initially had little effect, and most Hindus continued to abhor them as the decedents of a 'cow-killing race.'<sup>103</sup> Nevertheless, over the nineteenth century, they continued to use a range of strategies to assert a Hindu Rajput status.<sup>104</sup> These strategies included writing genealogies demonstrating plains origins and 'waging war against drinking, smoking, *rangbang* (orgy) and intermixing of the sexes.'<sup>105</sup> Boys at school in Almora even took to fighting any other schoolboy who called them a Bhotiya. By the late nineteenth century, they were so successful in this endeavour that they were officially counted in the census as Hindus of the 'Rawat' caste, with many adopting the appellation 'Pandit'.<sup>106</sup>

This program of assimilation into Hindu caste structures by the Bhotiya was to change direction again in early post-Independence India. In the new political realities of this period, a classification as a 'Scheduled Tribe' or 'Other Backward Caste' suddenly had real value in the *aarakshan* (reservation system) for accessing jobs that emerged. To take advantage of this system, the Jahori Bhotiyas changed tack, and led a long and ultimately successful campaign to gain the status of a Scheduled Tribe.<sup>107</sup>

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<sup>102</sup> Traill, 'Statistical Report of the Bhotia Mehals of Kumaon,' p. 21.

<sup>103</sup> Ibid.

<sup>104</sup> Ram P Srivastava, 'Tribe-caste mobility in India and the case of Kumaon Bhotias,' in *Caste and Kin in Nepal, India, and Ceylon: Anthropological studies in Hindu-Buddhist contact zones* ed. Cristoph von Furer-Hamendorf (New York: Asia Publishing House, 1966), pp. 161-213.

<sup>105</sup> Ibid., p. 208.

<sup>106</sup> Ibid., pp. 187, 204.

<sup>107</sup> Ibid., p. 208.

More broadly though, the much greater level of social homogeneity found in pre-colonial Kumaon resulted in a caste system with only two major points of cleavage that largely reflected the three major waves of pre-colonial conquest and domination rather than the complex hierarchical political economy of the plains. The first caste cleavage reflected the earlier domination of the aboriginal *dom/shilpkars* by the invading 'indigenous' Khasa. The second caste cleavage reflected the later domination of the Khasa by 'immigrant' *thuljat*, who came to hold both some level of political and ritual power in the region by around the middle of the second millennium.<sup>108</sup>

In this tri-level system, the top of the social order was occupied by the *thuljat*. This group was composed of both Brahmins and Kshatriyas who could effectively assert patrilineal descent from either high-caste groups from the plains or from 'mythical characters like Ram, Krishna or even Sishupal of the Mahabharata.'<sup>109</sup> These fantastical genealogies and their explicit 'immigrant' status, some with a grain of truth to them and some without, were the basis for differentiating these families from the equalizing nature of social relations within the lineages and clans of Kumaon and were essential for separation from the general political community and establishing an aristocratic status.<sup>110</sup>

Marginally below the *thuljat*, and forming the vast bulk of the population, were the peasant farming/pastoralist Khasa. Like the *thuljat*, the Khasa was made up of both Brahmins and Kshatriyas, and the social roles of Khasa Brahmins and Kshatriyas showed little differentiation. Both Khasa Brahmins and Kshatriyas were *bith* (clean), both used the plough and both groups paid little heed to prohibitions on the consumption of meat, the drinking of alcohol or association with persons of lower caste.<sup>111</sup> As most Kumaonis had an ambiguous relationship to the 'Great Tradition' of Hinduism, the priestly role of Brahmins held little status or income-generating potential in the hills as most spiritual services were provided by other Khasa or by 'unclean' *dom*.<sup>112</sup>

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<sup>108</sup> Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, pp. 11-14. Why Khasa are persistently labelled as 'indigenous' in the literature is a mystery to the author.

<sup>109</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 66.

<sup>110</sup> Ibid.

<sup>111</sup> Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, p. 13.

<sup>112</sup> Berreman, *Hindus of the Himalayas: Ethnography and change*, pp. 80-81; Majumdar, *Himalayan Polyandry: Structure, functioning and culture change: a field study of Jaunsar-Bawar*, p. 249.

With little to differentiate *thuljat* from Khasa and Brahmin from Kshatriya, intermarriage was common, and the groups had already begun to merge in pre-colonial times. The two groups are best understood then as a collective with only weak group boundaries.<sup>113</sup>

However, a major caste cleavage was apparent in Kumaon between the ‘clean’ *thuljat*/Khasa collective and the ‘unclean’ *dom/shilpkar*. This group, long held in a subordinate position by the Khasa, did not have access to the power base that comes with proprietary rights in land and membership of the *bhaichara*.<sup>114</sup> As a consequence, the *thuljat*/Khasa collective had been able to impose an inferior caste status on the *dom/shilpkars* (Dalit), who were thus prohibited from commensality and intermarriage with the *thuljat*/Khasa.<sup>115</sup>

The *dom/shilpkars*, the ‘Cooleys or Chamars’ of Fraser’s statement at the beginning of this section, are generally accepted to have been primarily derived from the diversity of aboriginal people present in the region prior to its occupation by the Khasa.<sup>116</sup> They were largely excluded from cultivation as proprietors, but many were held as agrestic slaves engaged in fieldwork. Alongside this agricultural role, nearly all artisanal work such as weaving, iron working, basket making and mining was performed by *dom*. Unlike the *thuljat*/Khasa collective that had weak caste boundaries, the *dom/shilpkars* had many strong *jati* (sub-caste) like divisions and both commensality and intermarriage between these *jati* was rare.<sup>117</sup> These strong boundaries precluded the development of a collective identity which might have enabled them to resist the hegemony of the *thuljat*/Khasa collective, and, consequently, many of the *dom/shilpkar* lived in close to slave-like conditions or actual slavery.

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<sup>113</sup> Ibid., p. 249.

<sup>114</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 61.

<sup>115</sup> Berreman, *Hindus of the Himalayas: Ethnography and change*, pp. 154-57.

<sup>116</sup> Ibid., p. 21; Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, p. 12; Sanwal, *Social Stratification in Rural Kumaon*, p. 38.; Traill, ‘Statistical Sketch of the Kumaon,’ p. 160.

<sup>117</sup> Uma Prasad Thapliyal, *Uttaranchal: Historical and Cultural Perspectives* (New Delhi: B.R. Publication, 2005), pp. 87-92.

### *Isolation of each Pahari community*

Having emphasized the distance and distinction of Pahari and Deshi culture, it is equally important to emphasize the distance and distinction of each mountain community. Most Pahari lived in tiny scattered communities separated by large stretches of forests, high hills and rocky mountains. Communication between each community 'was commonly both tedious and laborious, and the intercourse of the inhabitants of even adjacent hamlets is confined to the periodic festivals which occur at neighbouring temples.'<sup>118</sup> Compounding this isolation were social and linguistic patterns where the presence of anyone from outside the local community was often looked on 'as an intrusion.'<sup>119</sup> Circumstances which 'continued through the ages, has tended to preserve a distinctness of character and manners.'<sup>120</sup>

This difficulty of communication between and clannishness of those within each pargana resulted in a high degree of isolation for each Pahari community. Such was this isolation that George White noted in his 1836 work, *Views in India, Chiefly Among the Himalaya*, that:

Indeed, it was often surprising to observe the total ignorance they [the hill villagers] betrayed on almost every subject unconnected with their own little community, being often unacquainted with the names, or even the existence, of villages a few days journey from their own.<sup>121</sup>

The people of Kumaon not only had little knowledge and interaction with the plains, they also had little knowledge of and interaction with each other.

### **The Extra-Regulation Order**

The good will of the inhabitants, is to be conciliated by every attention to their feelings, prejudices and customs.<sup>122</sup>

**John Adam, Adjutant General and Secretary to Government to Colonel Nicholls, Commanding the forces before Kumaon, March 1815**

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<sup>118</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 217.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> George Francis White, *Views in India, Chiefly Among the Himalaya Mountains. Subscribers edition* (London and Paris: Fisher, Son and Co, 1836), p. 98.

<sup>122</sup> Adam, J. -Adjutant General and Secretary to Government to Nicholls, Colonel - Commanding the forces before Kumaon, 23/3/1815, KDMLR, vol: 3.

The Company well understood that its regulations—the embodiment of the formal legal, revenue and administrative practices that had been developed to assert and maintain its empire—were a palimpsest written on the economic, political and cultural conditions of the Indian heartlands. These heartland conditions were not present in Kumaon. The region’s economic structures meant that many basics such as the taxation system and how to supply grain to their troops had to be rethought. There were no remnants of the Mughul’s machinery of government to recycle as they had done on the plains, while the dominance of heterodox cultural practices meant that family and other law had to be discovered anew. In these novel circumstances, the Company was compelled to develop a new model for its formal governmental practices.

This new model did not emerge as part of a considered, pre-determined plan. Rather, it emerged amidst the fog of the ongoing war with Nepal that, as mentioned earlier, did not conclude until the year after Kumaon was first occupied.

To meet the logistical challenges the Pahar presented to their military, as well as the ‘secondary’ issues of collecting revenue and maintaining law and order, the Company adopted a series of informal, pragmatic responses to local circumstances developed in the context of the local people’s agency. Many of these responses were initially developed spontaneously by the Company’s civil and military officials on the spot and then, through the force of precedent, iteration and habitus, began to lay down the basis for the formal governmental practices that emerged.

Kumaon was to become an ‘Extra-Regulation province’, a space beyond the strict control of the regulations of the plains. The ‘spirit and principles’ of those regulations held some sway, but colonial Kumaon was a space in which the local administrators were relatively free to develop an independent and novel set of legal, revenue and administrative practices to meet the Company’s needs.<sup>123</sup> To differentiate this alternative colonial model from the system found in much of the rest of the Bengal Presidency, this thesis will use the term ‘Extra-Regulation Order’ to denote the legal, revenue and administrative practices of colonial Kumaon.<sup>124</sup> In contrast, this thesis will use the term

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<sup>123</sup> Bengal Presidency, ‘Regulation X of 1817,’ (1817). See Appendix 5.1. Regulation X of 1817, clause V, IV.

<sup>124</sup> This neologism draws heavily from the title of P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.* (Varanasi: Vishwavidyalaya Prakashan, 1991 [1870]).

‘Regulation Order’ to denote the legal, revenue and administrative system found on the plains.

***George William Traill, Raja of Kumaon***

Mr Traill... it is well known, possessed a most extraordinary influence amongst the natives of the hills<sup>125</sup>

**Pilgrim Barron, 1844**

The early development of the Extra-Regulation Order was a product of the energy, personality and actions of one man—George William Traill, Commissioner for Kumaon from April 1816 to December 1835.<sup>126</sup> Born at Bailey near Versailles in France in 1795, Traill had strong family connections with the Company and was sponsored to its ranks by his uncle and ex-chairman of the East India Company, Sir George Colebrooke in 1807 when he was twelve years old.<sup>127</sup> Traill was one of the first graduates from of the new purpose-built East India Company College at Haileybury, Hertfordshire, in England. Intended to produce a new kind of Company officer, the College had an innovative curriculum that not only provided training in oriental languages but also included law, ethics, mathematics, science and political economy.<sup>128</sup>

Arriving in India in December 1810, Traill excelled in languages at the Fort William College in Calcutta, where all new Company officers were first orientated to this unfamiliar and exotic land. Here, his prizes for Hindi and Persian soon helped him gain appointment to the judicial line as the Assistant Magistrate at Farrukhabad as his first in-country assignment in 1811.<sup>129</sup> It was at Farrukhabad in 1815 that Traill caught the attention of the Governor-General, who appointed him Assistant Commissioner for Kumaon in July 1815 when he was not yet 20 years old.<sup>130</sup>

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<sup>125</sup> P. [as Pilgrim] Barron, *Notes of Wanderings in the Himmala* (Agra: Agra Ukhbar Press, 1844), p. 27.

<sup>126</sup> Ramchunder Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842* (Calcutta: Baptist Mission Press, 1844), pp. 389-90.

<sup>127</sup> Rocher Rosane and Ludo Rocher, *The making of western Indology: Henry Thomas Colebrooke and the East India Company* (New York: Taylor and Francis, 2014), p. 120.

<sup>128</sup> Philip Mason, *The men who ruled India* (London: Pan, 1987), pp. 140-43; Haileybury Official Website, ‘Explore Haileybury,’ Haileybury School, accessed 1/12/2017, <https://www.haileybury.com/explore/about-us/heritage-archives/story-haileybury/east-india-college>.

<sup>129</sup> Rosane and Rocher, *The making of western Indology: Henry Thomas Colebrooke and the East India Company*, p. 121.

<sup>130</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 8/7/1815, KDMLR, vol: 5.

Traill's immediate superior, Edward Gardner, the first to hold the position of Kumaon Commissioner, was formally responsible for all aspects of civil administration, but in practice, was largely occupied with political matters and relations with the court of Nepal. In these circumstances, Traill took the lead in establishing the flow of land-tax revenue to the Company's treasury. This task required almost constant touring and direct contact with a huge number of people right across the province. In what would become a motif of the Extra-Regulation Order, rather than turn to the modes and practices of the Regulation Order as a model for the taxation system, as a stop-gap measure, Gardner and Traill turned to the model the Gurkhas had introduced during their rule from 1790 to 1815.<sup>131</sup>

The Gurkha model was not introduced unmodified, however. Gurkha demands had only been met by selling the many defaulters and their families into slavery down on the plains.<sup>132</sup> Under Company law this was not an option and so, rather than maintain the demand at its Gurkha level, and with a keen eye to winning hearts and minds, Traill reduced the Company's demand to what had actually been received by the Gurkhas. While this revenue model would later be iteratively transformed, most prominently by removing intermediaries, its base in the existing practices of the region would never be lost.

Similarly, Gardner and Traill turned to the customs of the region to meet the Company's troops' need for transport. Here, they co-opted the existing customary obligation of the citizenry to provide portage services to the sovereign and pressed thousands of men into carrying heavy loads of supplies over the roadless terrain. Like the revenue system, this practice was iteratively transformed over time to establish some semblance of reasonableness and compliance. However, again, these new models never lost their base in the existing practices of the region.

Winning praise not only from Edward Gardner but also from the Board of Commissioners and even from the Governor-General himself for his work, Traill rapidly

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<sup>131</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 2/6/1815, KDMLR, vol: 4.

<sup>132</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Traill, G. W. to Gardner, E., 1/3/1816 in Whalley *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government*, N.W.P., pp.26-27.



emerged as the man to get things done in the confusion of the early occupation.<sup>133</sup> Unsurprisingly then, even for one so young, Traill became Acting Commissioner only nine months after arriving in Kumaon in April 1816, when Gardner moved on to become the Company's Resident in Kathmandu.<sup>134</sup> Traill's appointment was confirmed in July 1817.<sup>135</sup>

Traill's administrative skills and the imperatives that Kumaon's political, economic and cultural environment imposed played a significant role in shaping the Extra-Regulation Order. However, it was his positive, empathetic relationship with the people of Kumaon that came to shape the early Extra-Regulation Order more than any other factor. Traill quickly came to a view that the Pahari were 'nature's children' untainted by the sins of civilization.<sup>136</sup> He believed that the Pahari, who lived in an arcadian wonderland, were the most honest, peaceful and crime-free people on earth.<sup>137</sup> What sins they had were the sins of innocent and unsophisticated children, not an expression of vice.

Projecting this romantic view in his official writings, Traill continued and amplified a discourse initially begun by Gardner that would dominate relations between the Company and the Pahari for the rest of the Company and Crown Raj.<sup>138</sup> Within this discourse, the Pahari did not need to be redeemed from degradation induced by the despotism of their former rulers. Rather, they needed to be protected from the cupidity of both the culture of the Indian heartlands and of the British themselves.

Traill's affection for the Pahari appears to have been genuinely reciprocated. At least some of this relationship was the product of a series of acts and policies which affirmed Pahari cultural values and won him great favour with the local people. One of the constant themes within this narrative was local approbation of Traill's policy of not

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<sup>133</sup> Gardner, E. to Traill, G. W., 13/4/1816, KDRLI, vol: 2; Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Adam, J. to Traill, G. W., 20/4/1816, KDMLR, vol: 8.

<sup>134</sup> Gardner, E. to Traill, G. W. - Assistant Commissioner, 25/8/1815, KDRLI, vol: 1; Traill, G. W. to Gardner, E., 12/4/1816, KDRLI, vol: 2.

<sup>135</sup> Osram - Acting Chief Secretary to Government to Traill G. W., 7/7/1817, KDMLR, vol: 10.

<sup>136</sup> Dane Kennedy, *The Magic Mountains: Hill Stations and the British Raj* (Berkeley: University of California Press, 1996), See Chapter 4 'Natures Children,' pp. 63-87.

<sup>137</sup> Traill, G. W. to Glyn, R. T. as Commissioner under Regulation X of 1817., 19/7/1822, KDJLI, vol: 25.

<sup>138</sup> Gardner, E. to Adams, Lieut. Col -Commanding in Kumaon, 11/1/1816, KDRLI, vol: 1; Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/1/1816, KDRLI, vol: 1.

applying land tax to lands granted to support religious institutions. Indeed, like a sovereign of old, he garnered the affection of the local people through new grants including a grant to support ceremonies at the temple of the Kumaoni state deity Nanda Devi in Almora.<sup>139</sup> However, the most conspicuous of his acts of public beneficence was the repair and construction of a footpath for those travelling to the great pilgrimage temples of Kedarnath and Badrinath.<sup>140</sup> In a tale that passed into local legend and folklore, Traill was reputed to have laid out much of the route with his own hands while dangling from a rope.<sup>141</sup> The result of these and similar acts on Traill's standing with the Pahari was best encapsulated by one of the first English businessmen in the hills, Pilgrim Barron. He put it quite simply, that 'Mr. Traill, being in the estimation of the Hill people [was] second only to Vishnoo.'<sup>142</sup>

However, without diminishing the importance of his occasional acts of public beneficence, it was Traill's ongoing role as the dispenser of justice in Kumaon on which his relationship with the Kumaoni people was built. Traill was most certainly a Company man, and he plainly gave first place to the interests of the East India Company in his dealings with the local people and in his court. Nevertheless, as a later Commissioner would comment 'had Mr Traill been born and bred a Kumaonee Joshee he could not have shown greater partiality to the hill side of the question.'<sup>143</sup> His court did not offer impartial justice to all, and there is no record of a European 'gentlemen' coming before his criminal court despite instances of them perpetrating plainly criminal acts on local people.<sup>144</sup> However, the official archives of Traill's reign brim with accounts of local people seeking and finding justice through him. Indeed, they brim with accounts of Traill standing up for the rights and interests of the Pahari against all comers, even if this role as the bringer of justice played out within the racialized rules of the colonial order.

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<sup>139</sup> Traill, G. W. to Campbell, A. – Commissioner of Kumaon Circuit 5th Division, 29/4/1832, KDRLI, vol: 11.

<sup>140</sup> Robakari of Traill's Court, 19/7/1829, KDMLR, vol: 40. Traill himself ascribed his motivation for completing the pilgrim road to a desire to establish a cash grain market in Garhwal that would facilitate the collection of revenue. This was not how it was perceived by the Pahari people however. Traill, G. W. to Newnham, Henry, 3/4/1830, KDRLI, vol: 27.

<sup>141</sup> R.S. Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884: Edward Gardner to Henry Ramsay* (Dehra Dun: Bishen Singh Mahendra Pal Singh, 2009), p. 11.

<sup>142</sup> Barron, *Notes of Wanderings in the Himmala*, p. 61.

<sup>143</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35. Original underlining.

<sup>144</sup> Traill, G. W. to Tate, M. – Asst. Surveyor in Kumaon, 30/9/1821, KDRLI, vol: 8.

This image of Traill as the dispenser of justice sank deep into Kumaoni culture. One hundred years after Traill's departure, the historian Phillip Mason who was Assistant Commissioner in Kumaon in the 1930s [Garhwal District], records that difficult negotiations amongst local people were still given finality and endorsed as just by the Pahari with the words, 'It was so in Traill Sahib's day.'<sup>145</sup>

Traill's positive relationship with the Pahari people first appears in the historical record in Bishop Heber's work *Narrative of a Journey through the Upper Provinces of India, from Calcutta to Bombay, 1824-1825*, published in 1828.

It is pleasing to see on how apparent good terms Mr. Traill is with these people. Their manner in talking to him is erect, open and cheerful, like persons addressing a superior whom they love and with whom they are in the habits of easy, though respectful intercourse. He says he loves the country and people where he has been thrown and has declined, as Sir Robert Colquhoun told me, several situations of much greater emolument for the sake of remaining with them....Almost the whole of the dry season he is travelling about in the discharge of his official duty and it was a mere chance which gave me the advantage of meeting him in Almorah.<sup>146</sup>

The value of this positive assessment of Traill's relationship with the Pahari from a creature of the empire such as the Bishop must always be questioned. However, Heber was not noted as a man with a rose-coloured opinion of British colonialists and *Narrative of a Journey* is littered with less than flattering views of the general conduct of the British in India. Moreover, Heber's view of Traill and his relationship with the Kumaoni people is reflected in many other contemporary sources. Most notable of these was the voracious critic of Company administrators of the time, F. J. Shore.<sup>147</sup> Like Heber, Shore singled out Traill and his administration with praise for 'his zeal in promoting the interests of the natives and long experience of their habits and sentiments.'<sup>148</sup>

Traill's tenure as Commissioner saw the introduction of a limited number of formal governmental practices in Kumaon, but the transition from the social order being

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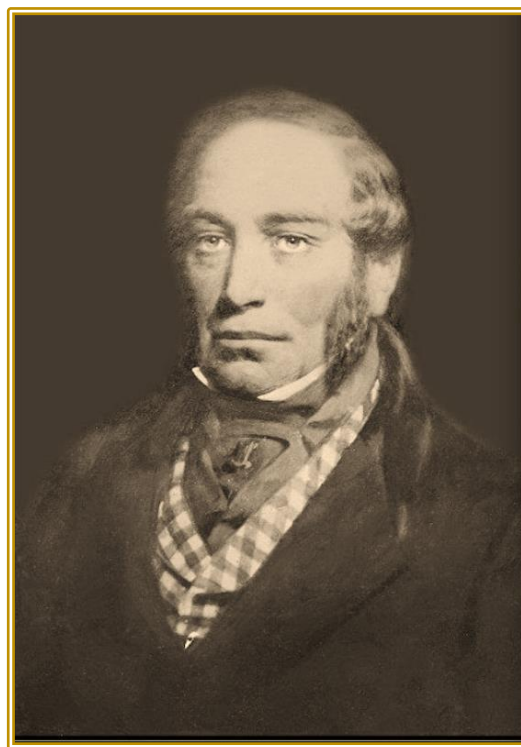
<sup>145</sup> Mason, *The men who ruled India*, p. 115

<sup>146</sup> Reginald Heber, *Narrative of a Journey through the Upper Provinces of India, from Calcutta to Bombay, 1824-1825, (with notes upon Ceylon): An account of a journey to Madras and the southern provinces, 1826, and letters written in India* 2nd ed., 3 vols., vol. 2 (London: John Murray, 1828), pp 224–225.

<sup>147</sup> Peter Penner and Richard Maclean, eds., *The Rebel Bureaucrat: Fredrick John Shore (1799-1837) as Critic of William Bentinck's India* (Delhi: Chanakya Publications, 1982).

<sup>148</sup> F. J. Shore quoted in G. R. C. Williams, *Memoir of Debra Dun* (Dehra Dun: Natraj Publishers, 2010 [1874]), p. 189.

embedded in the modes of custom to being embedded in the codified and impersonal modes of modernity was not completed during his time in Kumaon. With its continuing emphasis on the personal relationship between himself as sovereign and the Pahari as subjects, Traill's reign as Commissioner is best understood as a hybrid between the modes of the pre-colonial and high colonial eras and as an essential precursor to the Pahari's eventual acceptance of the wider range of formal governmental practices that were to come. His rule may have been reflexive, enlightened and benevolent, but unconstrained by codified rules and regulations as it was, it must also be seen as, in part, arbitrary and despotic.<sup>149</sup>



**Figure 1.6. George William Traill c. 1847. Source: Orkney Library & Archive.**

Traill left for a comfortable retirement in England on 30 November 1835, after a period of a little over 20 years as the primary figure in the development of the Extra-Regulation Order in Kumaon.<sup>150</sup> Given how tightly bound the Extra-Regulation Order

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<sup>149</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 9.

<sup>150</sup> Traill, G. W. to Macaulay, Charles - Secretary to the Government of the Agra Presidency Judicial and Revenue Department, 30/11/1835, KDJLI, vol: 30. Further: Traill died suddenly at the London Oriental Club in November 1847 aged 52 and a wealthy man. J. H. Batten, 'Notes and Recollections on Tea Cultivation in Kumaon and Garhwál,' *Journal of the Royal Asiatic Society of Great Britain and Ireland* 10, no. 1 (1878): p. 138. Tellingly, at a time when William Dalrymple relates that the practice had all but disappeared, Traill's will provided handsomely for his

was to his person, it is unsurprising that the period that followed was one of crisis and confusion.

### *The Interregnum and New Era*

The Kumaon Commissionership passed to Lieut. Colonel George Edward Gowan. Gowan had no experience of civil administration, little of Traill's charm or language skills and a quite extraordinary ability to become involved in long drawn out disputes with all those he came in contact with. Under his charge, the process of making a new revenue settlement floundered, there was a spike in crime in the lowlands fringing the hills, participation by local people in the civil courts went into rapid decline, and the level of distrust between the Company and Kumaon's customary officials led to a breakdown of relations. Most seriously of all for the Company, the grain supply system faltered, and they were nearly starved out of the hills. Gowan was dismissed after less than three years as Commissioner and little was left behind that could be considered his legacy. Given this circumstance, this thesis will follow Atkinson's use of the term the 'Interregnum' to refer to this period of crisis.<sup>151</sup>

The dysfunction of the Interregnum led to significant interventions in the affairs of Kumaon by the authorities of the Regulation Order. The central character of these interventions, the influential Robert Merttins Bird, saw that the main problem with the Extra-Regulation Order was its basis in the personality and practices of a single individual. As a consequence, the thrust of many of the interventions that followed was an attempt to introduce formal codified governmental practices more in concordance with those of the Regulation Order. These included a series of written rules for the conduct of criminal and civil justice in Kumaon, as well as an attempt to bring the revenue system into line with the increasingly codified and prescriptive revenue practices of the plains embodied in Regulation IX of 1833.

At the end of the day, however, the political, economic and cultural conditions of Kumaon reasserted themselves over these alien intrusions. Many of the 'reforms' had to

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acknowledged natural daughter Mary and grandchild Billie in Almora. William Dalrymple, 'White Mischief' *The Guardian*, Monday 9 December 2002.

<sup>151</sup> Atkinson, *The Himalayan Gazetteer*, p. 687.

be wound back or abandoned, particularly those concerning changes to revenue settlement practices and changes to policing practices in the liminal zone of the Bhabar.<sup>152</sup> While the written rules for the conduct of criminal and civil justice that were introduced modified the practices of the Kumaon Commissioners to a degree, it is difficult to identify any substantive impact on the daily lives of most Pahari flowing from these codified rules, other than the introduction of juries for trials of serious criminal matters.

What unfolded was a long period of stability. Change in in the form of progressively more and more state-centred, textually mediated, formal legal, revenue and administrative practices did occur. However, this only happened slowly and incrementally, and the essence of Kumaon's Extra-Regulation Order remained much as it had been in Traill's era until the mid 1880s. Central to this stability was the arrival in Kumaon of the men who would go on to pass the Commissionership onto each other over the period 1838 to 1884—George Lushington, John Batten and Henry Ramsay. Although this thesis will only touch on this long period of stability lightly, for clarity, it will follow Whalley and refer this period as the 'New Era.'<sup>153</sup>

### ***The formal origins of the Extra-Regulation Order***

Emphasizing the centrality of Traill to the development of the Extra-Regulation Order should not be taken to mean that it was solely his creation and that others were not involved. Extra-Regulation, or 'non-regulation' rule as it was often known in other spaces, was not a new form of rule in Company-controlled India in 1815. Many newly conquered territories were, at least initially, ruled without recourse to the regulations. Probably the most relevant of these other non-regulation provinces to events in Kumaon was the Delhi Territory governed by a Resident who reported directly to the Governor-General.<sup>154</sup> At the time of the invasion of Kumaon, the Resident was the influential

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<sup>152</sup> J. H. Batten, *Report on the Settlement of the District of Gurbwal in the Province of Kumaon : 15th August, 1842* (Agra: Orphan Press, 1843), pp. 3-4; Hamilton, R. N. C. – Secretary to the Governor to Lushington, G. T., 11/3/1842, KDMLR, vol: 69; 'Secretary of Government N.W.P. to Commissioner of Rohilkund dated 11/3/1842' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 81.

<sup>153</sup> Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 1

<sup>154</sup> Devendra Nath Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835* (Delhi: Munshiram Manoharlal, 1968), pp. 24-70.

Charles Metcalfe who developed the unorthodox 'Delhi model' for use in a province that did not generate sufficient revenue to support the expensive bureaucracy implicit in the regulations.<sup>155</sup> It was from Metcalfe's Delhi that the invasion of Kumaon was launched and it was Metcalfe's assistants, William Fraser and Edward Gardner, who were the region's first Company Political Agent and Commissioner respectively.<sup>156</sup>

The first documentation of the suggestion that Kumaon should also be governed as a space beyond the regulations appears in a flurry of correspondence all dated 19 October 1816 under the signature of John Adam, Secretary to Government.<sup>157</sup> Adam, who would later briefly act as Governor-General, maintained a long-term interest in Kumaon and visited the region in 1825 in the company of Bishop Heber.<sup>158</sup> The Government's thinking on the development of the Extra-Regulation Order at this early stage is most clearly expressed in the correspondence that opened up discussions regarding the administration of criminal justice in Kumaon.

...it would be neither practical nor desirable however, to extend to these countries and their inhabitants the regulations which have been enacted by the Government for the administration of criminal justice in other parts of its dominion where the character habits and manners of the people and their comparative progress in civilisation and the arts of life are widely different..<sup>159</sup>

The Company-Government in Calcutta was plainly aware that it was dealing with a space and people that were very different from those of the plains. Rather than bluntly imposing the models and system with which they were familiar, their first response was

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<sup>155</sup> For a useful case study of the size and expense of the bureaucracy under the Regulation Order see: Bernard S Cohn, 'The initial British impact on India: A Case Study of the Benares Region,' *Journal of Asian Studies* 19 no. 4 (1960): pp. 425-28.

<sup>156</sup> Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, pp. 126, 132 .

<sup>157</sup> Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon with an enclosure of a copy of a 'Letter to Major General Sir David Ochterlony', 19/10/1816a, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon, 19/10/1816b, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon, 19/10/1816c KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon, with enclosure of 'Extract from the proceedings of His Excellency the Right Honorable the Governor General in Council in the Secret Department', 19/10/1816d, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon. with enclosure of 'Extract from the proceedings of His Excellency the Right Honorable the Governor General in Council in the Secret Department', 19/10/1816e, KDMLR, vol: 3.

<sup>158</sup> James Sutherland Cotton, 'Dictionary of National Biography, 1885-1900,' (London: The Macmillan Company, 1901), [https://en.wikisource.org/wiki/Adam,\\_John\\_\(DNB00\)](https://en.wikisource.org/wiki/Adam,_John_(DNB00)).

<sup>159</sup> Adam, J. - Secretary to Government to Traill, G. W. - Acting Commissioner Kumaon with an enclosure of a copy of a letter to 'Major General Sir David Ochterlony', 19/10/1816a, KDMLR, vol: 9.

to seek information on 'local usages and habits as may be useful in framing the projected system' especially information on 'the system of criminal law which hitherto [had pertained] in the territory.'<sup>160</sup>

This deep interest in existing Kumaoni custom as the basis for any future legal system should not be seen as unusual. Both British and the Company's understanding and practice of law at the time was deeply grounded in custom, and while positivist, codified law that disrupted custom as the basis of law was an emergent trend in colonial lawmaking, its dominance would not be seen until later in the nineteenth century. To bring this process of change to light, the chapter to follow, 'Literature review, sources and structure,' will first turn to the historical process of change in the principles and practices of British law and the Company's role within that change through a review of the literature that informs this thesis. This will be followed by an examination of the sources on which the thesis is based and the chapter structure through which this process of change in Kumaon will be explored.

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<sup>160</sup> Ibid.



## Chapter 2, Literature review, sources and structure

THE British administrative frontier in India had widely differing effects on the political and social structures of the regions into which it moved from the middle of the eighteenth century until the middle of the nineteenth century. It is impossible to generalize on the impact of the administration, because the regions into which it moved differed in their political and social structures, and because British administration and ideas about administration, both in India and in Great Britain, changed markedly throughout this hundred year period<sup>1</sup>

Bernard Cohn, 1960

Bernard Cohn's preface to his 1960 study of the initial impact of the East India Company's formal governmental practices on the Banaras region highlights a number of issues of significance to this thesis. On the one hand, each region the Company expanded into had had a specific set of economic, political and cultural pre-conditions. India was not a monolith. On the other hand, the Company's modes of operation evolved and changed over time both in response to those varied pre-conditions and in response to broader changes afoot in its own and British governmental practice.

These broader changes in governmental practice were not limited to the Company's operations in India alone but were part of 'series of major historical transitions' seen globally in both provincial and metropolitan spaces that were the product of 'the interaction of a number deeply structured processes of change taking place over long periods.'<sup>2</sup> As Stuart Hall and David Held argue, these historical transitions cannot be collapsed into a single term or attributed to a single cause such as 'modernization', but rather, are best understood as an interrelated collection of processes, factors and causal patterns. This thesis focuses on one of these processes within this collection, the transition of the modes of governance from being based in custom to being based in formal, state-centred, textually mediated, legal, revenue and administrative practices—a mode of governance almost as equally novel to the Company as it was to the people of colonial spaces like Kumaon. Before moving on to the specifics of the meeting

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<sup>1</sup> Cohn, "The initial British impact on India: A Case Study of the Benares Region," p. 418.

<sup>2</sup> Stuart Hall and Bram Gieben, *Formations of Modernity* (Cambridge: Polity Press, 1992; repr., 2007), p. 1.

of Kumaoni custom with the East India Company's emergent formal governmental practices, it is important to pause and review both these broader dynamics and the historiography focused on them.

### ***E. P. Thompson***

The scholar contributing most to the conceptual framework of this thesis' understanding of the historical process of the transition from custom to formal governmental practices is E.P. Thompson. Unlike his father Edward John Thompson, E. P. Thompson was not a historian of India. However, his narrative of the historical process in which the interests of the emergent British capitalist classes and the customary rights of England's largely agrarian population collided and were contested during the long eighteenth century extended beyond the metropolitan space of England and into the colonial space of late eighteenth-century Bengal. This period saw the transition of property rights from being held in common and founded in custom, to property rights held to the exclusion of others and founded in positive and codified law such as the Enclosure Acts and the Permanent Settlement of Bengal.

To highlight the basis of English law in custom, Thompson begins his analysis of property rights by drawing heavily from Renaissance legal theory and frames his discussion in *Customs in Common* with a quote from Sir John Davies, who is widely credited with formulating many of the legal principles underpinning British colonialism.<sup>3</sup>

For Custome taketh beginning and groweth to perfection in this manner. When a reasonable Act once done is found to be good and beneficial to the People and agreeable to their nature and disposition, then they do use it and practice it again and again and so by often iteration and multiplication of the act, it becomes a Custome; and being continued without interruption time out of mind, it obtaineth the force of a Law.<sup>4</sup>

Drawing heavily from Coke and Carter's work on copyhold, Thompson argues that this earlier custom-based English law was grounded in the principle of 'antiquity, continuance, certainty and reason' and was essentially *lex loci*, founded and bound to a

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<sup>3</sup> Hans S. Pawlisch, *Sir John Davies and the conquest of Ireland: A study in legal Imperialism* (Cambridge: Cambridge University Press, 1985), pp. 1-14.

<sup>4</sup> Sir John Davies, *A discovery of the true causes why Ireland was never entirely subdued [and] brought under obedience of the crown of England until the beginning of His Majesty's happy reign (1612)* (Washington, D.C: Catholic University of America Press, 1988), p. 32-33.

particular landholding and not generalizable.<sup>5</sup> This law of place was expressed at one extreme in textual parish and manorial records, at a middling level through the performance of perambulation and renewal of oral traditions, but at the other extreme through ‘ambience’. To bring to light this concept of ‘ambience,’ Thompson alludes to Bourdieu’s concept of “habitus”—a lived environment comprised of practices, inherited expectations, rules which both determined limits to usages and disclosed possibilities, norms and sanctions both of law and neighbourhood pressure.<sup>6</sup>

However, while emphasizing custom’s basis in antiquity, Thompson points out that custom in England was not static, and he presents many historical examples of conflicts and contestations between individuals, groups and classes. Common rights were exercised according to time-hallowed custom, but they were also disputed in time-hallowed ways.<sup>7</sup> These conflicts came to the fore in eighteenth-century England in the context of the enclosure movement, agricultural improvement, an increase in the population and the emergent economic opportunities arising from the growth of towns and industry during this period. While Thompson makes no direct reference to custom in Kumaon, this thesis will show that, as in eighteenth-century England, custom in Kumaon was not static and was contested in time-hallowed ways.<sup>8</sup> Similarly, this contestation came to the fore in Kumaon soon after occupation as a consequence of the process of economic, political and cultural change the Company initiated.<sup>9</sup>

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<sup>5</sup> E. P. Thompson, *Customs in Common* (Pontypool: Merlin Press, 2010), pp. 97-98; S. Carter, *Lex Custumaria: Or a Treatise of Copy-hold Estates* (London: J. Walthoe in Vine Court, Middle Temple, 1696). Ebook @ [http://eebo.chadwyck.com.rp.nla.gov.au/search/full\\_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=V101302](http://eebo.chadwyck.com.rp.nla.gov.au/search/full_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=V101302); Edward Coke, Sir *The complete copy holder*, (London: Printed by John Streater, 1668). Ebook @

<http://find.galegroup.com.rp.nla.gov.au/mome/infomark.do?&source=gale&prodId=MOME&userGroupName=nla&tabID=T001&docId=U103860977&type=multipage&contentSet=MOMEArticles&version=1.0&docLevel=ASCIMILE>, Preface image four.

<sup>6</sup> Thompson, *Customs in Common*, p. 102. Thompson’s gloss of Bourdieu’s stricter concept found in Pierre Bourdieu, *Outline of a Theory of Practice*, Translated by Richard Nice (Cambridge: Cambridge University Press), Chapter 2 ‘Structures and habitus.’ [https://books.google.com.au/books?redir\\_esc=y&id=4BWZpwAACAAJ&q=habitus#v=snippet&q=Structures%2C%20habitus%2C%20power&f=false](https://books.google.com.au/books?redir_esc=y&id=4BWZpwAACAAJ&q=habitus#v=snippet&q=Structures%2C%20habitus%2C%20power&f=false).

<sup>7</sup> Ibid. p. 104

<sup>8</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 147-207; Kusum Budhwar, *Where Gods Dwell: Central Himalayan Folktales and Legends* (DLF Cyber City Gurgaon: Penguin, 2010).

<sup>9</sup> Lushington, G. T. to Elliot, H. M. - Secretary to the Suddar Board of Revenue N.W.P. – Allahabad, 23/9/1843, KDRLI, vol: 15.

However, Thompson does directly take up how the broader process of changes in property law played out in India's heartland. Again in *Customs in Common*, he describes the Cornwallis Code of the early 1790s, including the notorious 'Permanent Settlement of Bengal', as '[t]he most ambitious projects to transpose the law of property and sociological model of a landowner into an alien context were the succession of settlements imposed by British administrators upon India.'<sup>10</sup> Drawing heavily from Ranajit Guha's work *A Rule of Property for Bengal* and Ramsbotham's *Studies in the Land Revenue History of Bengal*, Thompson contends that '[p]roposals of mercantilists, physiocrats and Smithsonian political economists alike all agreed in the need to establish security of [exclusive] property and all converged upon a solution which would vest these permanent property rights in the zemindars [in colonial Bengal meaning large landholder].'<sup>11</sup>

Thompson further develops these themes in his work *Whigs and Hunters*, which examines how exclusive capitalist property rights over forests rather than agricultural land emerged and were contested in seventeenth and eighteenth-century England. The issue of property rights over forests is of great significance in Kumaon, but because most of the important events of this contestation occur later in the nineteenth century this thesis will not address this issue.<sup>12</sup> Nevertheless, other issues raised in *Whigs and Hunters* are central to the analysis in this thesis. In the famous epilogue, Thompson turns his attention to the role that the rule of law played in legitimizing and consolidating the social order of the times.<sup>13</sup> Here however, he turns away from Guha's and others' analysis, and consciously avoids the simplistic conclusion that 'law = class power.' Rather, Thompson reaches for a complex and contradictory understanding where, on the one hand, the law was a superb instrument for imposing the new forms of property that served the interest of the ruling class, while on the other, because the practices of law imposed inhibitions on the arbitrary power of government and the ruling class, the law was a genuine forum in which class conflict could be played out. Thompson contends that the law is something

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<sup>10</sup> Thompson, *Customs in Common*, pp. 167-68.

<sup>11</sup> *Ibid.*, p. 168.

<sup>12</sup> For a fullsome discussion of the issue of forests in Kumaon see Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*.

<sup>13</sup> E. P. Thompson, *Whigs & Hunters: The origin of the Black Act* (London: Breviary Stuff Publications, 2010), pp. 202-10.

more than *unalloyed* sham. While it may mystify the powerless and disguise power relations, ‘the notion of the regulation and reconciliation of conflicts through the rule of law—and the elaboration of rules and procedures which, on occasion, made some approximate approach towards the ideal—seems to me a cultural achievement of universal significance.’<sup>14</sup>

While acknowledging that the value of the rule of law is always part sham in the context of the gross inequalities of imperialism, Thompson argues that even here it imposed inhibitions upon imperial power and its rhetoric was a tool used by anti-imperial forces. Moreover, and in an argument couched in the language of Marxist theory, he contends that law as ideology cannot be usefully analyzed as simple superstructure distinct from infrastructure. Law is not simply imposed from above as it also functions horizontally to define rights and relations. Law may often fall short of its rhetoric of equality, ‘yet the notion of the rule of law is itself an unqualified good.’<sup>15</sup>

Keally McBride, following Thompson’s analysis, has recently argued that the British were well aware of the rule of law’s ability to bolster the political order in times of change, but only if it was something more than ideological ‘scrim’ and the political elite appeared ‘at least marginally bound by the law themselves.’<sup>16</sup> Having learned this lesson in England, the British then exported these practices both to stabilize their colonial empire and to legitimate that empire to the British public.

Thompson’s work in *Customs in Common* and *Whigs and Hunters* raises many issues in content, methodology and theory that are relevant to the issues raised in this thesis.

First, he makes clear that in England, custom was a dynamic site of conflict and contestation where appeals to antiquity were just one of the rhetorical devices used in negotiations over changing interests. This rhetorical device had real value in the legal negotiations at the historical point where land rights were in transition from being embedded in custom to being expressed in textually mediated law in England during the seventeenth and eighteenth centuries. However, the value of custom was determined on

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<sup>14</sup> Ibid., p. 207.

<sup>15</sup> Ibid., p. 208.

<sup>16</sup> Keally McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law* (Oxford: Oxford University Press, 2016), p. 119.

a case by case basis, and it was not a trump card. Similarly, this thesis will demonstrate that custom had an uncertain value in the negotiations through which custom in Kumaon was transitioned into formal governmental practices. While it usually had at least some value, what that value was varied on a case-by-case basis and in relation to the strength and ambitions of the interests involved.<sup>17</sup>

Stylistically, Thompson makes extensive use of the informant's own words, often giving voice to attitudes, beliefs and modes of thinking very different from those of today that would be lost if glossed in the author's own words. Like Thompson then, this thesis will make extensive use of the words of the actors and agents to ensure that subtleties are not lost in translation. Moreover, this principle will carry through to the texts of the formal legal, revenue and administrative practices that came to bear on Kumaoni custom. Many of these texts are unavailable to the general reader and will be included as appendices.

Theoretically, Thompson's work makes clear the value of understanding how individuals, groups and classes interacted with each other through and within the infrastructure of formal legal, revenue and administrative practices. In foregrounding this issue, he makes the important point that law did not just descend from above. It also operated horizontally between individuals, groups and classes as well as functioning in ascension to inhibit the expression of imperial power. This multi-directional functioning of law can clearly be seen in Kumaon. Yes, some law simply did descend from above, but the available case records show many examples where the Company was not the progenitor of the new laws and that their origins were to be found in the relations between individuals, groups and classes. Moreover, where law did descend from above, it was often directed at the Company and its servants, not at the Pahari.

### ***William Blackstone***

Another body of work that has had a significant impact on the analysis in this thesis is Blackstone's *Commentaries on the Laws of England*, first published in 1766.<sup>18</sup>

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<sup>17</sup> Traill, G. W. to Shrinkworth, 4/7/1835, KDJLI, vol: 30.

<sup>18</sup> William Blackstone and St. George Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia* (2nd ed.), v vols.(Philadelphia: William Birch and Abraham Small, 1803).

*Commentaries* is probably the most influential and authoritative work on the ideas and practices of English Law as it was applied to colonial spaces.<sup>19</sup> From this seminal work flows much of the legal understanding of the status of colonial spaces as ‘ceded and conquered’ territories, along with the status of corporations such as the East India Company that operated within those spaces. From the perspective of this thesis, the most important issue clarified in the *Commentaries* is that, as Kumaon became a British possession ‘by right of conquest,’ under English law the Kumaoni people had the right to retain their existing laws until the sovereign specifically changed those laws.<sup>20</sup>

But in conquered or ceded countries, that already have laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the antient [sic] laws of the country remain, unless such as are against the law of God, as in the case of an infidel country.<sup>21</sup>

On the plains of North India, Blackstone’s principle had found expression in Warren Hastings ‘Plan for the Administration of Justice’ of 1772. Through 37 Rules or Sections, the future Governor of the Presidency of Fort William (Bengal, Bihar and Orissa or more commonly simply ‘Bengal’) set out how justice was to be administered after the Company’s decision to ‘stand forth as diwan’ and directly administer justice in India.<sup>22</sup> Central to these rules was the principle that, other than new laws that the Company had specifically made, that the laws of India persisted. A principle most famously expressed in his Rule 23:

in all suits regarding inheritance, marriage and caste, other religious usages and institutions, the laws of the Koran with respect to the Mahomedans and those of the Shaster with respect to the Gentoos [Hindus], shall be invariably adhered to.<sup>23</sup>

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<sup>19</sup> Note that English and Scottish Common Law are quite separate traditions and that only the decisions of the English Law Lords were applicable in India. Awareness of this distinction is clearly apparent in discussion around law in the KDPMR.

<sup>20</sup> Newnham, H. – Secretary to the Board of Commissioner, Moradabad to Traill, G. W., 8/2/1817, KDMLR, vol: 10.

<sup>21</sup> Blackstone and Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia* (2nd ed.).p. 108 Also: This concept of “unless such as are against the law of God” is a common trope in later juridical and history of law scholarship and is generally expressed as ‘repugnant to natural justice’ see : Peter Fitzpatrick, *The Mythology of Modern Law* (London and New York: Routledge, 1992), p. 110.

<sup>22</sup> House of Commons Select Committee on the Affairs of the East India Company, *Fifth Reports &c. (East India Company)* (London: n.p., 1812), p. 6

<sup>23</sup> Rule 23, Hasting’s ‘Plan for the administration of Justice’ in Anil Chandra Banerjee, *English Law in India* (New Delhi: Abhinav Publications, 1983), pp 29-30.

As will be discussed in chapter 6, this maxim, initially focused on personal law, was explicitly extended in 1797 to cover much of what is understood today as civil law. Moreover, and as will be discussed in chapter 5, while the Company believed that Hindu and other criminal law had been over ridden by Indo-Islamic law, the principle of the continuation of existing law also had a significant *de facto* influence in criminal law up until the introduction of the Indian Penal Code of 1860.<sup>24</sup>

### ***Eric Stokes***

One of the significant themes that will be developed in this thesis is that the transformations seen in Kumaoni custom and the Company's formal governmental practices should be understood in their own right and not merely as a reflection of the broader events of the plains below. Nevertheless, the 'spirit and principles' of the regulations of the plains did come into play and, along with these, the political, economic and cultural movements at work on the plains also affected developments in Kumaon. One of the central texts addressing these political, economic and cultural movements is Eric Stokes' work *The English Utilitarians and India*, which, in the late 1950s, signalled a significant turn in the historiography of law in India.

Like so many earlier works, Stokes presents a detailed positivist account of British rule in India based on a reading of the archive. Within this analysis, he attributes the proximal cause of the Permanent Settlement to the Company's cash crisis of the time. However, in what several commentators have noted as a discursive shift, he emphasizes the influence of utilitarian thought on the development of the formal governmental practices that emerged in colonial India—a theme central to academic thought on the topic for the remainder of the 20<sup>th</sup> century.

Stokes makes two broad points about utilitarianism in India. First, utilitarianism in India was far from being the impotent abstract moral and political philosophy that it was in the metropole. Rather, it was a potent force and the underlying inspiration for the mode of governance that the British developed in India over the nineteenth century.

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<sup>24</sup> McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law*, pp. 125-31.



Secondly, it was the authoritarian, not the liberal aspects of utilitarianism that blossomed and informed imperial policy and practice.

Stokes sees utilitarians as competing for influence in India with a number of rival, but not necessarily discrete, ideologies. These included the Whigs with their anglicization policy, the liberal orientalist who sought to conserve much of India's custom and institutions, and the Evangelicals (largely the Clapham Sect) with their policies of assimilation, conversion and the abolition of slavery. None of these movements was monolithic, and there were many difference of belief and emphasis within them, but all agreed for their own reasons that protecting people from despotic and arbitrary government was essential.<sup>25</sup> Stokes shows that the utilitarians shared with the Evangelicals the belief that human nature is intrinsically the same everywhere, but both groups differed among themselves in their level of confidence in the power of codified law and government to achieve the transformation of the moral character of Indians that the two groups desired. The Evangelicals, while committed to the abolition of slavery and *sati* (burning or burying widows alive) through formal governmental practices, believed that a true transformation could only really come from personal revelation. The liberals, less confident of rapid change, often harboured romantic orientalist notions about the value of Indian culture and its established social order. These factors combined, meant that both the Evangelicals and liberals—while believing the transformation of local custom through formal governmental practices was essential—turned away from governmental action and embraced educational reform to achieve the transformation of character that they both desired. In contrast, and inspired by the thought of James Mill, the utilitarians argued that the form of government, the nature of the laws and the mode of taxation were the basic tools that would best achieve the desired change and turned to governmentality to achieve this objective.

For the utilitarians, 'happiness and not liberty was the end of government and happiness was promoted solely by the protection of the individual in his person and property.'<sup>26</sup> Importantly, neither Mill nor Bentham saw representative government as a

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<sup>25</sup> For a broad review of the impact of the trope of despotism and arbitrary government see Robert Travers, 'Ideology and British expansion in Bengal, 1757–72,' *The Journal of Imperial and Commonwealth History* 33, no. 1 (2005): 7-27.

<sup>26</sup> Eric Stokes, *The English Utilitarians and India* (Clarendon Press Oxford, 1959), p. 64

substitute for good government. The split in the British liberal movement that later emerged over imperialism was thus a split between those who emphasized liberty and representative government and those who emphasized happiness and authority. Stokes argues that the utilitarians, with their limited emphasis on liberty, succeeded in establishing positivistic government in India while they failed to do so in England because of the political requirement to emphasize liberty in the metropole. Acceptance of government responsibility for building roads, railways, ports, posts and telegraphs and large-scale irrigation works—projects for which formal, state-centred, textually mediated, legal, revenue and administrative practices were essential—involved utilitarian policies that found traction in the provinces, but not in the metropole. Similarly, the creation of the Indian codes in the last half of the nineteenth century—the ‘Penal Code’, the ‘Code of Civil Procedure’ and the ‘Code of Criminal Procedure’—was a legacy of the utilitarians’ vision of an efficient, rational and centralized bureaucracy that found early traction in heartland India, but not in the metropole.

### ***Jon E. Wilson***

Since the time Stokes wrote *The English Utilitarians and India*, the literature on the ascendancy of codified legal, revenue and administrative practices in colonial India has progressed on many fronts. Of these, the scholar to have most influenced this thesis is Jon E. Wilson in his recent work *The Domination of Strangers*. Wilson notes that the modern historiography of the development of formal governmental legal practices—Weber, Foucault, MacDonagh and Stokes—argues that institutional changes such as the move to impersonal governmentality generally used by modern states occurred first in Europe and then went on influence events around the world, particularly colonial states. However, Wilson cautions us, using Quentin Skinner as an authority, that ‘ ‘influence’ is a very difficult methodological tool to deploy successfully in the history of ideas.’<sup>27</sup> He argues that all of the new forms of governance to emerge in the late eighteenth and early nineteenth centuries targeted populations through categorization and impersonal rules, created stable hierarchical agencies to enforce the norms and generated new ideas about

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<sup>27</sup> Quentin Skinner, ‘The Limits of Historical Explanations,’ *Philosophy* 41, no. 157 (1966); Jon E. Wilson, ‘Anxieties of distance: Codification in early colonial Bengal’ *Modern Intellectual History*, vol 4, pp 7-23: p. 9.

how to manage the boundary between societies self-regulation and the state's governmentality, bureaucracy and liberalism. With all these new systems concerned with written rules, identifying colonial concern with codified law in India is not sufficient to demonstrate the influence of utilitarianism.<sup>28</sup> Moreover, Wilson, asks us to revise Stokes' schema and to consider that rather than the flow of influence being entirely from the metropole to the provinces, that much of this process occurred first in the provinces and then flowed back to the metropole. In particular, he asks us to consider that the process of developing modern positivist, codified, textually mediated law was more advanced in colonial India than in Britain in the nineteenth century and that this development later flowed back to the imperial centre.<sup>29</sup>

Wilson's revision of Stokes also identifies a significant influence on the new modes of colonial governance not discussed in earlier works. He argues that while the philosophical movements of the metropole were important, especially 'improvement' and utilitarianism, the actual historical transformation in India was primarily 'rooted in the complex set of responses to a complex, multi-layered series of imperial crises that occurred within British rule in Bengal in the late eighteenth and early nineteenth centuries.'<sup>30</sup> Centrally for Wilson, not the least important of these crises was the emotional crisis felt by many Company officers who, as strangers in a strange land without long-term immersion in local social practices, were unable to understand or feel at home in this alien landscape.

In the eighteenth-century Anglophonic world 'the law was a set of historical institutions and subjectively learnt practices and not a set of rules' in which 'political rhetoric, national attachment, juridical identity and religious denomination were often inseparable.'<sup>31</sup> Given this understanding of law, the Company engaged in an extended program to develop a practical understanding of what the law of Bengal was. Unfortunately for the Company though, this program—often focused on ancient texts of only limited practical relevance—bore little practical fruit. Consequently, Company judicial officers found themselves at a loss for a sound basis from which to administer the

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<sup>28</sup> Ibid.: 9-10.

<sup>29</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, p. 4.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid., pp. 75, 79.

law.<sup>32</sup> Wilson argues that the ascendancy of formal governmental practices, often with both foreign and novel Anglo-Indian concepts embedded within them, was largely a pragmatic response to the anxiety Company officials felt in applying law they had no real understanding of.<sup>33</sup>

Drawing on Wilson's work, this thesis will argue that the Extra-Regulation Order implemented by the Company in Kumaon had its origins in a pragmatic response to crisis—most importantly the crisis experienced by the Company in supplying their troops with grain and pay in Kumaon's radically different geography and economic conditions. However, the emotional crisis which Wilson asserts was experienced by many Company officials in Bengal in applying law they had no real understanding of, would appear to have been largely absent in Kumaon. All Company officials in Kumaon, perhaps with the exception of George Gowan in his brief reign as Commissioner 1835–1838, appear to have quickly gained a deep understanding of the languages and cultures of Kumaon and, through their long stays in the region, rapidly gained confidence in working with and through those languages and cultures in the application of law.

The contrast between the anxiety and alienation Company officers experienced on the plains to the familiarity and delight they often felt in the hills, is highlighted by the stark contradictions between the evidence of Wilson's principle informant John Shore (later 1<sup>st</sup> Baron Teignmouth and Governor-General 1793–1897) and his son, (Fredrick) John Shore who was Assistant Commissioner in Kumaon 1825-1829. Working from John Shore Senior's diaries, Wilson paints a picture of an anxious young man adrift in the strange and unknowable world of Bengal.<sup>34</sup> In contrast, John Shores Junior's writing

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<sup>32</sup> Maine asserts that under the influence of orientalist forces 'The impression in the mind of English judicial officers... manifestly was that the sacerdotal Hindu law corresponded nearly to the English Common Law, and was at least the structure of rules of life followed by Hindus. It is only beginning to be perceived that this opinion has a very slender foundation, for it is probable that at the end of the last century [eighteenth] large masses of the Hindu population had not so much as heard of Manu and knew little or nothing of the legal rules supposed to rest ultimately on his authority.' Henry Sumner Maine, *Dissertations on Early Law and Custom: Chiefly selected from lectures delivered at Oxford* (London: J. Murray, 1883), pp. 6-7.

<sup>33</sup> For an authoritative account of the results of the codification of law in India see: Whitley Stokes, *The Anglo-Indian Codes* (Oxford: Clarendon Press, 1887).

<sup>34</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, pp. 59-74;

from Kumaon and other places shows a confident young man perfectly at home in the hills.<sup>35</sup>

### ***Bhavani Raman***

An alternative explanation to the ascendancy of formal government practices seen in India in late eighteenth and early nineteenth centuries has emerged recently in Bhavani Raman's book *Document Raj*. Raman, drawing heavily on the work of Nicholas Dirks, argues that at around the time in question the Company and its practices had been the subject of withering examination through the extended saga of the show-trial impeachment of the former Governor of Bengal Warren Hastings, 1788–1795.<sup>36</sup> Company profits were slight and unstable and stood in sharp contrast to the increasing number of Company officers returning from sojourns in the East fabulously wealthy. The profits from Hastings' private trade and numerous other profit-seeking ventures involving Company 'nabobs', had scandalized the age.<sup>37</sup> With many parliamentarians being significant Company shareholders and personally interested in Company profits, these scandals had severely damaged the Company's reputation. Raman argues that the formal governmental practices that emerged in the colonial space were a response to these scandals and geared to increase the legibility of Company activities and bring them under the gaze of Parliament. Within this analysis, the formal governmental practices that emerged around the turn of the nineteenth century were a novel 'model of political accountability based on continuous writing and geared to assuage the imperial demand of the British Parliament.'<sup>38</sup> It was the Company and its servants that were the primary focus of the new modes of formal governmental practices that emerged in the colonial space, not the colonial subject alone.

Following Raman's analysis then, this thesis will consider the meeting of local custom with the Company's formal governmental practices and the transformations

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<sup>35</sup> Penner and Maclean, *The Rebel Bureaucrat: Fredrick John Shore (1799-1837) as Critic of William Bentinck's India*; Williams, *Memoir of Debra Dun*, p. 189.

<sup>36</sup> Nicholas B Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge and London: Harvard University Press, 2006), pp. 9-15.

<sup>37</sup> Ibid. Nabob is a term derived from the honorific nawab bestowed on semi-autonomous rulers of India by the Mughal emperors.

<sup>38</sup> Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago and London: University of Chicago Press, 2012), p. 194.

within this meeting using a unified field of analysis. All actors within Kumaoni space— Company officers, private Europeans, Native elites, peasants and the military— experienced the transformations. Each of these categories of persons experienced the transformations in different ways, but it would be simplistic to understand the transformations only in terms of the experience of the Kumaoni people.

### ***Lauren Benton***

Moving on from these studies that are narrowly focused on the Indian colonial space, Lauren Benton takes the study of the transition from custom to formal governmental practices out to the scale of world history and the international legal order. In her book *Law and Colonial Cultures* and subsequent journal article ‘From International Law to Imperial Constitutions,’ Benton begins with the premise that in early colonial India the sovereignty of the East India Company only extended to Company employees and the immediate confines of its factories.<sup>39</sup> After 1757, the Company (not the British Crown) acquired *de facto* sovereignty rights over Bengal. This sovereignty was initially expressed through a puppet government and then from 1765 onwards, through a Mughal issued *dewani* (written authority to collect revenue). The Company was sovereign but, as discussed earlier, the law of these lands persisted—a law that the Company understood to be split into Hindu and Muslim traditions and greatly complicated by *lex loci*. This acceptance of divergent legal traditions and institutions created a plural legal order with multiple and competing sources of authority, institutions and practices. Moreover, it was a matrix where actors often saw themselves as belonging to more than one orbit of action. Elizabeth Kolsky has recently added to our understanding of the complexity of this chaotic system in her article ‘Codification and the Rule of Colonial Difference’ by identifying the role of uncovenanted Europeans within this matrix.<sup>40</sup> Such ‘civilians’ were only subject to English law and the crown courts. As these courts and corresponding officers of the law were only found in the Presidency seats such as Calcutta, certainly not in Kumaon, these civilians were often effectively under no law at all. Benton contends

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<sup>39</sup> Lauren Benton, *Law and Colonial Cultures: Legal regimes in world history, 1400-1900* (Cambridge: Cambridge University Press, 2002), Ch. 4 especially pp. 131-34; ‘From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870–1900,’ *Law and History Review* 26, no. 3 (2008).

<sup>40</sup> Elizabeth Kolsky, ‘Codification and the rule of colonial difference: criminal procedure in British India,’ *Law and History Review* (2005).

that the structural pattern produced by the contestation between all the actors within this institutional matrix opened up a novel space that allowed the colonial state to emerge as the central and uncontested authority. Further, she argues that this outcome was a product of history and few would have predicted this pre-eminence of the state early in the process.

Benton's analysis draws heavily from the work of Sally Engle Merry on Hawai'i, Martin Chanock on East Africa and Bernard Cohn on the Indian heartland of Eastern Uttar Pradesh.<sup>41</sup> In her extended review 'Colonizing Hawai'i and Colonizing Elsewhere,' Benton makes clear the importance of these three texts in identifying the multiple centres of authority and power, often founded as newly defined legal identities, that came into play in the establishment of formal governmental practices in colonial spaces.<sup>42</sup> Benton contends that these three works combined—Merry, Chanock and Cohn—represent a discursive shift away from classical Marxist theory in which, like Thompson's complex and contradictory understanding of law expressed in *Whigs and Hunters*, law was more than merely an expression of the interest of the ruling class. In this analysis, law was not just a tool of the markets, but also functioned as a mode of regulating and articulating power that often stood against and alongside the market, constraining its activities through normative standards.<sup>43</sup>

More broadly though, Sally Engle Merry's text *Colonizing Hawai'i* has provided a model for and informed the analytical approach of this thesis more than any other text. Merry recognizes that the end of the 20<sup>th</sup> century saw a florescence of work on the postcolonial inspired by Fanon, Foucault and Said that examined how relations of power and culture shaped the present.<sup>44</sup> The value of this work notwithstanding, Merry argues that 'the postcolonial can only be understood through a detailed analysis of the colonial,' a project that lies at the heart of this thesis. Moreover, Merry puts forward the analysis

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<sup>41</sup> Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985); Bernard S Cohn, 'The British in Benares: A nineteenth century colonial society' *Comparative Studies in Society and History* 4, no. 02 (1962); *Colonialism and Its Forms of Knowledge: The British in India*; Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton: Princeton University Press, 2000); 'From Law and Colonialism to Law and Globalization,' *Law & Social Inquiry* 28, no. 2 (2003).

<sup>42</sup> Lauren Benton, 'Colonizing Hawai'i and Colonizing Elsewhere: Toward a History of US Imperial Law,' *Law & Society Review* 38, no. 4 (2004).

<sup>43</sup> Merry, 'From Law and Colonialism to Law and Globalization,' p. 18.

<sup>44</sup> Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton: Princeton University Press, 2000), p. 11.

that the form of the product of the meeting of custom and formal legal practices in colonial spaces reflected both serendipity and world scale historical process.<sup>45</sup> Rather than being a teleological certainty, the hybrid systems of law that emerged were the product of particular people who found themselves at a particular place at a particular time with whatever legal resources they had with them. In Hawai'i with its particular economic, political and cultural conditions, it was the American William Lee, and the law books from Massachusetts that he had brought with him shaped the hybrid legal system that emerged. I argue that in Kumaon it was George Traill with his half-remembered snatches of the Company's regulation and deep regard for local customs that were the primary factors that shaped the Extra Regulation Order.

### **Moving on to 'wild, remote, or peculiar districts or provinces'**

The transition from the social order being based in custom to it being based in formal governmental practices has been a central question of the historiography of India—indeed a central question of the historiography of many spaces and scales of analysis—since the early nineteenth century. This vast corpus has given rise to many schools of thought and seen many trends and phases. A feature of this corpus is that it has been overwhelmingly based on the historical experience of the modern Indian nation-state's heartlands and contextualised by the political, economic and cultural conditions of those heartlands. Case studies focused on specific South Asian heartland locations, most notably Banaras, Bengal and Tamil Nadu, have been taken to be, not just as part of the national experience, but *as* the national experience. Indeed, within these texts, the name of the location of the study was often used interchangeably and synonymously with the term India.<sup>46</sup>

Studies that escape this conflation of the heartland and the nation do exist, with Tupper's *Indian Political Practice* from 1885 an early counterexample. In contrast to most studies, *Indian Political Practice* emphasized the existence of 'wild, remote, or peculiar districts or provinces' that, under a succession of Scheduled Districts Acts, were

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<sup>45</sup> Ibid, p. 6.

<sup>46</sup> Cohn, 'The initial British impact on India: A Case Study of the Benares Region. '; Raman, *Document Raj: Writing and Scribes in Early Colonial South India*; Jon E. Wilson, 'Anxieties of distance: Codification in early colonial Bengal,' *Modern Intellectual History* 4, no. 01 (2007).



exempted from legislation applicable to the rest of British India.<sup>47</sup> Such studies are a rarity however and, as Willem van Schendel argues in his article ‘Geographies of knowing, geographies of ignorance,’ Extra-Regulation provinces such as Kumaon are largely peripheralized and often simply elided from the nation-centric discourses of the late 20<sup>th</sup> century.<sup>48</sup>

Schendel proceeds from a critique of the area-studies enterprise in which he demonstrates that this broad disciplinary school is grounded in and is a construction of the imperatives of the post-war scholars of Europe and America. These imperatives focused the academy’s interest in the heartlands of the post-colonial nations and peripheralized border regions such as Kumaon as they were ‘politically ambiguous and did not command sufficient scholarly clout.’<sup>49</sup> Schendel argues that by focusing exclusively on the heartlands, the nation-centric discourses have lost awareness of the borderlands of many of today’s nation-states. This is less than optimal as these borderlands have been important sites for influential studies, such as those by Owen Lattimore, Edmund Leach, Fredrik Barth and Christopher von Fürer-Haimendorf, that theorized the links between kinship, ecology, identity and political structure.<sup>50</sup>

### ***Aniket Alam***

A recent work that questions using both the geographic boundaries of the modern nation-states and the historical experience of those nation’s heartlands as the exclusive perspective of analysis is Aniket Alam’s *Becoming India*. Focused on the Shimla Hills immediately to Kumaon’s west—part of the mosaic of Hill States returned to their erstwhile rulers by the Company noted in the introduction—*Becoming India* foregrounds the distance and distinction of the Himalayan mountains from the Indian heartlands in pre-colonial times. He argues that, rather than privileging the political, economic and cultural conditions of the heartlands and their colonial experience, the specificities of the mountain’s colonial experience need to be studied independently of a general history of

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<sup>47</sup> Charles Lewis Tupper, *Indian Political Practice: A collection of the decisions of the Government of India in political cases*, 4 vols., vol. 3 (Delhi: BR Publishing Corporation, 1974 [1895]), p 241.

<sup>48</sup> Willem van Schendel, ‘Geographies of knowing, geographies of ignorance: jumping scale in Southeast Asia,’ *Environment and Planning D: Society and Space* 20, no. 6 (2002): pp. 651-52.

<sup>49</sup> *Ibid.*, p. 647.

<sup>50</sup> *Ibid.*, p. 654.

India.<sup>51</sup> In structuring his argument, Alam is careful to first distance himself from any 'lame duck attempt at reviving the historiography of colonial apologia.'<sup>52</sup> He then goes on to assert that the colonial experience of the Pahar was both qualitatively different and 'non-cataclysmic' when compared with the colonial experience of the heartlands. Moreover, the Company's response to the economic, political and cultural conditions of the region and its geographic setting meant that 'colonialism did not introduce a sudden rupture in the life of the people as it did in most other places.'<sup>53</sup> Indeed, reports from late in the nineteenth century emphasize that at that time, the Kumaoni peasantry was generally seen as better off than any other in India, while reports from the mid-20<sup>th</sup> century emphasize that the British had very little impact on the daily lives of most mountain people.<sup>54</sup>

This thesis follows on from Alam's work in emphasizing the value of focusing on the specificities of the Pahar's colonial experience, while equally distancing itself from colonial apologia. Given this focus, this thesis will argue that, in the same manner that the 'spirit and principles' of the regulations of the plains influenced did not determine the mountain experience, the great corpus of historiography addressing India's transition from custom to formal governmental practices must be seen as relevant, but not fully adequate for understanding the Pahar's experience. By taking the study of the transition from custom to formal governmental practices out of the Indian heartland and looking at the quite different historical experience of Kumaon, this thesis takes the study of this central historical question into largely unexplored territory and offers new insights.

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<sup>51</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. xiii.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., p. ix.

<sup>54</sup> British Parliamentary Papers, 1890–92, *East India (Scarcity in Kumaun and Garhwal)*, p. 5; Berreman, *Hindus of the Himalayas: Ethnography and change*, p. 311.

## Sources

The character and possible limitations of this study can only be understood in the light of the sources employed and the curious absences in these sources.<sup>55</sup>

E. P. Thompson, 2013

For the history of Kumaun under the British the materials are ample and sufficient in themselves to form a volume full of interest and instruction.<sup>56</sup>

Edwin Felix Thomas Atkinson, 1882

### *The Kumaun [sic] Division Pre-Mutiny Records*

This thesis is grounded in a reading, indeed a celebration, of a little-explored archive—The Kumaun [sic] Division Pre-Mutiny Records (KDPMR).<sup>57</sup> The KDPMR is a collection of 212 bound volumes of the remaining official copies of letters, reports, orders and other documents issued and received by the Kumaon Commissioner's office during the period 1815 to 1858.<sup>58</sup>

A detailed guide to the collections was published in 1920 by Douglas Dewar where it appears as 'Chapter XXXVII' of a more wide-ranging work.<sup>59</sup> Dewar knew the collection well, and a number of his handwritten notes are found in the KDPMR, some dating as far back as 1905.

Dewar reported that the collection is divided into:

1. Letters Received
  - a. Kumaun Division Miscellaneous Letters Received (KDMLR)
  - b. Kumaun Division Political Letters Received (KDPLR)
  - c. Kumaun Division Settlement Letters Received (KDSLRL)
2. Letters Issued
  - a. Kumaun Division Revenue Letters Issued (KDRLI)

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<sup>55</sup> Thompson, *Whigs & Hunters: The origin of the Black Act*, p. 235.

<sup>56</sup> Atkinson, *The Himalayan Gazetteer*, p. 684.

<sup>57</sup> Note that 'Kumaun' is a common alternative spelling of Kumaon.

<sup>58</sup> Note that a small amount of material has been drawn from a parallel collection located at the Uttarakhand State Archives outside Dehradun.

<sup>59</sup> Douglas Dewar, *A hand-book to the English pre-mutiny records in the government record rooms of the United Provinces of Agra and Oudh* (Printed by the Superintendent, Government Press, United Provinces, 1920), pp. 439-68.

b. Kumaun Division Judicial Letters Issued (KDJLI).<sup>60</sup>

The Letters Received series contains individual documents that are a mix of handwritten letters, lithographs and printed documents. The Letters Issued series largely takes the form of continuous handwritten copies of letters where several documents can appear on one page and individual documents can flow onto subsequent pages. Most of the documents are on high quality 'English paper', but some, particularly those written at remote outstations, are written on poorer quality 'Country paper.' Examinations of the stationary orders included within the archive suggest the KDPMR Letters Issued series were largely written using quill until the mid-1840s. After this time, the number of quills ordered annually declines significantly, probably replaced by the flow of relatively inexpensive metal nibs produced by English manufacturers such as John Mitchell. However, small numbers of quills and pen knives continue to be ordered and used during the period under study.<sup>61</sup>

The primary KDPMR collection is currently housed at the State Archives Office in Lucknow, Uttar Pradesh. Lucknow was the state capital for Kumaon until the year 2000, when the 'Hill Districts' of Kumaon and Garhwal, as well as Udham Singh Nagar district on the Terai, became a separate state initially called Uttaranchal but now known as Uttarakhand with its capital at Dehradun. Anthony Low reported that in 1969 the KDPMR were housed in the Allahabad Archives. The archive must have been moved to Lucknow sometime after that date.<sup>62</sup>

As Douglas Dewar noted, the Kumaun Division Pre-Mutiny records 'are very complete', although all the printed indexes he describes appear to have been lost.<sup>63</sup> Today, the only available catalogue of the collection is a simple typed listing of the volumes known as 'List No.9.' Produced sometime after Independence, 'List No. 9',

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<sup>60</sup> The series KDJLI only begins in 1822 and prior to this time judicial letters were included in KDRLI with a very few in KDPLI.

<sup>61</sup> Lushington, G. T. and Huddleston, H. -Stationary orders, 30/10/1840, KDRLI, vol: 14; Lushington, G. T. - Stationary orders, 10/7/1846 KDRLI, vol: 14; Stationary order for Commissioner's office, 29/4/1816, KDMLR, vol: 8.

<sup>62</sup> D. A. Low, Iltas J. C., and M. D. Wainright, *Government Archives in South Asia: A Guide to National and State Archives in Ceylon, India, and Pakistan* (London: Cambridge University Press, 1969), p. 321.

<sup>63</sup> Dewar, *A hand-book to the English pre-mutiny records in the government record rooms of the United Provinces of Agra and Oudh*, p. 440.

along with careless relabelling of the volumes, has introduced considerable error and confusion in the sequencing and dates covered by each volume.

There appears to have been several systems for numbering the pages of the volumes in the KDPMR over time. This results in pages either having several inconsistent page numbers or no page number. Whatever numbering system was used, the numbers only have a vague correspondence to page sequence. In the light of these issues with page numbering, the footnotes referring to documents in the KDPMR in this thesis will generally not refer to page numbers. Fortunately, many of the longer documents contain numbered paragraphs and these are included in the footnotes wherever possible. Even here though, some confusion may be experienced and occasional examples of documents with missing or out of order paragraph numbers are apparent.

Another frustrating issue for researchers working in the Uttar Pradesh State Archives is that it does not permit digitization of documents except for official government purposes. As a consequence, the only practical approach to collecting the text of the documents is to transcribe them. Every effort was made to transcribe the documents as accurately as possible. This includes original spellings, underlinings and, as far as possible, the often idiosyncratic punctuation of the day. However, for clarity, some interventions have been made, usually marked with [intervention] except where this would have overwhelmed easy comprehension.



**Figure 2.1. The Research Room at the Uttar Pradesh State Archives, Lucknow. Typical KDPMR volume on the left with 'List No.9' at the centre of the table.**

The documents of the KDPMR are generally legible to an experienced and determined reader, but vermin, water damage and an uncontrolled environment have taken their toll. A magnifying glass was sometimes a useful aid. Words I was totally unable to read such as those consumed by vermin, have been marked in the transcriptions with a '#' symbol and represented in the body of this thesis by [indecipherable].

The natural light levels of the reading room are very low as most of the windows have been blacked out. This meant that there were often long delays during the frequent 'load shedding' of electricity on which the lighting was dependent. Very occasionally, a generator would be fired up. In winter months, temperatures can be very low in the reading room and I often needed a blanket and beanie. I am very grateful to the reading room Manager, Devi Ji, who eventually took pity on me and found an electric heater to use on the coldest days. During such days, most of the male staff were outside warming themselves around rubbish fires that gave off toxic fumes, while the female staff endlessly walked back and forth across a sheltered, sun-drenched terrace.

The KDPMR is largely written in early nineteenth-century official Anglo-Indian English, a dialect that contains many words and phrases unfamiliar to the general reader.

An invaluable aid in understanding this dialect was access to Wilson's *A Glossary of Judicial and Revenue Terms*, a copy of which is held by the ANU Library.<sup>64</sup> Wilson's *Glossary* is of particular value in processing the KDPMR as it often notes where the meaning and usage of Anglo-Indian words in Kumaon were different from their general meaning and usage on the North Indian plains. The spelling of words in the KDPMR is often at some distance from the standards in Wilson's *Glossary*, but this divergence is often recorded in the *Glossary* and means that one can be certain that it is, in fact, the same word. Initially, I presumed that Wilson's referencing of Kumaoni variations was a random stroke of good fortune. However, I later established that Kumaon's Commissioners had been active contributors to the compilation of the *Glossary*.<sup>65</sup> Indeed, inspired by his contact with the *Glossary* project, John Batten, Assistant Commissioner 1836–1848 and then Commissioner until 1856, took care to mimic this feature and include glossaries of Kumaoni specific terms and words in his later settlement reports.<sup>66</sup> Compilation of the *Glossary* must have been painstaking work. By 1842, only the letter A had been completed, while the final text was not published until 1855.

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<sup>64</sup> Horace Hayman Wilson, *A Glossary of Judicial and Revenue Terms: And of Useful Words Occurring in Official Documents Relating to the Administration of the Government of British India, from the Arabic, Persian, Hindustani, Sanskrit, Hindi, Bengali, Uriya, Marathi, Guazrathi, Telugu, Karnata, Tamil, Malayalam, and Other Languages* (London: W. H. Allen and Company, 1855).

<sup>65</sup> Secretary to the Government of India to Lushington, G. T., 14/12/1842, KDMLR, vol: 74.

<sup>66</sup> J. H. Batten, *Official Reports on the Province of Kumaon* (Agra Secundra Orphan Press, 1851), pp. 463-67.

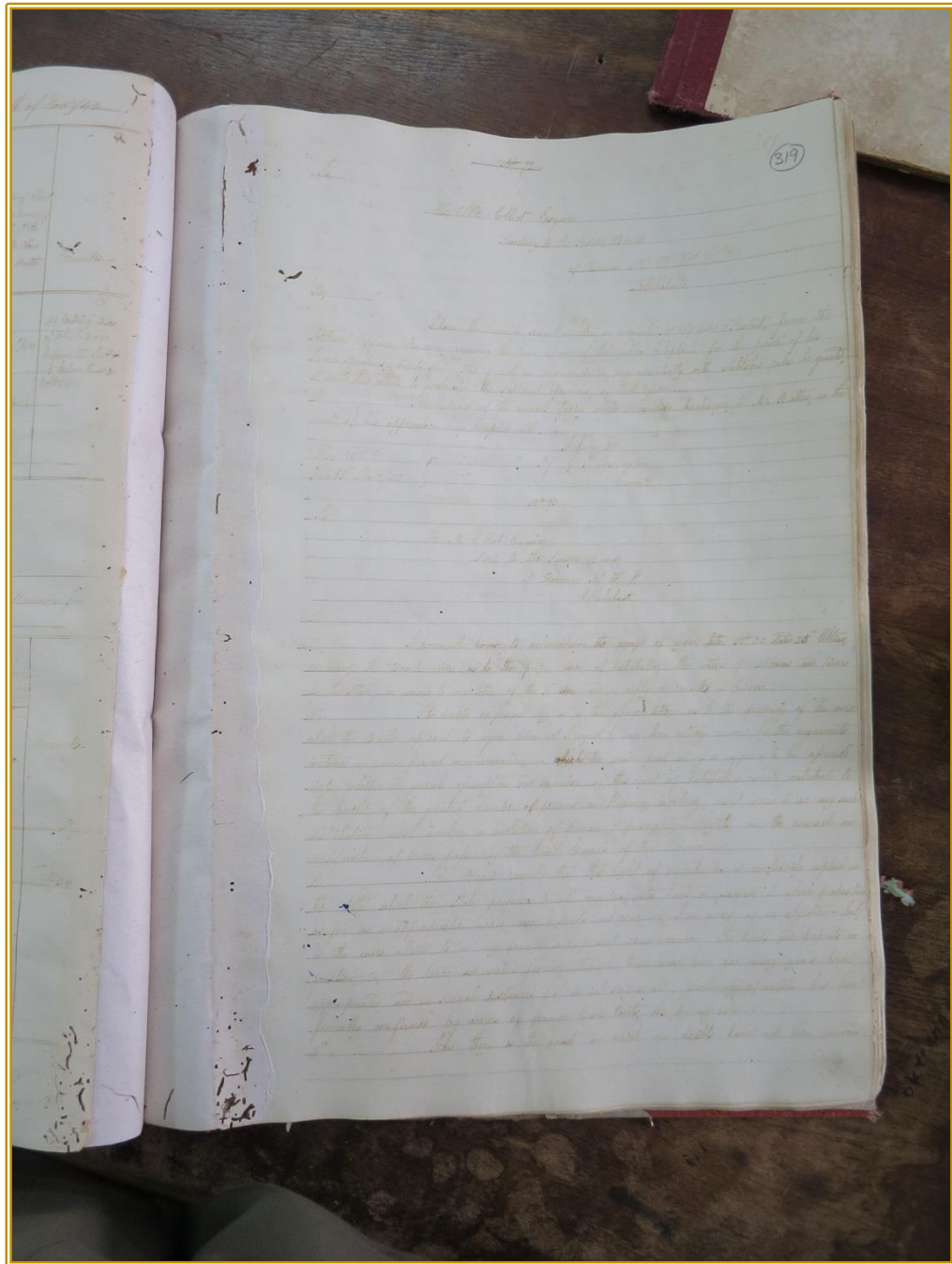


Figure 2.2. Example document from the KDPMR.

I worked through the KDPMR in two tranches. First from November 2014 to February 2015 and then in a second from October 2015 to December 2015. I found this an exhilarating experience. The Kumaon Pre-Mutiny records contain a good deal of mundane material including endless lists of pensions paid along with distressing lists of bounties paid for killing bears, but they also contain a wealth of lively, elegant prose that brings the place and times to life in a most unexpected manner.



Three highlights of great value regularly appear within the KDPMR. The first group are the many reports of the settlements or land tax agreements negotiated from time to time. Unlike in much of the Bengal Presidency, there was no 'Permanent Settlement' in Kumaon, and new agreements regarding the amount of land tax to be paid were struck at steadily lengthening intervals. As part of this process, the region's Commissioner and later the Settlement Officer was expected to study and report on the condition of the people and their economy in detail.

The second group of highlights are the annual and later biannual 'Police and Judicial Reports.' These describe crime, unnatural deaths, the implementation of policy change and local reactions to those policy changes, along with accounts of major natural calamities such as epidemics and floods. The 'Police and Judicial Reports' also contain a wealth of raw statistical data on criminal and civil law proceedings that allow for the compilation of some very useful time series. Unfortunately, this series was disrupted with the coming of the New Era in 1839, when reporting based on the conventions of the plains was haphazardly introduced.

Finally, Kumaon was an oddity that fascinated every senior officer who came to have nominal charge of the region from their distant, plains-based headquarters. With each new appointment, the new senior officer would call for a thorough briefing on Kumaon and its exotic Extra-Regulation Order. Kumaon's Commissioner of the time would speedily supply the requested report, both recycling material from previous briefing papers while also adding new material and new analysis of past events specifically tailored to each new request.

The first tranche of fieldwork was largely exploratory and, while the thesis topic was always in mind, quite how events unfolded and what was illuminating data about those events was not. This was not a linear process. The significance of some data was not always clear at initial reading and insights gained from later material often meant a return to earlier documents for more in-depth and extensive note taking to be undertaken. I found the process very much like putting a jigsaw puzzle together where you do not have a copy of the completed picture on the cover of the box as a guide.

During the first tranche of fieldwork, I examined and took extensive notes on Volumes 1–16 of KDRLI, Volumes 27–39 of KDJLI and 13 selected Volumes between Volume 9 and 81 of KDMLR. In all, around 550 typed pages of notes and transcripts were taken from over 440 individual documents. On return to Australia, these notes and transcripts were indexed by keyword and recorded on an Endnote database. Loading the material to Endnote not only made each document easier to reference, it also made the material fully searchable by author and receiver, date, year, volume, keyword or indeed any word found in the notes or transcriptions. Where appropriate, entries were cross-referenced and chains of letters and their replies identified. Unfortunately, only around 60 percent of letters mentioned as having been received in the Letters Issued series could be found in the Letters Received series, notwithstanding a broad and careful search.

The second tranche of fieldwork was much more focused. In consultation with my supervision panel, I had identified the key events and themes on which I would base this thesis. On my return to the archive, I focused narrowly on identifying material missed or inadequately examined during the first tranche relating to these themes. In many ways, I now had a good idea what the completed puzzle looked like and just had to find the missing pieces. During this research period, a further 145 documents were newly accessed and around a further 240 pages of typed notes and transcripts were taken. These were again transferred to the Endnote database while the indexing of all documents was updated to include the chapters of this thesis where the material was likely to be of most value.

### ***The ‘Statistical Sketch’ and ‘Statistical Report’***

Another significant source of data for this thesis were two articles, ‘Statistical Sketch of the Kumaon’ and ‘Statistical Report of the Bhotia Mehals of Kumaon,’ published in the journal *Asiatic Researches* in 1828 and 1832 respectively. Both the ‘Sketch’ and the ‘Report’ were written by George Traill, and both describe in lively detail each of the two region’s geographies, economies, cultures and, most importantly, their judicial and legal practices as they were known to him at the point of first contact between

Company officers and the Kumaoni people.<sup>67</sup> As such the Sketch and the Report constitute the urtexts of knowledge about Kumaon and the Pahari people and their influence can be seen in all subsequent work. Alternative sources of data other than oral traditions and a few as yet untranslated copper plates do not exist. Based on the state of knowledge of 1822 and 1823 respectively, the ‘Sketch’ and the ‘Report’ were acclaimed at the highest levels of government at the time, while today they are regarded as classics of their genre.<sup>68</sup> They have been recently reprinted and continue to be referenced to this day by the few historians who have looked at the history and social development of the Western Himalaya. However, and here highlighting how little these classic texts have been examined by scholars in Australia, many pages of the reprints held by the ANU were uncut, and I had to carefully slit them open with a paper knife. Indeed, I had to perform this operation on several of the primary and secondary sources I consulted.

***Whalley’s British Kumaon: The Law of the Extra-Regulation Tracts subordinate to the government, N.W.P and Williams’ Memoir of Dehra Dun***

The third significant group of sources of data for this thesis are two official books published in 1870 and 1874. The Extra-Regulation Order of the hills was undergoing one of its periodical reviews around this time, and the government thought it appropriate to consolidate knowledge about the region’s judicial and revenues systems into comprehensive volumes.<sup>69</sup> The result was, Whalley’s *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.* and Williams’ *Memoir of Dehra Dun*.<sup>70</sup> Whalley, in particular, saw his job as compiling transcripts of all of the important proclamations and legislation relevant to Kumaon and indexing these chronologically. This is invaluable material as the authors of these earlier works had access to material now lost to the KDPMR.

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<sup>67</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 10/4/1823, KDJLI, vol: 25.

<sup>68</sup> Swinton, George -Secretary to Government to Traill, G. W., 10/3/1829, KDMLR, vol: 39.

<sup>69</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 9.

<sup>70</sup> Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*; Williams, *Memoir of Dehra Dun*.

### *Other sources*

Other sources include British parliamentary reports relating to Kumaon. Many of these have only recently been made accessible through various ongoing digitization projects including the work of the non-profit organization Internet Archive.<sup>71</sup> These reports are of particular value in understanding changes around property in persons/slavery in the Pahar, as the model developed in Kumaon—delegalization rather than prohibition—was of great interest to the British Parliament.

Supplementing the data on Kumaon itself is an extensive number of official reports from the mosaic of petty Hill States to Kumaon's west that the Company returned to the control of their erstwhile princely rulers. Many of these Hill States were little effected by Gurkha control and, with sovereignty quickly returned to their princely rulers after Company conquest, little impacted by Company systems. Using these Hill States as an analogue for conditions in Kumaon has validity at a general level as all communities of the Pahari/Khasa belt running from Kashmir to eastern Nepal 'shared ideas, related life-ways and longstanding cultural ties' that included language, trade and environmental conditions.<sup>72</sup> Schendel asserts that these conditions are the '*physical-space* criterion used to support and legitimate area studies.'<sup>73</sup> Nevertheless, each community while similar was particular and unique; this caution applies equally within Kumaon as it does across the broader Pahari/Khasa belt.<sup>74</sup>

Supplementing this official archive is a small number of sources such as traveller's tales, a few letters by John Stuart Mill, several gazetteers and some folk tales. Traill's last will and testament gives insight into his family life.<sup>75</sup>

A great aid in decoding all this material was access to Doss's *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*.

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<sup>71</sup> See <https://archive.org/>

<sup>72</sup> Martin W. Lewis and Kären E. Wigen, *The Myth of Continents: A critique of metageography* (Berkeley: University of California Press, 1997), p. 158.

<sup>73</sup> Schendel, 'Geographies of knowing, geographies of ignorance: jumping scale in Southeast Asia.' pp. 653–654. Original emphasis.

<sup>74</sup> Professor Mahesh Sharma, Chandigarh University. Personal communication.

<sup>75</sup> George William Traill, "Last will and testament of George William Traill late of the Honourable East India Company," (5/1/1848). <http://discovery.nationalarchives.gov.uk/details/r/D122386>

The *Register* contains detailed data on the career of every covenanted Company officer of the period including the dates and places of their appointments. Given that:

- the spelling of names was often idiosyncratic and variable,
- names could change suddenly with acquisition of titles,
- many siblings and generations of the one family were often in India at the same time and the same name was often used in each generation, and;
- the propensity of scribes to be at their most creative in the calligraphy used on initials,

there is great potential for confusion regarding who the author of a letter was and to whom it was addressed. In these circumstances, Doss's *Register* offers an invaluable tool in resolving this confusion.

Unfortunately, anything resembling a written local civil discourse does not appear in Kumaon with any vigour until the 1880s. This is not to say that the voices of the Kumaoni people of the period are absent. A careful reading of the KDPMR and other sources, particularly the petitions, affidavits and case records, give significant insight into the perspectives of the local people. These, however, have always been selected by Company and British officials.

## **Thesis structure**

This thesis will first explore the early years of the Extra-Regulation Order through five chapters themed around the major sites of interaction between Kumaoni custom and the Company's formal governmental practices. It will then move on to the early post-Trail period which saw a range of interventions into the practices and formal basis of the Extra-Regulation Order intended to align its practices with those of the Regulation Order. Given Kumaon's distant and distinct environment, these interventions soon faltered, and the essence of the Extra-Regulation Order reasserted itself in the New Era.

In the first of the themed chapters, chapter 3, 'Coolie and grain,' I will explore how the Company developed a range of novel governmental practice to overcome the challenges that the distant and distinct economic and geographic conditions of the region presented to feeding, paying and supplying its troops. This chapter will introduce the

themes that these innovations were often hybrids between local custom and formal textually mediated practices and that the textually mediated law developed was often directed at the Company and its servants, not the Kumaoni people.

Continuing this theme, chapter 4, 'Revenue and real property,' focuses on the meeting of custom and formal governmental practices around land-tax revenue and property rights in arable land. This meeting, saw the property rights of the ordinary landholder affirmed and enhanced while shifting the flow of revenue to the state centre.

Chapter 5, 'Criminal justice' focuses on the meeting of Kumaoni customs around crime, policing, and punishment with Company practices. This analysis will highlight the impact of Traill's emotional reaction to the culture and character of Pahari people and his belief that they were 'Natures children' and the most honest and crime free people on earth. This emotional reaction, not just to Kumaonis but to the Pahari people in general, would go on to be the defining element of relations between the hill people and the Company and Crown raj during the colonial era.

Chapter 6 focuses on a major site of hybridity and innovation 'Civil justice.' Whereas the Kumaonis and Company officials had little interaction around criminal matters, the Paharis flocked to the new hybrid institution of Traill's civil court with alacrity. By 1829, the demand for civil justice services had grown to the extent that Traill appointed a number of local customary officers to minor judicial positions. As part of this move, Traill developed a complex regulation like document the 'Rules for the Guidance of Moonsiffs.' Based on an existing regulation, the Rules will be examined in detail to give insight how legislation intended for use on the plains was adapted for use in the hills.

In chapter 7, 'Change in property in persons,' this thesis moves on from analysis focused on the Traill era to a broader time scale. Women had a slave like status in Kumaon and many Kumaonis were unequivocally slaves. The meeting of Kumaoni custom around these matters with fast-changing Company practices around slavery was a complex process where practices developed on the plains regarding women were imposed in the hills, while practices initially developed for use in the hills were later imposed on the plains.

Finally, in chapter 8, 'The Interregnum and New Era,' this thesis moves onto the post-Trail period. With the Extra-Regulation Order so closely tied to the person of George Traill, it is unsurprising that his departure was followed by a period of confusion and disorder—the Interregnum. Reacting to this confusion, powerful forces at work on the plains attempted to impose the formal governmental practices of the Regulation Order on the hills. These interventions largely proved to be unworkable and dysfunctional. In response, the modes of the early Extra-Regulation Order were reinvented or reasserted by the men who would go on to rule Kumaon through the long stability of the New Era, 1838–1884, and Kumaon would remain distant and distinct from the rest of British India for much of the colonial era.





## Chapter 3, Coolie and grain



Figure 3.1. The Company finds itself in an Arcadian wonderland unlike everything it knew on the North Indian plains. *Bheemke Udar*. Aquatint by James Baillie Fraser drawn from his experience on tour with his brother William Fraser, the Political Agent to the Hill States in 1815. *Journal of a Tour*, 1820. Source British Library.

Kumaon's economic and geographic conditions presented the Company with many novel logistical challenges that it had to overcome if its empire was to persist in this mountainous space. Correspondence regarding the development solutions to these logistical challenges dominates the early volumes of the Kumaun Division Pre-Mutiny Records (KDPMR) like no other concerns. First, Kumaon's frictional terrain—the mountainous topography combined with the absence of roads, navigable rivers or alternative efficient means of transport—meant the Company had to find new ways of providing the occupying troops with the transport needed for their baggage and equipment. Second, and equally challenging, the absence of grain merchants and bankers meant new ways of sourcing grain to feed the troops as well as the cash to pay them had

to be found.<sup>1</sup> The solutions to these challenges emerged within the meeting of Kumaoni custom with the Company's emergent formal, state-centred, legal, revenue and administrative practices in an iterative, catalysing, cascade of innovation.

## Begar



Figure 3.2. Coolies at rest on the road to Darchula circa 1956. Photo by Gordon Van Rooy. Used with kind permission of his heirs.

Edward Gardner was appointed Commissioner for the affairs of Kumaon and Agent for the Governor-General early in May 1815.<sup>2</sup> His initial administrative focus was establishing interim revenue and policing systems for the region.<sup>3</sup> However, the need to find solutions to meet the logistical imperatives of the occupying force rapidly became the focus of both his and the Assistant Commissioner George Traill's attention.<sup>4</sup>

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<sup>1</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 78

<sup>2</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 2; 'Secretary to Government to Gardner, E.' dated Futtchgurh, 3 May, 1815 in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 25.

<sup>3</sup> 'To Hon'ble Edward Gardner, dated Futtchgurh, 18 May 1815' in *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 25.

<sup>4</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 7.

Early in the occupation, Company troops were stationed at Almora, nearby at Hawalbagh, and at Champawat to the east.<sup>5</sup> A precise estimate of troop numbers is not available. However, based on battalions and companies known to be present, it is likely that there were between 1,200 and 1,500 troops at Almora, around 800 at nearby Hawalbagh, with up to 5,000 at Champawat in the eastern district of Kali Kumaon adjacent to the Gurkha front line. The number of camp followers travelling with the troops must also be added to these figures. Available records suggest that the number of camp followers nearly always exceeded the number of troops.<sup>6</sup> If the number of troops and camp followers are taken together, there could easily have been an additional 15,000 people associated with the army suddenly concentrated in Kumaon. This horde stressed the region's limited capacity to supply grain and transport beyond breaking point. The stress was at its greatest to the east in Kali Kumaon, a space where '[t]he produce of the country is not more than sufficient to the support of its present inhabitants,' and the custom of the people was to move to the lowlands of the Terai in the cool fighting season.<sup>7</sup> These circumstances meant that there was only a tiny amount of surplus grain available locally and virtually no labour to move it at the critical time of year.

The amount of food the Company's horde required each day was enormous. Once on station, troops were responsible for the purchase and preparation of their own food, and a precise estimate of what they consumed is not available. However, troops on the move and unable to find food easily themselves were provided one seer of grain per day (approximately one litre or one kilo), camp followers three quarters of a seer, with officers allocated considerably more.<sup>8</sup> From this, it is reasonable to estimate that military units required a minimum of just under a one kilo of grain per person per day when on the move and much more when in station. Given the absence of grain merchants, this meant that Gardner and the military authorities had to find and transport a minimum of one and a half tonnes of grain every day, with a substantial proportion of this coming from the distant plains.

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<sup>5</sup> Ibid., p. 6.

<sup>6</sup> Aldin, Lieut. Colonel to Traill, G. W., 2/2/1835, KDMLR, vol: 51.

<sup>7</sup> Traill, G. W. to Newnham, Henry – Secretary to the Board of Commissioners Furukabad 24/1/1817, KDRLI, vol: 4.

<sup>8</sup> Aldin, Lieut. Colonel to Traill, G. W., 2/2/1835, KDMLR, vol: 51.



Figure 3.3. East India Company silver rupee 1842. Authors collection.

Paying the occupying troops, while a smaller scale logistical problem than feeding them, also presented considerable challenges. Early in the occupation when troop numbers in Kumaon were at their highest, the Company had to find around 150,000 silver rupee coins each month for their pay.<sup>9</sup> Given the absence of treasuries or banking services, and the debased nature of the limited amount of coinage that was in circulation, this specie had to be sourced entirely from treasuries on the plains.<sup>10</sup> With each rupee weighing 11.66 grams, 150,000 rupees weighed close to 1,800 kilograms, not including the strongboxes they were transported in.

### *Begar*

To find the transport for the grain, equipment and silver needed to maintain the Company's troops and their followers in the field in Kumaon's rugged and roadless terrain, Company officers, both civil and military, turned haphazardly to the existing customary obligation of the peasantry to provide labour to the state known as *begar*. Aniket Alam reports that in pre-colonial times, *begar* was a very broad concept that included longstanding customary practices in which both the state and *bhaichara* compulsorily demanded labour, goods and cash from its subjects and members.<sup>11</sup> He argues that in the unmonetized economy of the hills, *begar* was the primary form of surplus extraction and central to the functioning of the local political economy. The ability of the state to demand labour in the form of carriage of goods found within this

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<sup>9</sup> Gardner, E. to Law, J. - Collector of Bareelee, 5/12/1815, KDRLI, vol: 1.

<sup>10</sup> Gardner, E. to Batsom, H. - Collector of Moradabad, 11/09/1815a, KDJLI, vol: 1.

<sup>11</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 38, 75-79.

broad concept of *begar*, often known as *coolie begar*, was to prove essential to the functioning of the Company's empire in the hills.<sup>12</sup>

A useful summary of the somewhat self-serving understanding of *begar* in the hills that was to emerge over time amongst the Company ranks is available from G. C. Barnes' 1850 *Report on the Settlement in the District of Kangra*. Kangra district, north-west of Kumaon and today in Himachal Pradesh, came under Company control in 1848–1849.<sup>13</sup>

...a custom has grown up, possessing the sanction of great antiquity, that all classes who cultivate the soil, are bound to give up, as a condition of the tenure, a portion of their labour for the exigencies of Government. Under former dynasties, the people were regularly drafted and sent to work out their period of servitude, wherever the Government might please to appoint. So inveterate had the practice become that even artisans, and other classes unconnected with the soil, were obliged to devote a portion of their time to the public service. The people, by long prescription, have come to regard this obligation as one of the normal conditions of existence; and so long as it is kept within legitimate bounds, they are content to render this duty with cheerfulness and promptitude. Certain classes, such as the privileged Bramin and Rajpoot [*thuljat*], uncontaminated by the plough, were always exempt, and the burden fell principally upon the strictly agricultural tribes.<sup>14</sup>

*Begar* was not a practice exclusive to the hills, and Company officers, both military and civil, had long pressed local people on the plains to provide a wide range of goods and services as *begar*, most conspicuously to troops on the move and to official travellers. Nancy Gardner Cassels provides an overview of the Company's attempts to control and limit the use of *begar* through a range of formal governmental practices dating back to the Cornwallis Code and Regulation XXV of 1790.<sup>15</sup> This legislation 'for securing the inhabitants of the country from molestation or oppression, and prohibiting sepoys, lascars, and public followers being sent into villages for the purpose of procuring provisions, or of the pressing of coolies and dandies' saw many iterations and amendments over time.<sup>16</sup> Probably the most significant of these amendments was

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<sup>12</sup> Shekhar Pathak, 'The *begar* abolition movements in British Kumaon,' *The Indian Economic & Social History Review* 28, no. 3 (1991): p. 1.

<sup>13</sup> G.C. Barnes, *Report on the Settlement in the District of Kangra in the Trans-Sutlej States* (Lahore: Hope Press, 1862), pp. 33-34.

<sup>14</sup> *Ibid.*, p. 146.

<sup>15</sup> Nancy Gardner Cassels, *Social Legislation of the East India Company: Public Justice Versus Public Instruction* (Delhi: Sage Publications India, 2010), p. 168.

<sup>16</sup> Governor General in Council, 'General Orders dated July 25 1805' *The Asiatic Annual Register* VIII (1806): p. 25.

enacted through Regulation XI of 1806 ‘Assistance to marching troops and to travellers,’ which persisted as law well into the twentieth century.<sup>17</sup> The Regulation placed responsibility for collection of *begar* on to the collectors and magistrates of the civil administration and provided formal rules on how they should go about this. Amongst these rules, Sec. 8 strictly forbade pressing anyone not accustomed to acting as a coolie. In doing so, showing an awareness the negative impact of pressing people as coolies whose caste practices made carrying of goods polluting. The same section then went on to limit the geographic bounds of impressment to the next thana (police post) and insisted that the responsible officer should ensure that those pressed were properly compensated for their efforts.

When it invaded Kumaon in 1815, the Company carried with it the tension between the customs of the military to seize *begar* when and where they felt the need and the moderating influence of Regulation XI of 1806.<sup>18</sup> These tensions were heightened and modified by the logistical challenges that the region’s novel economic and cultural conditions presented.

### ***Khuseea begar***

In the Kumaon, men pressed to provide carriage were known as *khuseea*. From the limited documentation available about the early occupation, it appears that the Company had only a loose and chaotic system for obtaining *khuseea*. Officially, both military and civil officers would issue *purwana* (a letter of authorization, a written order, a licence, a pass) through a tehsildar (revenue officer) to village *pudhan* (village headman, person responsible for the village’s revenue) who would then have to provide the number of *khuseea* demanded.<sup>19</sup> Unofficially, however, there were many examples of military and civilian officers simply seizing *khuseea* whenever and wherever it suited and pressing them to carry goods—examples of this practice continue for many years.<sup>20</sup>

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<sup>17</sup> Governor-General in Council, ‘Regulation XI of 1806: Assistance to marching troops and travellers,’ Presidency at Fort William (Calcutta: Government Press, 1806).

<sup>18</sup> Harington, B. B. - Officiating Register to Fraser, C. - Officiating Commissioner of Circuit Agra Division, 25/11/1836, KDMLR, vol: 53.

<sup>19</sup> Stephen, Lieut. to Leys, Capt., 22/10/1815 - 10/11/1815, KDMLR, vol: 6. Note that *purwana*, *tesildar* and *pudhan* are all Anglo-Indian words of plains origin that appear to have been either quickly naturalised or were already partially naturalized into official correspondence and usage in Kumaon.

<sup>20</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

The inadequacies of this chaotic approach to pressing *khuseea* came to the fore in November 1815 when the Company forces in Kali Kumaon began to prepare to move against the Gurkhas in the adjacent Dotti Province east of the Kali River. The drafting of the Treaty of Sugauli forestalled the need for such an adventure, but it was estimated that it would have require more than 16,000 *khuseea* to carry out.<sup>21</sup> For this enormous number of *khuseea*, and the supply of *khuseea* more generally, the military had increasingly turned to the civil authorities as the occupation lengthened.<sup>22</sup> However, Gardner was simply unable to meet such a huge the demand. Writing to Lieut. Colonel Adams, Commander in charge Kumaon, Gardner assured Adams that he had every desire to provide the ‘public requisites’ but that:

The province [Kali Kumaon] is by no means capable, particularly in the present season when a great proportion of its population has left the hills for the lowlands, of furnishing the great number of coolies estimated by Capt. Raper as absolutely necessary....<sup>23</sup>

Gardner even searched as far as Garhwal for *khuseea* to meet Adams’ demands, but most of the men pressed simply disappeared into the jungle at the first opportunity.<sup>24</sup>

The introduction of *begar* in the form and at the scale that the Company demanded was a profound change for most hill-men. Most Pahari lived their lives within a very narrow geographic space and often had little knowledge or awareness of the world outside of that space.<sup>25</sup> Moreover, for those groups who lived on the move such as the residents of Kali Kumaon, travel was mostly from north to south following the seasons and the drainage pattern of the topography. To travel from west to east as Gardner tried to compel the *khuseea* from Garhwal to do—across the grain of the region’s relief pattern into cultural spaces where the dialect was barely intelligible and the where the local people held a longstanding antagonism towards them—was deeply disturbing to all involved.

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<sup>21</sup> Capt. Raper, circa November 1816, KDMLR, vol: 6,

<sup>22</sup> Adams, Lieut. Colonel to Gardner, E., 21/11/1815, KDMLR, vol: 6.

<sup>23</sup> Gardner, E. to Adams, Lieut. Colonel - Commander Officer in Charge Kumaon, 22/11/1815a, KDRLI, vol: 1.

<sup>24</sup> Gardner, E. to Raper, Capt. F. V. - Sub-Assistant Commissary in Kumaon, 7/3/1816, KDRLI, vol: 2.

<sup>25</sup> White, *Views in India, Chiefly Among the Himalaya Mountains. Subscribers edition*, p. 98; Thomas Skinner, *Excursions in India: including a walk over the Himalaya Mountains, to the sources of the Jumna and the Ganges* (London: Richard Bently, 1833), p. 231.

Moreover, most of the grain the Company needed was sourced on the plains. This grain was transported to the limits of the Terai using standard plains methods, but with the people of the plains holding an ‘extreme aversion to the hill service’ the magistrates of nearby Moradabad and Bareilly on the plains were unwilling to force plainsmen to transport the grain further.<sup>26</sup> Beyond these grain depots at the foot of the hills, all carriage was on the backs of *khuseea*, which took many of these men down to the Terai for the first time in their lives. The Terai was an alien and feared space for most Pahari. In the dry season, the Terai was plagued by bandits and ferocious wild animals.<sup>27</sup> Alternately, during the rains from April to November, it was disease that was most feared. This fear was not unjustified. Around 50 per cent of the *khuseea* who picked up loads in the Terai in the unhealthy season contracted fevers, and around 10 per cent of these perished.<sup>28</sup>

Barnes’ words earlier that ‘they are content to render this duty with cheerfulness and promptitude’ may have been true for the men of Kangra mid-century. However, in Kumaon under the Company, especially for the Garhwalis, it was initially not an acceptable practice and not “kept within legitimate bounds.”<sup>29</sup> Resistance to being pressed as a *khuseea* was widespread, and the Company was never able to find the full number they wanted ‘notwithstanding the various measures which have been adopted by the court to ensure prompt and implicit obedience to its order.’<sup>30</sup> The Company tried jailing Pahari who would not comply, but, in an issue to be explored in chapter 5, jail held no ‘terror’ for most hill people.<sup>31</sup> Similarly, the imposition of fines had little effect. Small fines were gladly paid if it meant avoiding work duty, while larger fines simply would not and could not be paid.<sup>32</sup>

Rather than exclusively using punitive measures to maximize and regularize the provision of carriage by the local people, the Company turned to a hybrid mix of

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<sup>26</sup> Adams, Lieut. Colonel to Gardner, E., 23/11/1815, KDMLR, vol: 6.

<sup>27</sup> Every year, a hundred or so Kumaonis lost their lives to ‘tygers’. From my own experience in the region, the term ‘tyger’ would have included leopards and perhaps lions which, although rare, were still found in the area at the time. See chapter 6 for more detail.

<sup>28</sup> Traill, G. W. to Prinsep, H. J. - Secretary to Government, 19/11/1822, KDJLI, vol: 25.

<sup>29</sup> Barnes, *Report on the Settlement in the District of Kangra in the Trans-Sutlej States*, p. 146.

<sup>30</sup> Traill, G. W. to Bayley, W. B. – Chief Secretary to Government, 23/12/1819, KDRLI, vol: 7.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*



personal authority, persuasion and appeal to custom, held together and systematized through formal legal, revenue and administrative practices. All of this, indeed all of the early Extra-Regulation Order, was to be embodied in one man, Gardner's Assistant, George William Traill.

### *Traill's arrival*

As was mentioned in the introduction, Traill rapidly emerged as the man to get things done in the confusion of the early occupation.<sup>33</sup> This was equally true in resolving difficulties in obtaining *khuseea*.<sup>34</sup> Indeed, Traill's ability to effectively manage intractable problems passed into local legend, an ability his successor George Gowan summed up with the comment, 'Mr Traill, ...was, I believe, as capable of removing all obstacles thrown in the way, as any man in the service.'<sup>35</sup>

Order began to appear in the *begar* system soon after Traill assumed an active role.<sup>36</sup> Initially, the *khuseea* of each pargana (administrative district) were assigned to specific corps of troops, but this resulted in new bodies of troops arriving on rotation being unable to access these assignments and, as a consequence, sometimes finding themselves close to starving.<sup>37</sup> Traill also experimented with alternatives to the *begar* system and, early in the occupation, tried to get grain up from the plains using the services of plains-based Banjaras and their load carrying cattle. However, the Banjaras were reluctant to repeat their initial trial owing to the state of the roads, the constant incline and declines, and the high mortality rate of their cattle inadvertently fed on the often-poisonous grasses and foliage of Kumaon.<sup>38</sup> Moreover, using Banjaras meant that a maund of grain (approx. 36 kg in Kumaon) cost Rs1-12 anna to transport from the plains. In contrast, using *khuseea* only cost around 14 anna for the same load—half the cost of using Banjaras.<sup>39</sup> A similar attempt 'to ease the population of this province as far

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<sup>33</sup> Gardner, E. to Traill, G. W., 13/4/1816, KDRLI, vol: 2; Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Adam, J. to Traill, G. W., 20/4/1816, KDMLR, vol: 8.

<sup>34</sup> Indecipherable to Traill, G. W., 28/11/1815, KNMLR, vol: 6.

<sup>35</sup> Gowan, G. E. to Turner, J. S. - Assistant Commissioner 3rd Division, 29/8/1837, KDRLI, vol: 12.

<sup>36</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, pp. 46-49.

<sup>37</sup> Taylor, J. - Commissariat Officer Almora to Traill, G. W. - Acting Commissioner Kumaon, 15/11/1816, KDMLR, vol: 9.

<sup>38</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furrucabad, 6/12/1817, KDRLI, vol: 5.

<sup>39</sup> There were 16 anna to the Rupee. Rs. 1-12 anna translates to 28 anna or twice the fee charged by *khuseea*.

as possible from the requisition of *kbuseed* was made with the establishment of a mule corps.<sup>40</sup> Intended to bring up heavy military equipment, the corps, however, proved equally to be unsuccessful as the Banjaras cattle. All 300 mules died over the next few years, and the government was reluctant to replace them because of the capital cost.<sup>41</sup>

The earliest indication of the transition of the practices of *begar* to a basis in formal, textually mediated, legal practice under Traill was in October 1816 when the Governor-General in Council issued the directive 'Prohibition of forced labour.' This legislation outlined that the government was 'desirous of restraining within the narrowest possible limits the practice...of compelling the inhabitants of the hill countries under the authority or protection of the British Government to act as porters,' and that:

His Lordship in Council is pleased to prohibit all travellers, civil and military, from pressing any of the said inhabitants to carry their baggage or perform any other service, and to forbid persons exercising authority from Government in those countries to supply such travellers with carriers for their baggage. Travellers must in all cases depend for the transportation of their baggage on the bearers or coolies whom they may be able to entertain in the plains.<sup>42</sup>

Illustrating a theme that will be developed throughout this thesis, the focus of this first explicit example of the meeting of the customs of *begar* with formal textually mediated law was not the Kumaoni people or the customary practices of *begar* itself. Rather, the focus of the legislation was the custom of the Company's military and civilian officers to seize carriage for their personal use.<sup>43</sup> This legislation was not mere unalloyed sham.<sup>44</sup> While there are many clear examples where the order was bent or flouted by Company officers, Traill himself felt personally bound by the order with his own private baggage sometimes held up at the foot of the hills for up to six months.<sup>45</sup>

The focus of this early legislation on the Company's officers rather than the Pahari emphasizes that any study of the transformations seen in the meeting of local

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<sup>40</sup> Traill, G. W. to Satchwell, Lieut., 23/10/1822, KDJLI, vol: 25; Gowan, G. E. to Thomason, J. - Officiating Secretary to the Governor-General N.W.P., 15/1/1838, KDJLI, vol: 31.

<sup>41</sup> Traill, G. W. to Swinton, George - Secretary to the Political Department, 19/4/1822, KDJLI, vol: 25.

<sup>42</sup> 'Prohibition of Forced Labour' 'Extract from the Proceedings of The Right Hon'ble the Governor in Council, in the Secret Dept., under date 19th October 1816' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 28.

<sup>43</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

<sup>44</sup> Thompson, *Whigs & Hunters: The origin of the Black Act*, p. 207.

<sup>45</sup> Traill, G. W. to Bayley, W. B. - Chief Secretary to Government, 23/12/1819, KDRLI, vol: 7.

custom with the Company's formal governmental practices in Kumaon must be understood through a unified field of analysis. All actors in the space—civil administrators, private British persons, native elites, peasants and the military—experienced the transformations. Each of these categories of persons experienced the transformations in different ways, but it would be anachronistic and simplistic to understand the transition only in terms of the experience of the Kumaoni people. As was outlined in chapter 2, the change from the social order being embedded in custom to being embedded in formal governmental practices—particularly codified legal practices—was an inchoate process in the early nineteenth century. There was not an established model that the Company imposed ready made on India and the Pahar. Rather, it only emerged as the dominant and archetypal mode of governmentality for colonial systems much later in the century through a contested historical process.<sup>46</sup>

For many Company officers in Kumaon then, especially the military, the 'Prohibition of forced labour' was a novel and unwelcome impingement on their customs. These two factors combined opened up a space, bounded as it was by ignorance and displeasure, with considerable opportunities for resistance by the military to the laws and local practices. This space of contestation and resistance was widened even further, given the reality that Traill, as a civil administrator, had little or no direct authority over the military and especially its officers.

Rather than issuing diktats to gain compliance by the military with the *begar* law of October 1816, a law that few would have heard of, Traill, at least initially, worked largely through a process of education and persuasion. This discourse was articulated almost exclusively through 'private letters' to the 'gentlemen' of the military. Official public letters had a tone of command that was not considered appropriate for the personal relationships that still dominated the Company's modes of operation. Such a tone of command was most certainly inappropriate for relations between the Company's military and civil branches. Indeed in 1820, Traill, in a plainly contrite response to a rebuke from the region's then military commander Lieut. Colonel Gardner [not Edward Gardner discussed earlier] about his use of public letters, took pains to point out that the

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<sup>46</sup> McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law*, pp. 92-122.

overwhelming majority of communication with the military had ‘invariably been carried on in a private form’ and that during the previous five years, not more than twenty public letters had been interchanged with the military authorities.<sup>47</sup> These ‘private letters,’ where they do appear in the archive (possibly through administrative error), are generally clearly marked as ‘private letters’ in pencil. Often only vaguely dated and showing none of the elaborate formal salutations of public letters, private letters were often written in a chatty, familiar style and sometimes presented views quite contrary to the official position.<sup>48</sup> One of the most telling of these private letters was written to Traill’s friend in Kali Kumaon, Captain McHarg, in 1821.<sup>49</sup> The letter outlines that the men of Kali Kumaon were not disinclined to provide transport. Indeed they provided more transport for commerce than any other pargana of Kumaon. Rather, the problem was the low wages paid by the Company, wages much lower than were paid by the region’s borax traders.<sup>50</sup> Traill outlines that much of the resistance to being pressed as *khuseea* had only emerged after their wages were reduced from the two anna per day that the military had paid at first occupation to the miserly rate of less than one anna a day the Company had introduced to reduce costs.<sup>51</sup>

Given Traill’s limited control over the military, all of the few public letters seeking compliance with the *begar* law of 1816 and about other matters regarding the treatment of *khuseea* found in the KDPMR are addressed to junior officers. All of these public letters show a similar pattern. First, Traill explains why the local people are reluctant to act as *khuseea* offering reasons such as that they are currently busy preparing their fields for planting. He then moves on to ask the officer to address improper conduct by the military’s agents such as discounting wages or demanding a percentage, conduct that was generating an extra layer of dissatisfaction.<sup>52</sup> None of the public letters contain a direction to adhere to the *begar* law of 1816 or complain of the officers conduct directly.

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<sup>47</sup> Traill, G. W. to Gardner, Lieut. Colonel – Commanding in Kumaon, 12/5/1820, KDRLI, vol: 7.

<sup>48</sup> Traill, G. W. to 'My dear Colonel' [Mouat, Lt Col] undated private letter, circa 00/05/1822, KDJLI, vol: 25; Traill, G. W. to Mouat, Lieut. Colonel, Undated, KDRLI, vol: 7.

<sup>49</sup> Traill, G. W. to My Dear McHarg [Captain at Loharghat], 29/12/1821, KDRLI, vol: 8.

<sup>50</sup> Borax or *tincal* was basic commodity traded between Tibet and Hindustan. C. W. Brown, ‘Salt, Barely, Pashmina and Tincal Contexts of being Bhotiya in Traill’s Kumaon,’ in *Himalaya: Past and Present*, ed. Maheshwar P. Joshi, Allen Fanger, C., and Charles W Brown (Almora: Shree Almora Book Depot, 1994), pp. 215-47.

<sup>51</sup> Traill, G. W. to Gardner, 9/5/1817 KDRLI, vol:6.

<sup>52</sup> Traill, G. W. to Sneyd, Lieut., 18/8/1816 and 19/8/1816, KDRLI, vol: 3, Traill, G. W. to Satchwell, Lieut., 23/4/1822 and 29/4/1822, KDJLI, vol:25.

## *Transformations in begar*

With the signing of the peace treaty with the Gurkhas in March 1816, Company troop numbers in Kumaon began to be reduced, particularly in Kali Kumaon. However, this reduction did not result in a corresponding reduction in demand for *khuseea* and other labour.<sup>53</sup> In these more settled times, the Company's focus moved to constructing facilities and infrastructure such as roads, military establishments and public buildings to aid permanent occupation of Kumaon. To find the labour needed for this work, estimated at an average of around five thousand adult men at any one time, the Company again turned to the local people, and in doing so took both its own and Kumaoni customary practice around *begar* into new forms.<sup>54</sup>

In pre-colonial times, the provision of *begar* by the Pahari was a taxation not an employment-like practice and was largely performed as corvée without expectation of payment.<sup>55</sup> Apart from larger levies gathered to support short-term military obligations, service as a *khuseea* was generally a commitment for a limited period in the local area. *Khuseea* were expected to provide for themselves in these circumstances. The demand for longer periods of service by the Company, often far from the *khuseea*'s networks of support, meant that some form of financial compensation was essential.<sup>56</sup> Such compensation was an explicit element of Regulation XI of 1806 but was a new construct within Pahari customs around *begar*.

In parallel, the move to development of infrastructure necessitated the recruitment of people with specialist artisanal skills. In the Pahar, such skilled workers—stonecutters, masons, smiths and leather workers—were only found amongst the Dalit *dom/shilpkar* communities concentrated in Almora.<sup>57</sup> In pre-colonial times, payment to these artisans was largely in kind or a share of the product and took place in the context of a *jajmani* patron/client relationship.<sup>58</sup> Unable to engage in *jajmani* relationships with

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<sup>53</sup> Traill, G. W. to Frazer – Acting Secretary to the Board of Commissioners Furukabad, 15/2/1820, KDRLI, vol: 7.

<sup>54</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 48.

<sup>55</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 78.

<sup>56</sup> Caste centred practices around commensality precluded provision of sustenance by messing or canteen. Ramsay, H. to Batten, J. H., 2/11/1840, KDJLI, vol: 35.

<sup>57</sup> Alam, *Becoming India: Western Himalayas under British Rule*, p. 52; Traill, 'Statistical Sketch of the Kumaon,' p. 146.

<sup>58</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 43-44, 52. For a useful discussion of the *jajmani* system in a modern context see: Craig Jeffrey and John Harriss, *Keywords for Modern India* (Oxford University Press, 2014).

the *dom/shilpkar*, the Company was again forced to implement a model of paid employment to compensate these artisans for their labour.

Like the *kbuseea*, the *dom/shilpkar* found the high demand for their skills burdensome and strongly protested this imposition to Traill. His response to this protest was to assert that the practice was well within customary practice:

...with regard to the pressing of coolies, the people in question that is the Doms, have invariably from time immemorial furnished coolies and consequently it is ridiculous for them now to complain of such a demand as a novel hardship....<sup>59</sup>

### ***Formal control of begar by the civil administration***

Naturalization, increased compliance with orders to provide service and the establishment of legitimate bounds for *begar* in colonial Kumaon, would be a process contested over time. Central to this process were Traill's moves beginning in 1819, to take direct control of the collection and allocation of *kbuseea* and artisan workers away from the military and put it formally into the hands of his civil administration apparatus.<sup>60</sup>

Military control of *begar* had been haphazard and dysfunctional, particularly in the remote eastern provinces of Kali Kumaon and Shore with their isolated military posts near Lohaghat and Pithoragarh.<sup>61</sup> Despite the reduction of troops in these pargana to very low levels, the severe shortage of locally available grain meant that nearly all supplies for the troops that remained continued to be sourced from the plains. Transporting this grain for the garrison, around 100 tonnes annually, required finding around three thousand *kbuseea* at the same time of year when nearly all the local population moved to the Terai for trade and access to pasture.<sup>62</sup> Moreover, the agents at these posts had been discounting the already low hire rates for *kbuseea* prescribed under the official *nerrick* (a fixed price issued by government order or rate list). The resulting derisory return for

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<sup>59</sup> Traill, G. W. to Mouat, Lieut. Colonel, Undated, KDRLI, vol: 7. Note that this letter is marked as a private letter in pencil and undated. However, its position in the KDRLI suggest it is from early 1821.

<sup>60</sup> Traill, G. W. to Bayley, W. B. – Chief Secretary to Government 23/12/1819, KDRLI, vol: 7.

<sup>61</sup> The author has visited the ruins of the fort of *Bannasur-E-Quila* a few kilometres south of Loharghat on several occasions. Until around 2005 it was a romantic structure sitting high on a hill overlooking a rich and fertile hanging valley. Unfortunately, 'restoration' work conducted by the Archaeological Survey of India in 2006 destroyed much of the structure including breaking the elegantly carved lion gate that guarded the entrance.

<sup>62</sup> Traill, G. W. to Swinton, George – Secretary to the Political Department, 19/4/1822, KDJLI, vol: 25.

their work made local men extremely reluctant to answer calls for labour.<sup>63</sup> Indeed, to avoid being pressed as *kbuseea*, many zamindars (in Kumaon meaning simply farmer but in colonial Bengal meaning large landholder) had deserted their villages and moved to Nepal or to remote districts of Kumaon not subject to calls for *begar*. This exodus had only further diminished local grain production which, in turn, had led ‘to an annual increase of the evil’ of pressing even more *kbuseea* to bring grain from the plains.<sup>64</sup> This ‘evil’ grew to the point where, Traill stated in a private letter to Kumaon’s military commander, that if he as Commissioner made a further call on the population to provide carriage ‘in all probability half the population would desert.’<sup>65</sup>

Traill’s solution to these systemic problems was to begin to draw the collection and allocation of *kbuseea* away from the customs and practices of the military and into the hands of his civil administration. The earliest archival account of this process appears in the KDPMR in December 1819. W. B. Bayley, the Chief Secretary to Government, had raised a number concerns regarding the efficacy of the practice of pressing *kbuseea* in Kumaon to meet the needs of the military.<sup>66</sup> He then went on to ask if a free market in the provision of coolie labour was a viable option.

Traill responded to Bayley’s concerns by first outlining that the population had contracted under Gurkha rule and that the region’s normal number of potential *kbuseea* was simply not available.<sup>67</sup> He then went on to reiterate a common trope of the KDPMR and more modern literature, that Pahari men were resistant to performing any demanding manual labour outside of a very narrow range of culturally defined activities. Using the language of the times, Traill described this resistance as ‘the insurmountable indolence of the male population of the Province.’<sup>68</sup> Traill argued that when combined, these demographic and cultural contingencies meant that continuing to press *kbuseea* was the only way to meet the military’s need for carriage in Kumaon’s geographic, economic and

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<sup>63</sup> Traill, G. W. to Satchwell, Lieut., 29/4/1822, KDJLI vol:25.

<sup>64</sup> Traill, G. W. to Swinton, George – Secretary to the Political Department 19/4/1822, KDJLI, vol: 25.

<sup>65</sup> Traill, G. W. to 'My dear Colonel' [Mouat, Lt Col] undated private letter, circa 00/05/1822, KDJLI, vol: 25.

<sup>66</sup> Bayley, W. B. to Traill, G. W., Date indecipherable, KDMLR, vol: 15.

<sup>67</sup> Traill, G. W. to Bayley, W. B. – Chief Secretary to Government 23/12/1819, KDRLI, vol: 7.

<sup>68</sup> Men in Kumaon made—and continue to make—little contribution to the agricultural or domestic economy of the region. They did take a lead role in activities such as ‘ploughing and harrowing’, but this was often limited to around eight days labour a year. Traill, ‘Statistical Sketch of the Kumaon,’ p. 217; Jane Dyson, ‘Harvesting Identities: Youth, Work, and Gender in the Indian Himalayas,’ *Annals of the Association of American Geographers* 98, no. 1 (2008): 165; Tukral, *Garhwal Himalaya* p. 34; Berreman, *Hindus of the Himalayas: Ethnography and change*, p. 67.

cultural conditions.<sup>69</sup> Traill went on to assert that the current system of issuing demands for labour used by the military was very open to abuse which had led to higher levels of resistance. He argued that the collection of coolies by the civil authority through a systematic process ‘a fixed detailed cess formed on an estimate the number of houses and amount of revenue of each village’ would tend to curb those abuses. To facilitate this new model, Traill proposed the formation of a new branch of his civilian administrative service that would be dedicated to *khuseea* collection at the modest additional cost of Rs. 28 per month.<sup>70</sup>

Impressed by Traill’s arguments, Bayley explicitly endorsed the establishment of the proposed new branch of the administrative service and proposed formal administrative practices for pressing *khuseea*. In doing so, Bayley tacitly endorsed the continued pressing of *khuseea* to perform *begar* in Kumaon.<sup>71</sup> Just as significantly, Bayley also tacitly exempted Kumaon from the impact of Regulation III of 1820 which he promulgated only a few weeks after his correspondence with Traill.<sup>72</sup> Regulation III of 1820 reversed the intentions of Regulation XI of 1806 discussed earlier and prohibited ‘the highly injurious practice which prevails, of forcibly pressing certain classes... for the purpose of carrying baggage or other loads.’<sup>73</sup> Emphasizing the distance and distinction of the Extra-Regulation Order, neither the ‘spirit and principle’ nor the letter of this new plains regulation was to apply in Kumaon.<sup>74</sup>

Bayley’s concerns about the pressing of *khuseea* was entirely focused on best meeting the needs of the military and not on the welfare or rights of *khuseea*. However, concerns about the welfare of the *khuseea* themselves were to come to the fore in 1822 when R. T. J. Glyn, the judge and magistrate at Bareilly, was appointed Commissioner of Circuit for Kumaon (see chapter 5, Criminal Law). As part of his tour of the region,

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<sup>69</sup> Traill, G. W. to Bayley, W. B. – Chief Secretary to Government, 23/12/1819, KDRLI, vol: 7.

<sup>70</sup> Ibid.

<sup>71</sup> Bayley W. B. to Traill G. W., 23/1/1820, KDMLR, vol:16.

<sup>72</sup> W. B. Bayley, ‘Practice of Pressing Begarees Prohibited,’ *The Asiatic Journal and Monthly Register for British India and its Dependencies* X (1820): p. 595.

<sup>73</sup> Ibid.

<sup>74</sup> Regulation III of 1820 would seem to have been largely ignored on the plains and its purport was transcended by Regulation VI of 1825 without mention or revocation of the earlier legislation.



Glyn was instructed to compile a report on the police and general administration of justice in Kumaon ‘in the manner usual at the close of circuit.’<sup>75</sup>

At the beginning his tour, Glyn asked Traill for a briefing on many issues, but prefaced his enquiries with the observation:

It must be quite unnecessary for me to observe *how intimately the police of a country is connected with the subsistence of the lower orders of society*. This connection however imposes on me the duty of requesting your opinion upon the subject of the hire of hill porters employed by Government and individuals for the transport of grain stores, baggage etc from the plains to this station [Almora].<sup>76</sup>

In his subsequent report to Henry Thoby Prinsep, the Acting Secretary to Government in the Judicial Department, Glyn expressed ‘[a] feeling of regret and disappointment from observing the squalid countenances and sickly emaciated half starved appearance of the khuseea instead of the strong healthy aspect which is usually associated with the idea of mountaineers.’<sup>77</sup> He added that the population was ‘deficient in those qualities of hardiness and vigour and courage and independence which in mountainous countries are generally found.’<sup>78</sup>

Using the common tropes of his day, Glyn attributed the condition of the Kumaoni people to the former government of the Chand dynasty which, being Brahminical, despised and degraded the lower classes and suffered them to be oppressed and treated as slaves. This condition was compounded by ‘the oppressions and extractions perpetrated by the Gurkhas on all classes from the highest to the lowest [which] almost depopulated the country and reduced those that lingered, to a state of deprivation and wretchedness almost unparalleled.’<sup>79</sup>

Glyn reported that real progress had been made in the Paharis’ living standards and that:

[t]he parental anxiety and beneficence of the British Government has already effected a happy change, an impartial administration of justice.

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<sup>75</sup> Prinsep, H. T. - Acting Secretary to Government to Glyn, R. T. J., 13/5/1822, KDMLR vol: 20.

<sup>76</sup> Glyn, R. T. J. – As Commissioner of Circuit to Traill, G. W., 6/7/1822, KDMLR, vol: 20. Emphasis added.

<sup>77</sup> Prinsep, H. T. - Acting Secretary to Government to Traill, G. W., 10/10/1822a, KDMLR, vol: 20. Note that Glyn's report appears as an attachment to a letter from Prinsep.

<sup>78</sup> Prinsep, H. T. - Acting Secretary to Government to Traill, G. W., 10/10/1822b, KDMLR, vol: 20.

<sup>79</sup> Ibid.

Exemption from hostile inroads and internal communication and mildness and forbearance and equity in the revenue system have already rendered the inhabitants of Kumaon comfortable and happy compared with their condition in former times.<sup>80</sup>

However, Glyn was concerned that an egregious oppression continued and was struck by how all except Kumaon's *thuljat* elite were pressed into carrying baggage at pay rates disproportionate to the necessities of life.

He reported that up to eight thousand *khuseea* were pressed into service each year, with the burden falling disproportionately on the people at Almora and Bumouree at the foot of the hills.<sup>81</sup> Glyn argued that the 12 anna that they were given as compensation for carrying a load between the two towns, a round trip of around 13 days, was not sufficient. Twelve annas, marginally under one anna per day, would allow them to buy around 12 seers of grain, which was barely enough to maintain themselves while performing the heavy work and left nothing for their dependants.<sup>82</sup>

Glyn argued that *khoosh kureed* labour (happy exchange, voluntary, free market) in Almora yielded 1½ anna per day from private Europeans, while it yielded 1½ anna plus some *chabeena* (parched gram) from 'Natives.'<sup>83</sup> He noted, however, that even this supposedly voluntary labour was not given freely and had to be collected by government *chaprasi* (low-level officials). Glyn compared this rate with that paid at Bareilly on the plains, where the minimum *khoosh kureed* rate was 2½ anna per day. Given that grain was cheaper on the plains, this gave the labourers of Bareilly much greater purchasing power for their day of work than those in the hills. He commented that even prisoners in the Bareilly jail received ¾ anna per day as diet allowance as well as an annual clothing allowance. Unsurprisingly, many of the *khuseea* were unwilling to perform the work at such a low rate, and many ran off halfway through, abandoning the paltry pay that was owed to them.

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<sup>80</sup> Ibid.

<sup>81</sup> Glyn's estimate of 8,000 would only appear to cover those pressed to carry loads and not include those pressed to perform labour such as road making. See Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 48.

<sup>82</sup> One seer in Kumaon at this time was approximately 0.95kg, but was a measure of volume not weight

<sup>83</sup> Here I use Glyn's own term for Indians in general. The term 'Indian' is not used anywhere in the KDPMR and did not come into general use until much later in the century.

## *Introduction of the Coolie Law of 1822*

In response to Glyn's report, Prinsep wrote to Traill in October asking him to draw up a scale of hire charges for *khuseea*. This scale was to be based on the rate of 1½ anna for every day that the *khuseea* were away from their homes.<sup>84</sup> Days away was to include travel to the collection point, days waiting to commence, days carrying, and days to return home, with extra days during the wet season. Prinsep's directive to pay *khuseea* for all their days away is so detailed and so in line with practices that Traill had been trying to introduce for some time, that it can only have come in response to knowledge of Traill's proposed reforms.<sup>85</sup> No record of such advice to Prinsep exists in the KDPMR, but it would seem reasonable to speculate that Glyn had passed on Traill's earlier briefing on the matter to him.<sup>86</sup> Prinsep's letter was explicit that the scale was only relevant for *khuseea* pressed for Government service and was not to cover the private hire of carriage. Private hire was to be at any rate struck between the traveller and the *khuseea* even if it was lower than the scheduled rate.

Traill's response to Prinsep's directive was to implement and promulgate a group of formal governmental practices known as the 'Coolie Law' that went far beyond the simple codification of a pay scale for *khuseea*.<sup>87</sup> This, the first of the Extra-Regulation laws unequivocally authored by Traill, bore only a superficial resemblance in form or content to any regulation of the plains, and took no account of the then current Regulation III of 1820 discussed earlier, which had forbidden pressing coolies for the military. Indeed, Traill was ignorant of all legal developments on the plains, and only the year before in May 1821 had apologised if any of his proposals ran counter or went beyond the 'spirit' of current regulations or legal judgements. He added that if he had exceeded his remit, he could only offer the excuse that 'as the regulations do not extend to this Province I have not been furnished or seen a single regulation for the last six years.'<sup>88</sup> Traill's lack of access to plains regulations was to be remedied from 1825

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<sup>84</sup> Prinsep, H. T. - Acting Secretary to Government to Traill, G. W., 10/10/1822a, KDMLR, vol: 20.

<sup>85</sup> Traill, G. W. to Prinsep, H. J. - Secretary to Government, 19/11/1822, KDJLI, vol: 25.

<sup>86</sup> Traill, G. W. to Glyn, R. T. as Commissioner under Regulation X of 1817, 19/7/1822, KDJLI, vol:25.

<sup>87</sup> Regulation regarding the supply of coolies, 9/11/1822, KDJLI, vol: 25; Traill, G. W. to Aldin, Lieut. Colonel, 16/11/1822, KDJLI, vol: 25.

<sup>88</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furukabad, 1/11/1817c, KDRLI, vol: 7.

onwards, but at the time of development of the Coolie Law, he only had his memories from his role as Assistant Magistrate at Furrukhabad seven years earlier to guide him.<sup>89</sup> Moreover, all of the relevant plains regulations were intended to apply to provide ‘Assistance to Troops on March’ not permanently garrisoned troops. By 1822, apart from when units were being rotated in and out of the hills, troops in Kumaon were accommodated in established barracks. The existing regulations had nothing to say about troops in such circumstances. Rather, on the plains, the military were expected to source grain and other supplies for garrisoned troops through normal commercial arrangements. Similarly, public works such as building and road making in settled times had never come under the remit of Regulation XI of 1806. At best then, compliance with the ‘spirit’ of the relevant plains regulations would seem to be a distant and unimportant objective of the Coolie Law. What was important was meeting the needs of the military in Kumaon’s distant and distinct conditions. Rather than viewing it as being derivative of a plains regulation, then, it is more useful to understand the Coolie Law—indeed most of Traill’s early formal governmental practices—as an independent creative adaptation to meet the needs of the Company’s empire in the political, economic and cultural conditions of Kumaon.

Highlighting the heterodox nature of Traill’s adaptation of plains regulations, the Coolie Law did not take the form of a single integrated and fixed document. Rather, those parts of the Coolie Law reduced to a written code were expressed in four separate documents, three from late 1822 followed by an additional document in 1834, that consolidated changes to the Coolie Law that Traill had incrementally introduced over time. None of these later changes had been introduced with the explicit sanction of the Company government in Calcutta, and yet Traill acted and wrote as if they were an integral part of the initial articulation of the Coolie Law.

The first document that constituted the Coolie Law was dated 9/11/1822 and, reflecting its endorsement by Prinsep as Secretary to Government, began by declaring itself to be a regulation.<sup>90</sup> Moreover, in an attempt to take on the form and authority of a

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<sup>89</sup> Copies of regulations begin to appear in the Miscellaneous Letters Received volumes of the KDPMR from late 1825 onwards. Many of these are in Persian, a language that few in Kumaon could read or understand.

<sup>90</sup> Traill only described any of his orders as a ‘Regulation’ on one other occasion. This was for the ‘Rules for the guidance of Moonsiffs’ detailed in chapter 6 which were similarly specifically endorsed by Government.

regulation, it began with a header that orthographically and calligraphically mimicked the short title of a printed plains regulation, notwithstanding that it was a handwritten document.

The regulation did not cover all Kumaon. Rather, it was directed specifically to the officers of the military posts at Lohaghat and Pithoragarh far to the east of Almora where Traill's influence and administrative reach was at its most tenuous and the military's practices were at their most dysfunctional. Reflecting Traill's position as a civilian vis-à-vis the military, the regulation did not prohibit or enjoin any action by the officers at those posts. Instead, it politely advised them that the Tehsildar of Kali Kumaon and Jamadar of Shore, the relevant civilian officers, had been authorized to receive *purwana* from the officers of the garrisons for indents of up to 15 *khuseea* for work in the local area. In a concession to the customary practices of the military at these posts, the regulation broke with the directive of 1816 that prohibited using *begar* for private purposes and permitted *khuseea* to be used to carry private baggage and undertake private construction work for the Company and its officers. However, pressed *khuseea* were not to be used by the private traders that serviced the posts. Whatever activity the pressed *khuseea* were engaged in they were to be paid at a rate of 1½ anna per day.

The regulation then advised the officers of the garrisons that the Tehsildar and Jamadar had been forbidden from receiving *purwana* for indents of more than 15 *khuseea* or for use outside the local area. These requests had to be made directly to the military officer Sir Robert Colquhoun, the commander of the local battalion in Almora who was acting as Traill's assistant. Sir Robert, acting in his role as a civilian, would then recruit the indents using Traill's systematic administrative practices that ensured that they were drawn from across the whole of the province in a manner likely to cause as little disturbance to the rhythms of local life as possible.

Quirkily, the regulation also set a *nerrick* for lime mortar and grass which were usually supplied in response to compulsory purchase orders. This off-theme inclusion was not just an expression of Traill's idiosyncratic character. The supply of lime mortar and grass was an ongoing point of contestation between local people and the military, and failure to codify the rate for these products would have opened another opportunity

for exploitation. Traill used the occasion to take the liberty to shut that opportunity down.

The second document that constituted the Coolie Law was a letter to Lieut. Colonel Aldin the military commander for Kumaon, dated 16/11/1822. Intended to cover all Kumaon, this letter follows Prinsep's instructions and takes the form of a 'Schedule of rates of hire for *khuseea*' detailing the price to be paid for each journey on all the major routes in the region. Based on the hire rate of 1½ anna per day that Glyn had advised was the market rate for coolies paid in Almora, the schedule shows that *khuseea* plying the Almora–Bumouree route received at least a 30 per cent increase in their pay. Additionally, *khuseea* working as part of indents of over 50 were to receive a flat 3 anna bonus as well as a 50 percent bonus if they were sent to the Terai between mid-May and mid-October when the disease risk was at its highest. Tolia argues that these penalty rates were not intended as a means of compensating *khuseea* for the inconvenience and dangers of working in these kinds of indents.<sup>91</sup> Rather, Traill intended to use this price signal to force the military to plan the movement of goods and people in such a way as to space out movements and to avoid movements in the wet season altogether.

The schedule also introduced formal administrative procedures designed to ensure that the *khuseea* received full payment. These were a racialized construct where *khuseea* received their hire at the end of the journey if they were under the supervision of a European gentleman but were to be paid at the commencement of the journey if they were under the supervision of Natives. Moreover, if they were under the supervision of Natives, they had to be paid in the presence of a Native officer. If a *khuseea* defaulted in his task after being pre-paid, the hire fee was to be recovered through the offices of the civil administrators, not directly by the Native officers.

The letter to Aldin then went on to schedule the standard number of days that each of the regular routes should take and insisted that if there were any delays, the *khuseea* were to receive 1½ anna extra for each day of delay. This additional fee was to be paid on the day of the delay to enable the *khuseea* to purchase additional supplies as it was

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<sup>91</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 51.

their custom to only bring sufficient supplies with them to cover the minimum period they would be away from home.

The third document of 1822 constituting the Coolie Law was a letter to Secretary Prinsep also dated 19/11/1822. However, rather than conveying original material like the first two documents, the letter details orders issued earlier in the year by Traill dated 8/2/1822. These orders scheduled the number of days' notice needed for the civil administration to gather sufficient *kbuseea* to fill an indent. These varied from two full days for indents of up to 15 *kbuseea* to 10 days for indents of more than 100. Sending the schedule to Prinsep transformed the status these existing local administrative practices from a basis in custom to a basis in a formal, textually mediated law with much greater authority.

Two significant features of the Coolie Law are apparent. The Law did not prohibit the military from simply seizing *kbuseea*. Rather, it constrained, structured and moderated their practices by normalizing the recruitment of *kbuseea* through the availability of a suite of state-centred, textually mediated, formal governmental practices. In parallel, the Law said nothing about the obligation of individual *kbuseea* to provide *begar*. However, it likewise constrained, structured and moderated the practice through a suite of state-centred, textually mediated, formal governmental practices. In both these regards then, the Coolie Law was a hybrid that melded the customs of both the military and the Kumaoni people with the Company's emergent formal governmental practices. Both sets of customary practices were transformed in this meeting, but neither was obliterated.

### ***Contestation and iteration***

The reduction of aspects of the Coolie Law to a textually mediated form did not end all contestation regarding the practice, nor did it mean that the law was fully expressed in that written form or fixed for all time. Based in handwritten documents, which would have to be rewritten each time it was invoked, it would be subject to the transformative influence of memory, experience and ambition amplified with each iteration.

A factor in this process was that army units, and with them their commanding officers, were regularly rotated in and out of the hills.<sup>92</sup> Not only did this increase demand for *kbuseea*, but each rotation also brought a new batch of military officers into the region who were unfamiliar with its contingencies and the specific formal governmental practices used to deal those contingencies. Traill dealt with this ignorance by using the Coolie Law of 1822 primarily as a heuristic device.<sup>93</sup>

As outlined earlier, Traill and later Commissioners had only limited authority over the military notwithstanding the remit the Coolie Law gave them as an authority beyond their own personal authority. Nevertheless, and particularly after being empowered by the Coolie Law of 1822, Traill began to take a more direct and assertive line with the military, and, fortunately for this study, began to communicate more commonly through official public letters. This increasing use of public letters marks a point of phase change in the transformation of relations between the military and civilian arms of the Company from a basis in the informal and personal relationships of custom to a basis in formal governmental practices.

Just how Traill used the Coolie Law as an authority beyond his own is most clearly seen in an exchange with a junior officer of a newly arrived military corps at Almora in 1832. The dialogue began in April of that year with Traill using an official letter to seek that Lieut. Loftie of Almora pay money into the court for waiting charges that had arisen when a group of *kbuseea* had to wait for several days to be paid at the end of a journey.<sup>94</sup> Lieut. Loftie disputed liability for the waiting charges and, by early June, had still not paid the requested monies into the court. To bolster his ongoing argument with Loftie, Traill subjoined an extract of the Coolie Law to his letter in rebuttal of Loftie's denial of liability. This handwritten extract plainly showed the influence of memory, experience and ambition on the Coolie Law in that it did not precisely reflect the text of the original document of 1822. Section 10 now included a provision that delay fees now included days waiting to be paid, a point not anticipated or explicitly covered in the original

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<sup>92</sup> Ibid., p. 45.

<sup>93</sup> Traill, G. W. to Aldin, Lieut. Colonel, 16/11/1822, KDJLI, vol: 25; Traill, G. W. to Aldin, Lieut. Colonel – Commanding in Kumaon, 29/9/1823, KDJLI, vol: 26.

<sup>94</sup> Traill, G. W. to Loftie, Lieut. – Almora, 31/4/1832, KDJLI vol: 32.



version.<sup>95</sup> The weight of the legislation notwithstanding, Lieut. Loftie continued to refuse to pay. Somewhat exasperated, by the 27<sup>th</sup> of the month, Traill resorted to appealing through a private letter to Loftie's commanding officer Lieut. Colonel Murray, politely asking for Murray's intervention in the matter.<sup>96</sup> Unfortunately, the archive does not explicitly reveal whether Lieut. Loftie ever paid the money, but in nearly all disputes recorded in the KDPMR, Traill doggedly pursued matters until he achieved a positive, if not perfect, outcome for the local people.<sup>97</sup>

On the same day he wrote to Murray on the Loftie matter, Traill also wrote to him about problems caused by the military's practice of recruiting *khuseea* for the small post at Pithoragarh in Shore.<sup>98</sup> The quite different tone Traill took with Murray as a senior officer compared to his tone with Loftie is palpable. He did not begin his correspondence by reciting the Coolie Law, rather, his initial focus was the practical observation that the zamindars around Pithoragarh were so severely harassed by excessive demands to provide coolie, that they were close to deserting their villages.<sup>99</sup> Such a desertion would have harmed Traill's revenue receipts to a small degree, but of more concern to both men was that their desertion would have increased the difficulty and the cost of supplying the military post. Traill stated that the problem lay with the officers of the station not going through the thana office to obtain *khuseea* and giving sufficient notice that would allow coolies to be recruited from more distant locations, thus sharing the burden more equally.

It was only after this polite and considered discussion that Traill began to inform Murray of the current contents of the Coolie Law. Again, like the extract supplied to Loftie, the subjoined extract he sent to Murray reproduced below showed considerable development from the text of the original law of 1822.

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<sup>95</sup> Traill, G. W. to Loftie, Lieut. – Almora, 8/6/1832, KDJLI vol: 32.

<sup>96</sup> Traill, G. W. to Murray, Lieut. Colonel, 27/6/1832a, KDJLI, vol: 32.

<sup>97</sup> Traill, G. W. to Tate, M. – Asst Surveyor in Kumaon [Assistant to Webb], 30/9/1821, KDRLI, vol: 8; Traill, G. W. to Swetwellian, Lieut. - Executive Officer in Kumaon, 25/6/1827, KDJLI, vol: 29; Traill, G. W. to Swetwellian, Lieut. - Executive Officer in Kumaon, 23/6/1827, KDJLI, vol: 29; Traill, G. W. to Swetwellian, Lieut. - Executive Officer in Kumaon, 23/7/1827, KDJLI, vol: 29.

<sup>98</sup> Traill, G. W. to Murray, Lieut. Colonel, 27/6/1832b, KDJLI, vol: 32.

<sup>99</sup> Reflecting their transhumant lifestyle, many people of the region had lands across the newly created border with Nepal.

[1] In cases where the number of coolies required may not exceed five – twenty-four hours previous notice will be expected.

2 - Where be more than five and not exceeding ten; a previous notice of 48 hours will be necessary.

3 - In indents from 10 to 15 coolies three days' notice

4 - In indents from 15 to 20 coolies four days' notice.

[5] Where more than 20 are required the application to be made to the Commissioner's Office at Almora.<sup>100</sup>

The variations from the original text of 1822 seen in Traill's letter to Murray of 1832 are even more starkly apparent in the final document that constituted the Coolie Law titled 'Rules regarding the hire & payment of Khuseas in Kumaon' dated 6/7/1834.<sup>101</sup> Most prominent of these variations was a new schedule of standard charges corresponding to the many new destinations that had opened up, along with the redaction of listings for journeys no longer current such as the run to Bumouree which had been supplanted by services to the new marts at Kheaowee, Kota and Dikolee.

Another significant variation included in the 1834 Rules was the specification that a standard load was now a Kumaoni maund of 36 seers. This provision went on to allow a discount on the hire rate where the *khuseea* chose to carry a lighter load. In parallel, the Rules introduced a rough formula for dealing with heavy and bulky items not easily reduced to standard loads, such as large consignments of alcohol.

Finally, to deal with the increase in bi-directional movement of goods and people, the 1834 schedule included rates for back loads, with a full hire rate for the backload if it was for a new hirer, but only a half-hire rate if the backload was for the original hirer.

The variations and developments seen in the text of each iteration of the Coolie Law were not merely a product of transcription errors or an attempt by Traill to take advantage of newly arrived military officer's ignorance. For most Company officers of the period, a period when Company practices were transitioning from a basis in orally mediated customs to a basis in codified rules, the law was not rigidly based in fixed and immutable texts that were slavishly referenced every time the law was recited. Rather, the

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<sup>100</sup> Traill, G. W. to Murray, Lieut. Colonel, 27/6/1832a, KDJLI, vol: 32.

<sup>101</sup> Traill, G. W. - Rules regarding the hire & payment of Khuseas in Kumaon, 6/7/1834, KDJLI, vol: 30.

law was a dynamic construction grounded in memory and influenced by experience and ambition in which change and development was an inherent component.

Many examples of the dynamic nature of plains regulations are available from this period. One of the most conspicuous of these is Charles Metcalfe's Delhi anti-slavery law from 1812 that will be discussed in greater detail chapter 7. By the 1830s, all copies of Metcalfe's original handwritten proclamation had been lost as well as any clear recollection of its contents, but the law persisted and propagated as a 'rumour' that grew to encompass many practices far beyond the law's original intentions.<sup>102</sup> At this early stage of the evolution of codified legal practices, the law was not understood as an ever-fixed sources of truth attached to historically authentic documents. Rather, written laws functioned essentially as aide-mémoire and were only loosely attached to their originating documents.

I argue that there was no clear divide between the plastic nature of the largely orally based practices of custom of pre-colonial Kumaon and the early formal textually mediated laws that Traill and the Company introduced to the region. The Coolie Law of the Traill era was then a dynamic hybrid that functioned at the point of interaction between Kumaoni custom, the practices of the military, and the emergent understanding of formal governmental practices that was to come to full flower later in the century.<sup>103</sup>

The practice of pressing *khuseea* to provide carriage for the Company continued long after Traill's departure and would remain a feature of colonial rule well into the twentieth century. Indeed, the scale of the practice steadily grew, and in 1843, Commissioner Lushington reported that in the previous year, more than 22,000 men had been forced to work for projects including the Great Trigonometrical Survey, the Government Tea Nurseries and the Public Works Department.<sup>104</sup> However, the military continued to demand by far the largest proportion of this total with around 6,000 *khuseea* used at Almora and around 9,000 used to supply the posts of Lohaghat and Pithoragarh.

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<sup>102</sup> 'Minute by C.H. Cameron dated 1 February 1839' in East India Company, *Slavery in the Territories under the Company's Rule, Volume 5* (London: n.p., 1841), p. 35-39.

<sup>103</sup> McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law*, pp. 92-122.

<sup>104</sup> Lushington, G. T. to Elliot, H. M. - Secretary to the Suddar Board of Revenue N.W.P.—Allahabad, 25/5/1843, KDRLI, vol: 14. Note that by 1843 the region's population had grown substantially.

Lushington lamented the injustice of the practice of pressing *khuseea*, but with the Company's interests to the fore, he could see no viable alternative. He concluded his report to the Suddar Board on the issue with the comment:

Finally as admitting as I am the hardship and inconvenience to the people resorting to, I at the same time feel that it could not be abolished, wholly or in part, without [indecipherable] some additional expenses for the state.<sup>105</sup>

## Grain

It is strange how loth these men were found to part with the hoards of grain which they possessed, although their own price was offered for it to them. There was hardly an instance in this part of the country of the farmers giving what was wanted for the use of the army at the first requisition, though they had it in abundance, and the money was tendered to them at the same moment. The possession of it was, in general denied, and it never was produced until force was threatened...but our Ghoorkhas, well aware of their ways, never failed to find what was required.<sup>106</sup>

James Baillie Fraser, 1820.

As outlined in the introductory chapter, commodity production and sale of grain for cash to a domestic market was an economic and cultural practice largely absent from the hills in pre-colonial times.<sup>107</sup> The grain production and exchange that was conducted overwhelmingly took place on a cashless basis within established customary constructs of obligation such as family, a *jajmani* patron/client relationship or *begar*. The limited amount of grain exchanged outside of these constructs of obligation was largely conducted on a cashless basis using long-established ratios of exchange legitimated through spiritual rituals, traditions and habitus.<sup>108</sup> With so little grain exchanged outside of these customary modes of exchange, little or no infrastructure for commodity production and sale of grain—grain merchants, transportation systems focused on urban

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<sup>105</sup> Ibid.

<sup>106</sup> Fraser, *Journal of a tour through part of the snowy range of the Himāla Mountains, and to the sources of the rivers Jumna and Ganges*, pp. 128–29.

<sup>107</sup> The KDPMR almost exclusively uses the generic term 'grain' and only very occasionally refers to a specific type of grain. It would seem that 'grain' was used much like the term 'corn' was at the time. See [https://en.wikipedia.org/wiki/Corn\\_\(disambiguation\)](https://en.wikipedia.org/wiki/Corn_(disambiguation))

<sup>108</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 33–44, 55.

centres, or granaries—had developed in the hills and grain had little or no monetary value attached to it.

There was an internationally focused grain trade, most prominently the 750 tonnes of grain that the Bhotiya traded into Tibet each year largely for salt and borax.<sup>109</sup> However, even here, most of this trade was conducted on a cashless barter basis, with the salt exchanged in the hills for hill products and the borax bartered down to the plains for trade goods such as broadcloth.<sup>110</sup> This trade notwithstanding, exchanging grain for cash in a commodity market was an alien and disturbing concept to most Pahari.<sup>111</sup>

If the Company were to occupy Kumaon in the longer term, it was essential for them to develop a system that would reliably supply their troops with grain from local sources. The strategy that emerged was a complete contrast to the compulsory pressing of *kbuseea*. Seeking a long-term sustainable solution, and inspired by the principles of physiocratic ‘improvement’ that had transformed British agriculture in the 18<sup>th</sup> century, the Company turned to the development of a domestic *keboosh kureed* (happy/voluntary exchange) grain market based on free-market principles.<sup>112</sup>

However, issues around *begar* and the supply of grain from local sources were not unrelated. If large numbers of men were pressed as *kbuseea*, they were taken away from the potential of being engaged in grain production.<sup>113</sup> While it was true that men generally had only limited involvement in the production of grain—essentially only ploughing, harrowing and scaring away scavenging animals—nevertheless, these roles were vital.<sup>114</sup> The absence of men on *kbuseea* duties meant that these functions were either not performed or performed less efficiently by women. For example, women were restricted by cultural practices from using metal-tipped ploughs, indeed even touching ploughs, and used wooden hoes to till the land.<sup>115</sup> Wooden hoes required much more

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<sup>109</sup> Ibid., pp. 53-57; Traill, ‘Statistical Report of the Bhotia Mehals of Kumaon,’ p. 37.

<sup>110</sup> Data from as late as 1868 suggests around 70% of this international trade was conducted on a barter basis,’ in Alam, *Becoming India: Western Himalayas under British Rule*, p. 55.

<sup>111</sup> Ibid., pp. 81-83; White, *Views in India, Chiefly Among the Himalaya Mountains*, pp. 52, 68, 98.

<sup>112</sup> Ranajit Guha, *A Rule of Property for Bengal: An Essay of the Idea of Permanent Settlement* (Paris, La Haye: Mouton & Co, 1963), pp. 45, 48, 105, 67, 72, 78 and 98. Traill and many others refer to ‘improvement’ in many places in the KDPMR.

<sup>113</sup> Traill, G. W. to Adam, J. – Secretary to the Political Department Fort William, 1/5/1817, KDRLI, vol: 5.

<sup>114</sup> Tukral, *Garhwal Himalaya* p. 34.

<sup>115</sup> Y. S. Parmar, *Polyandry in the Himalayas* (Delhi: Vikas Pub. House, 1975, p. 39.

human labour to complete a job compared to a bull powered plough. Similarly, women were and remain differentially disinclined to confront wild animals such as bears, pigs, monkeys and leopards raiding crops or livestock. Women in Kumaon often have a smaller stature than men and do not carry guns. Wild animals would seem aware of these differences and act more aggressively towards women. Tragically, leopards continue to this day to take much larger numbers of women as prey compared with men.<sup>116</sup> In corollary, and as discussed earlier, compulsory demand for grain beyond levels that Kumaoni people found tolerable would result in farmers abandoning their lands and moving beyond the reach of the systems for pressing *kbuseea*. As Gardner was to find early in the occupation, this space beyond the reach of the system for pressing *kbuseea* was soon to include Almora itself where men were drawn as the town was beyond the reach of their *pudhan* to press them into duty.<sup>117</sup>

Traill, with his more extensive understanding of the region developed during his early settlement tours, felt that the development of a *kboosh kureed* grain supply system would be a long-term project. In 1817 he reported to Government that with the depopulation and damage caused to the region by the Gurkhas ‘many years will in all probability elapse ere the quantity of grain raised in the province will be sufficient to answer fully such a demand as now exists.’<sup>118</sup> Traill believed that not only were there significant structural problems in developing a commodity focused grain market, but there were also cultural issues which would have to be addressed. The most significant of these cultural issues was Pahari men’s ‘excessive habits of idleness which no consideration of interests can totally suppress must render the improvement gradual and prevent the expectation of immediate increase to any great extent.’<sup>119</sup> Nevertheless, given that grain sourced locally was likely to be cheaper than grain transported from the plains, the Company chose to try to develop a *kboosh kureed* grain market focused on the

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<sup>116</sup> Fatal animal attacks are a continuing feature of Kumaoni life. This burden falls disproportionately on women. See Jim Corbett’s *Man Eater* series for a semi fictional account of this.

<sup>117</sup> Gardner, E. to Adams - Lieut. Colonel. - Commander Officer in Kumaon, 9/3/1816a, KDRLI, vol: 2.

<sup>118</sup> Traill, G. W. to Adam, J. – Secretary to the Governor General, 17/2/1817, KDRLI, vol: 5.

<sup>119</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furrucabad, 6/12/1817, KDRLI, vol: 5.

military's needs. Not coincidentally, cash income from grain sales earned by the Kumaonis could then be used to meet the land tax demanded by the Company.<sup>120</sup>

The move by the Company to establish a *keboosh keureed* grain market had an almost immediate effect, and the price of grain in the regions near Almora had quadrupled by 1821, which encouraged new land to be brought into cultivation.<sup>121</sup> Nevertheless, and despite significant reductions in troop numbers, in the early years of Company occupation, hundreds of tonnes of grain still had to be brought up from the plains each year, particularly for the outposts at Pithoragarh in Shore and Lohaghat in Kali Kumaon where little increase in grain production had been seen locally.<sup>122</sup>

One of the earliest formal legal steps in the process of developing a market in grain was a series of orders from the Company-Government in Calcutta issued in July 1818.<sup>123</sup> These outlined that the sale of grain by zamindars was now optional and that troops were no longer to be sent into the villages to enforce compulsory requisition of grain. The military found this formal restriction of their customary practices burdensome and, like they did the orders around *begar*, continually contested and subverted the orders.

To promote the intentions of the Government's July 1818 orders, Traill, in the same manner as he was to promote the intentions of the Coolie Law, largely worked through a process of rearticulation and persuasion through private letters and personal communication rather than diktats. Fortunately for this study, Traill did, of occasion, use public letters in his education of the military, and an example of such appears in June 1824 when Traill acquaints the newly arrived Lieut. Colonel Duncan, Commander in Kumaon, with the laws regarding the voluntary nature of grain sales in Kumaon.<sup>124</sup> Duncan had complained that the zamindars demanded to see a *purwana* issued by Traill's office before selling him grain. In response, Traill outlined that this was a ruse. Eliding the realities of his very early practices, Traill outlined that *purwana* for the compulsory

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<sup>120</sup> Traill went to the length of developing roads to Kedarnath and Badrinath to increase the number of pilgrims to these Dams with a view to giving grain at least some level of market value in Garhwal.

<sup>121</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>122</sup> Traill, G. W. to Swinton, George – Secretary to the Political Department, 19/4/1822, KDJLI, vol: 25.

<sup>123</sup> Traill, G. W. to Lyons, Lieut. Colonel 8/7/1818, KDRLI, vol: 6; Traill, G. W. to Lyons, Lieut. Colonel - Commanding in Kumaon, 18/7/1818, KDRLI, vol: 5.

<sup>124</sup> Traill, G. W. to Duncan, Lieut. Colonel – Commanding in Kumaon, 21/6/1824, KDJLI, vol: 26.

purchase of grain had *never* been issued to zamindars by his office, and the zamindars are aware of their right to refuse orders not accompanied by such a *purwana*.<sup>125</sup> Traill advised Duncan that ‘where they call upon you to produce such a document it must be meant as a refusal.’<sup>126</sup> Traill, clearly responsive to the position of the zamindars, added that given past conduct by the military their ‘conduct will have been fully justifiable.’<sup>127</sup> Importantly, while the zamindars refusal to sell grain can be seen as an act of everyday peasant resistance, they were also clearly aware that their resistance was referenced on and endorsed by the formal governmental practices that Traill had introduced.

Duncan appeared aware of and, to a degree, accepted the restraints that the Government order of 8 July 1818 imposed on him. However, by July he had adopted a new tactic to circumvent the letter of that law. Rather than imposing the purchase orders directly on the zamindars, he placed advances with *pudhan*, whom he knew would, in turn, impose the purchase order on their zamindars. Traill’s response to this new tactic was to assert that as advances allowed for many abuses they were prohibited.<sup>128</sup> In doing so, Traill unilaterally moved the grain purchase law beyond the strict text of the 8 July 1818 proclamation and in doing so, chose to defend the rights of the zamindars over the customs and interests of the military.

Traill’s sympathies in this dispute were clear. When Duncan responded in a public letter that in his entire career he had never ‘met with so disobeying a set of natives as the people of these hills’ and that ‘their chief delight [was] rendering the troops uncomfortable’ Traill found it necessary to defend the character of the zamindars in a public letter.<sup>129</sup> He concluded the letter with ‘I have to express my regret that your intercourse with the inhabitants of this province should have impressed you with an opinion so unfavourable to their character and so contrary to the universal testimony which has hitherto borne to their extreme honesty and good faith.’<sup>130</sup> Ultimately, Duncan referred the dispute to his Commander in Chief. However, such was Traill’s

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<sup>125</sup> Traill’s assertion that *purwana* for compulsory grain purchase had *never* been issued is erroneous as they were issued very early in the British occupation.

<sup>126</sup> Traill, G. W. to Duncan, Lieut. Colonel – Commanding in Kumaon, 21/6/1824, KDJLI, vol: 26.

<sup>127</sup> Ibid.

<sup>128</sup> Traill, G. W. To Duncan, Lieut. Colonel – Commanding in Kumaon, 16/7/1824b, KDJLI, vol:26.

<sup>129</sup> Duncan, Lieut. -Colonel – Commanding in Kumaon to Traill G. W., 22/7/1824, KDMLR, vol: 25.

<sup>130</sup> Traill, G. W. To Duncan, Lieut. Colonel – Commanding in Kumaon, 24/7/1824, KDJLI, vol: 26.



status by 1824, that the only response was a routine direction from the civil authorities in Calcutta asking Traill 'to endeavour to assist the officers and men of the infantry in procuring material' but adding that no excess should be committed and that the zamindars should always receive full, fair and liberal compensation.<sup>131</sup>

### *The urzee of Waree*

Disputes over the compulsory purchase of grain continue to appear sporadically in the Pre-Mutiny Records during much of Traill's reign as Commissioner. Fortunately, the KDPMR contains a detailed account of such a dispute from very late in Traill's tenure that brings to light the state of play between Kumaoni and military custom and Traill's formal governmental practices at the time.

Traill had received an *urzee* (petition, report or request) from the zamindars of the village of Waree near Lohaghat in late July 1835 seeking relief from a *purwana* to supply grain to the post at Lohaghat<sup>132</sup>. The *purwana* had not been issued from Traill's office. The *urzee* was written on the 8 anna stamp paper prescribed by Traill's administrative procedures (see chapter 6 Civil Law) and stated that the zamindars of the village had received a requisition from the hand of the Jemadar Dhuneeram to supply Rs. 4 worth of grain [around 100 kg] to the cantonment bazaar. Despite the villagers not having supplied the grain, the Rs. 4 had been paid into the village account by the military. The villagers stated that they were unable to provide the grain and that they sought the relief and protection of Traill from being forced to supply it as directed by the *purwana*. To demonstrate their good faith, the villagers had paid Rs. 4 into the Court at Almora.

This action by the villagers of semi-remote Waree demonstrates that neither Traill nor the formal legal practices of his court were foreign, alien or unapproachable to them. Moreover, the villagers were familiar with the rules, institutions and practices of the Extra-Regulation Order, and accepted its novel technical practices such as the need to put the petition on an 8 anna stamp paper and lodge the rupees with the court, were part of the normal practices through which disputes were contested. Tellingly though, the *urzee* made no reference to the formal proclamation of 8 July 1818, and there is no

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<sup>131</sup> Secretary in the General Department to Traill G. W., 14/11/1824, KDMLR, vol: 27.

<sup>132</sup> Traill, G. W. to Moody, Capt. - Commanding at Lohaghat, 25/7/1835, KDJLI, vol: 30.

evidence that the villagers had the slightest knowledge or awareness of the proclamation. Rather, and highlighting the personal nature of Traill's rule, the *urẖee* appealed directly to Traill and his beneficence as a sovereign, not a specific law or an abstract rule of law.

Traill wrote to Captain Moody, commanding at Lohaghat, in a friendly personal tone and first turned to how important the issue was to the villagers, rather than any discussion of law. To bring to light the depth of feeling the villagers had on the issue, Traill made much of the fact that the villagers had had to walk at least four days to lodge the *urẖee* and the cash, while the cost of the 8 anna stamp paper—and probably the cost of getting the *urẖee* written—was not a trivial matter to them.<sup>133</sup>

Moody himself had problems with Traill's request to have the Rs. 4 remitted to the Battalion at Lohaghat's treasury balance, and, in rebuttal, invoked the rumour of an earlier system where grain was acquired compulsorily. Traill, in contrast to his assertions to Lieut. Colonel Duncan in 1824, acknowledges that such a system had briefly operated early in the occupation of the region, but for an extended period, all grain had been 'supplied wholly and totally by voluntary contract' and that compulsory acquisition had been prohibited by the government.<sup>134</sup> This fact of law rankled Captain Moody, but as a directive of government, was one he had to accept.

### ***Events of 1837 at Lohaghat***

As will be discussed in chapter 8, much of the authority and legitimacy of the early Extra-Regulation Order and its formal governmental practices was vested in the person of George William Traill and dependent on the Kumaoni people's affection and regard for him, not in the abstract formal textually mediated practices of the Extra-Regulation Order itself. Traill retired in December 1835. His acting replacement, Mosely Smith, had six years' experience in Kumaon as Assistant Commissioner, high-level language skill, Traill's deep professional regard, and carried with him aspects of Traill's personal authority and legitimacy.<sup>135</sup> However, Mosely Smith was not permanently appointed as

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<sup>133</sup> The author walked this route in 2003 with a motivated porter and can assure the reader that it is far more demanding than your average stroll.

<sup>134</sup> Traill, G. W. to Moody, Capt. - Commanding at Lohaghat, 25/7/1835, KDJLI, vol: 30.

<sup>135</sup> Traill, G. W. to Campbell, M. - Commissioner of Circuit, 7/7/1834, KDJLI, vol: 30; *The Asiatic Journal and Monthly Register for British and Foreign India, China and Australasia*, vol. 1 - New Series, Parbury, Allen and Co

Traill's replacement. That honour would go Lieut. Colonel George Edward Gowan, who assumed charge as Commissioner of Kumaon on 7 April 1836.<sup>136</sup> Gowan had no experience of the region, no language skills, and, with no relationship with the Kumaoni people, did not carry any aspect of Traill's personal authority and legitimacy. Indeed, J. S. Mill commented that Gowan's sole qualification for appointment appears to have been a 'connexion by marriage of Mr Ross in whose gift as Lieutenant-Governor of Agra the appointment was.'<sup>137</sup>

Gowan was plainly at sea in the unfamiliar environment of Kumaon. Mosely Smith, apparently miffed by Gowan's appointment, moved on to a position on the plains as quickly as he could, taking his corporate memory and personal experience of the Traill era with him. This left Gowan with few resources other than the written texts of the Pre-Mutiny Records as a means of becoming familiar with the law and practices of the Extra-Regulation Order.<sup>138</sup> Moreover, without Traill's authority, charm and sensitivity, Gowan's relations with the army—and just about every other group in Kumaon—rapidly deteriorated. Indeed, he soon became embroiled in a vitriolic dispute with Colonel Andee, the military commander in Kumaon at the time, over the conduct of a sensational military murder trial.<sup>139</sup>

Focused on this and other interminable brouhahas, Gowan lost all influence over grain purchasing practices in Kali Kumaon and, by early 1837, the military outposts had reverted unashamedly to their preferred means of obtaining grain, simply demanding it through a *purwana* at whatever price they felt like.<sup>140</sup> Indeed, early in 1837 Gowan was to complain to Captain Moody who was still at Lohaghat, that the local *chaprasi* were engaged almost full time in issuing *purwana* for grain on the Captain's behalf.<sup>141</sup> The system that had emerged was that Moody had appointed a *chandhari* (here meaning agent) who would tour with a body of soldiers and make out indents for grain which the

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(London 1830), p. 154; Traill, G. W. to Macaulay, Charles - Secretary to the Government of the Agra Presidency Judicial and Revenue Department, 30/11/1835, KDJLI, vol: 30.

<sup>136</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p.75.

<sup>137</sup> J. S. Mill to William Cabell, Letter 239.3 18 April 1838' in Marion Filipiuk and John Stuart Mill, *Additional Letters of John Stuart Mill* (Toronto and Buffalo: University of Toronto Press, 1991), p. 40.

<sup>138</sup> Gowan, G. E. to Boulderson, J. M. - Commissioner of Revenue Circuit Moradabad, 14/9/1836, KDRLI, vol: 12.

<sup>139</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, pp.80-81. The correspondence on this dispute in the KDPMR is enormous.

<sup>140</sup> Thomas, E. in Kallee Kumaon to Gowan, G. E., 23/3/1837, KDMLR, vol: 54.

<sup>141</sup> Gowan, G. E. to Moody, Capt. – Commanding at Loharghat, 7/3/1837, KDJLI, vol: 33.

*chaudhari* would pay for on the spot. The villagers were required to deliver the grain to the military godown in Lohaghat in short time.<sup>142</sup>

The *chaudhari* paid for the grain at a bargain-basement fixed rate of 36 seers to the rupee and made no provision for the cost of transport. With grain in short supply at that time of year, many villages had to buy grain from the plains at a rate of 14 seers to the rupee (more than twice the standard *nerrick* price) and then transport the grain from the plains at a rate of around 13 anna per maund. The loss on the deal for the villagers was close to 200 percent.

Newly appointed Assistant Commissioner Edward Thomas, reporting on these matters in March 1837, outlined that the system opened up many possibilities for the *chaudhari* to extract considerable sums from the zamindars and that it was contrary to both recent and longstanding Government directives.<sup>143</sup> Highlighting just how fraught civil and military relations were at this time, Thomas's proposal that a free market be re-established caused a furore that eventually resulted in Thomas having to supply a written apology.<sup>144</sup>

Gowan himself supported the establishment of a *keboosh kureed* grain market.<sup>145</sup> However, he felt powerless to insist on such a market's development and opined in a letter to F. J. Turner, the Officiating Commissioner at Bareilly, that:

...one would suppose there could be no difficulty in supplying grain for the use of so small a detachment as the two companies of sepoy, with their followers, but the reverse has ever been the case at Lohaghat – From the period of conquest of Kumaon...the supply of grain for the use of the troops at that post has been a constant source of annoyance and litigation to all parties and until some positive orders shall be issued by the board on the Government Prohibiting interference with the people in the prices demanded, such annoyance and discontent must remain.<sup>146</sup>

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<sup>142</sup> Gowan, G. E. to Moody, Captain and later Major - Commanding at Loharghat, 6 letters 7/3/1837 to 24/7/1837, KDJLI, vol: 31 and 33.

<sup>143</sup> Thomas, E. in Kallee Kumaon to Gowan, G. E., 23/3/1837, KDMLR, vol: 54. Thomas had only been appointed two months earlier on 20/1/1837 with 'such duties and you may entrust him'. Officiating Secretary to the Lieutenant-Governor of the N.W.P. to Gowan, Lieut. Colonel G. E., 20/1/1837 KDMLR, vol: 54.

<sup>144</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 81.

<sup>145</sup> Gowan, G. E. to Officiating Commissioner of Revenue and Circuit 3rd Division Bareilly, 25/3/1837, KDJLI, vol: 33.

<sup>146</sup> Ibid.

Turner replied, enclosing a copy of a letter from H. M. Elliot, the Secretary to the Lieutenant-Governor N.W.P.<sup>147</sup> The letter advised that the current system for purchasing grain for the post at Lohaghat was objectionable and should be abandoned. The *chaudhari* was to be dismissed, and an open market was to be established, perhaps on one or two days a week, allowing zamindars to bring such grain as they wished to sell at what price they wished. Payment was to be made in cash or in lieu of land tax. Importantly, both Turner and Elliot expressed the view that it would take some time for the zamindars to have their confidence restored, but in the long term, a *kehoosh kureed* grain market would be the best means of ensuring continued supply to the garrison and, importantly, the satisfaction of the people.

This concern for the satisfaction of the people of Kali Kumaon was not just a beneficent expression of general good will. The people of Kali Kumaon had long been the most resistant group to Company rule in Kumaon, and the previous year had seen a general breakdown of law and order in the district. Ostensibly centred on a local dispute about a road, the disorder escalated to a level where troops were rushed to the region and the local Treasury reinforced.<sup>148</sup>

Gowan advised Colonel Hamilton, the new military commander, that authorization for compulsory purchases of grain was withdrawn.<sup>149</sup> This advice was followed by a directive to Moody in Kali Kumaon that grain was to be purchased at the best market price through the tehsildar.<sup>150</sup> Moody, motivated in part by the compelling reality that he had very little grain in store, continued to dispute the directive and insisted on the necessity of continuing the old system. Despite Moody's entreaties, Gowan felt bound by the orders of Government and replied that 'it is quite out of my powers to sanction the employment of sepoy for the purpose of collecting grain after the positive orders I have received to the contrary.'<sup>151</sup> Moody's response, backed up by agitation by the sepoy at the post, was to simply refuse to pay for the goods purchased by the

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<sup>147</sup> Turner, F. J. - Officiating Commissioners of the 3rd Division Bareilly to Gowan, G E with enclosed copies of 'Letter No 135 from Turner undated' and 'Letter No. 127 from Elliot Sect. to Lieutenant-Governor N.W.P. dated 4 July 1837', 12/7/1837, KDMLR, vol: 55.

<sup>148</sup> Gowan, G. E. to Moody, Capt. - Commanding at Loharghat, 13/8/1836, KDJLI, vol: 30.

<sup>149</sup> Gowan, G. E. to Hamilton, Colonel - Commanding the 61st Native Infantry, 17/2/1838, KDJLI, vol: 31. Note that when this authorization was given is unknown.

<sup>150</sup> Gowan, G. E. to Moody, Capt. - Commanding at Loharghat, 19/7/1837 KDJLI, vol: 33.

<sup>151</sup> Gowan, G. E. to Moody, Capt. - Commanding at Loharghat, 7/3/1837, KDJLI, vol: 33.

tehsildar as he believed the price was too high and repeated his demand for a *nerrick* at a lower rate.<sup>152</sup> Gowan's only reply was to ask for a list of prices that Moody believed were reasonable and a promise to attempt to find supplies at those prices.<sup>153</sup>

### *Famine*

Towards the end of the year, the issue of how best to obtain grain moved from a local issue at Lohaghat, to an issue across the region that would threaten the continued occupation of Kumaon by the Company. Around the middle of 1837, rumour had swept the hills that there would be a long famine. Gowan's assessment of the situation was that '[t]here is no real scarcity in the district, but people are infected with the conviction that there are set to be two, or more, years of famine in the land that will extend to the hills, and as a consequence, [they are] most unwilling to part with their grain.'<sup>154</sup> By December, Colonel Hamilton in Almora reported that he could not get grain at any price and 'nothing can induce them to dispose of that, in any quantity, which they feel certain they must themselves [before] long require.'<sup>155</sup>

Gowan did not understand that for most Kumaonis, selling grain was still a new and alien practice and felt no obligation to supply grain when there was a shortage. Rather, Gowan saw the root cause of the grain shortage as the apathy of the local people to market signals and their preference to selling grain on the spot for next to nothing rather than expend the labour of carrying it to a profitable market.<sup>156</sup> Nevertheless, he rejected Colonel Hamilton's insistence that *kehuseea* be compelled to bring in grain as this was expressly contrary to Government orders. He argued that 'I have already done all in my power to cause grain to be brought in.... My powers are limited, and should I exceed my limit, I shall at least incur the displeasure of Government.'<sup>157</sup>

Gowan did find the judicial space to ban the export of grain by the Bhotiya to Tibet and to accept grain in lieu of land tax, but with only around four maunds of grain

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<sup>152</sup> Gowan, G. E. to Moody, Major – Commanding at Loharghat, 4/8/1837, KDJLI, vol: 31.

<sup>153</sup> Gowan, G. E. to Moody, Major – Commanding at Loharghat, 16/10/1837, KDJLI, vol: 31

<sup>154</sup> Gowan, G. E. to Thomason, J. - Officiating Secretary to the Governor-General N.W.P., 15/1/1838, KDJLI, vol: 31.

<sup>155</sup> Hamilton, Colonel – Commanding the 61st Native Infantry to Gowan, G. E., 31/12/1837, KDJLI, vol: 31.

<sup>156</sup> Gowan, G. E. to Thomason, J. - Officiating Secretary to the Governor-General N.W.P., 15/1/1838, KDJLI, vol: 31.

<sup>157</sup> Gowan, G. E. to Hamilton, Colonel – Commanding the 61st Native Infantry, 17/2/1838, KDJLI, vol: 31.

coming in each day to Almora and consumption between 15 to 20 maunds, the situation was becoming increasingly desperate.<sup>158</sup> By July 1838, Gowan wrote to Davidson, Commissioner in Bareilly, and advised:

Sir, [w]e are reduced to the lowest state of misery for want of foods – and have the prospect of starvation before us.<sup>159</sup>

Despite the Company's hopes of 'improvement', commodity production of grain had not emerged as a significant or stable economic activity in Kumaon during the Extra-Regulation Order. As a consequence, grain merchants, with their associated systems of advances and contracts to ensure a supply that would fill their granaries, had not established themselves.<sup>160</sup> What had emerged was a loose collection of petty traders who would buy and then on-sell micro loads of grain brought in by zamindars when they had a little to spare or needed a little cash. None of these *bunnia* (in this context, petty trader) had the capital to hold or hoard grain stocks and a search of the town ordered by Gowan only found a tiny amount of grain.<sup>161</sup> Eventually, Gowan began to understand the inherent incompatibility of the region's economic, political and cultural conditions to the establishment and maintenance of an empire of the plains. He later summarized this understanding in a report to the Government with '[i]n the plains even in time of famine, money will always buy corn, but here where we have no corn dealers to store it, it is not procurable at seasons like the present, at any price, for even the cultivators possess no store.'<sup>162</sup>

By August, Gowan had begun to take action. He abandoned the *keboosh keureed* market at Lohaghat and ordered the tehsildar there to obtain grain any way he could short of acts of violence. Nevertheless, these moves had little effect, and the starvation of the garrisons loomed.<sup>163</sup> Desperate, Gowan finally called for a large consignment of grain to be imported from the plains. Unfortunately, August is the height of the wet

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<sup>158</sup> Gowan, G. E. to Batten, J. H., 17/2/1838, KDJLI, vol: 31.

<sup>159</sup> Gowan, G. E. to Davidson, J. - Officiating Commissioner for 3rd Division Bareilly 28/7/1838, KDJLI, vol: 31.

<sup>160</sup> On the plains, the system of advances and contracts used to ensure supply were usually intensely exploitative and the basis for many small farmers poverty. Grain merchants would not appear in Kumaon in the nineteenth century other than at a few Hill Stations. British Parliamentary Papers, *East India (Scarcity in Kumaon and Garhwal)*, pp. 4-5

<sup>161</sup> Gowan, G. E. to Hamilton, Colonel – Commanding the 61st Native Infantry, 17/2/1838, KDJLI, vol: 31.

<sup>162</sup> Gowan, G. E. to Davidson, J. - Officiating Commissioner 3rd Division Bareilly, 7/8/1838 and 7/8/1838b, KDJLI, vol: 34.

<sup>163</sup> Gowan, G. E. to Stuart, Major at Loharghat, 4/6/1838, KDJLI, vol: 31.

season, and shipment was only achieved by seizing all available carriage at Moradabad and then force marching this unwilling workforce through the Terai. Here, the consignment was met by *kbuseea* at the Bamouree Pass at the foot of the hills. The cost of this desperate measure both financially and in terms of lives lost to fever was terrible.<sup>164</sup>

In a bitter irony, the relief supplies arrived just as a bumper kharif (monsoon) crop came in. All talk of famine evaporated as the zamindars sold off what stocks they had to make way for the fresh grain. Unsuccessful attempts to sell off the rain-affected relief supplies litter the KDPMR for the next few years.

Gowan's failure to ensure the grain supply for the Company's troops was the last in a long string of blunders. While the grain supply fiasco was not the proximal cause of his downfall (see chapter 8), Gowan was dismissed only a month after the crisis in September 1838.<sup>165</sup>

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<sup>164</sup> Davidson, J. to Gowan, E. - Officiating Commissioner 3rd Division Bareilly, 2/8/1838, KDMLR, vol: 58., Davidson, J. To Gowan, E. - Officiating Commissioner 3rd Division Bareilly, 25/10/1838, KDMLR, vol: 59

<sup>165</sup> Macnaughten, A. M. to Secretary to Government N.W.P., 3/9/1838, KDMLR, vol: 59. For a more comprehensive overview of Gowan's blunders see Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, pp. 75-98



## Chapter 4, Revenue and real property

In Mr. Fraser's opinion [the initial Political Agent to the Hill States conquered in 1814–1815], this was and is the evil of the permanent settlement in Bengal. 'The error did not lie in fixing the assessment upon the land in perpetuity, but in sacrificing the rights, properties, and interests of millions to a class of landholders, thus constituted the fiscal tyrants of the multitude.' He remarks, 'In Upper India the intermediate engager is a party who preys both upon the people and the Government. He gives too little to the one, and takes all from the other.'<sup>1</sup>

*'Mister Harrington's Minute' dated 31 May 1827*

Extraction of rent as land-tax revenue was the *raison d'être* of the Company's empire and lay at the core of the formal governmental practices that emerged in the Extra-Regulation Order.<sup>2</sup> A central element of these practices was a series of formal written settlements between the Company and landholders about what land-tax revenue the landholders were obliged to pay.

Unlike in Bengal, Bihar and Orissa a generation earlier, there was to be no 'Permanent Settlement' in early-colonial Kumaon. Rather, Gardner and Traill would preside over a series of seven settlements that allowed Kumaon's settlement model to emerge through an iterative, cascade of innovation in which the Kumaoni people had significant agency.<sup>3</sup> It was within these settlements that the property rights of Kumaoni zamindars (again, in Kumaon meaning simply farmer whereas in colonial Bengal the term meant large landholders and or tax farmers) were defined and found a textually mediated form. Again, unlike Bengal where the Permanent Settlement had obliterated the property rights of most farmers, the settlements in Kumaon, built on the interests and sentiments of ordinary cultivators, affirmed and enhanced the property rights of most Kumaoni farmers. Unsurprisingly then, Kumaoni reaction to the settlements showed a strong

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<sup>1</sup> 'Mr. Harrington's Minute dated 31 March 1827' in The Honourable Court of Directors, *Appendix to the Report From the Select Committee of the House of Commons of the Affairs of the East India Company* (London: J. L. Cox and Son, 1833), p. 286; Note that in the original, Fraser's name is spelt Frazer, but from Fraser's job title of 1825 given in Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, I am confident that this was William Fraser of Delhi who had been Kumaon's first political agent.

<sup>2</sup> As the Committee of Circuit in Calcutta put it in their Proceedings dated 28 July 1772 pp.162-168 'The Revenue is beyond all question the first object of Government.' in R. B. Ramsbotham, 'Chapter XXV The Revenue Administration of Bengal,' in *The Cambridge History of the British Empire* ed. H. H. Dodwell. (London: Cambridge at the University Press, 1929), p.415.

<sup>3</sup> There were first two annual settlements running 1815-17, then two triennial settlements running 1818-1822, and then three quinquennial settlements running 1823-1837 see Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 22.

contrast to their reaction to Company practices around *begar*. Rather than resistance or at best, limited and grudging acquiescence, the settlements were met with acceptance, even broad approval by the overwhelming majority of cultivators. This positive view of the settlement model did not extend to many of the region's *thuljat* and clan leader elites who, as intermediaries of the pre-colonial revenue model, had earlier been able to make significant extractions. These elites were able to maintain some access to customary offerings, but Traill was determined to remove them from the revenue flow and make the revenue system state centred.

As with the Coolie Laws, the early settlements of Kumaon were very much a hybrid between the largely orally based practices of the custom of pre-colonial Kumaon and the emergent formal governmental practices that were to come to full flower later in the century.<sup>4</sup> Moreover, and again like the Coolie Laws, they were an essential bridging stage in region's transition from older forms of rule based on the personal relationship between the sovereign and the people, to a rule based on the impersonal, formal practices of modernity.

## **Models from the plains**

### *The experience of Bengal*

The master narrative on the impact of the Company on customary practice around land tax and property rights on the North Indian plains has been overwhelmingly focused on the 'Permanent Settlement of Bengal.' Just before he sailed home to England in 1793, Lord Cornwallis, Governor-General of Bengal (1786–1793), enacted a series of changes in law and administrative practices that many see as 'a new order of things' and the point of phase change in the transition from custom to formal governmental practices in India.<sup>5</sup> Most conspicuous within the 'Cornwallis Code' was the Permanent Settlement in which Cornwallis made an agreement with zamindars that gave them exclusive property rights of the land they controlled and permanently settled the amount of land-tax revenue each should pay. The academic literature on these relatively modest

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<sup>4</sup> McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law*, pp. 94-122.

<sup>5</sup> East India Company, *Fijib Reports &c. (East India Company)*, p. 18.

pieces of legislation is simply vast. For some scholars, the Cornwallis Code marked the beginning of the colonial state in India. For others, it was a plot to create a Whiggish landed aristocracy. Some see it as the quintessential expression of imperialism as the highest form of capitalism; others identify it as the point of rupture between the ancien régime and modernity.

Without in any way seeking to diminish the diversity within this discourse, the most influential text within this corpus in the latter half of the 20<sup>th</sup> century was Ranajit Guha's work of 1963, *A Rule of Property for Bengal*.<sup>6</sup> Dispensing with the methodologies and archival base of earlier work, Guha's then-novel analysis emphasized the legacy of physiocratic thought in the work of Alexander Dow, Henry Patullo and most especially Philip Francis in the 1770s, asserting that these men's works were the primary influence on Cornwallis in his framing of the Permanent Settlement.<sup>7</sup> Jon E. Wilson argues that Guha tried to show that 'Cornwallis' aim was no less than to transform the Indian countryside into a capitalist society.<sup>8</sup>

However, and as discussed in chapter 2, Bernard Cohn cautions against generalizing on the impact of the British on Indian political and social structures and overly focussing on a single master narrative.<sup>9</sup> The Company's administrative frontier continued to expand for many years after the Permanent Settlement, and every space that the Company moved into differed in its pre-colonial economic, political and cultural conditions and practices. In parallel, Company ideas on legal, revenue, and administrative practices showed dramatic change and development between the mid-eighteenth and mid-nineteenth centuries.

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<sup>6</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, p. 45.

<sup>7</sup> Holden Furber, 'Review: A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement by Ranajit Guha,' *The Journal of Asian Studies* 25, no. 2 (1966): pp. 358-59.

<sup>8</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, p. 45. Here I use the term 'British' to reflect the original text

<sup>9</sup> Cohn, 'The initial British impact on India: A Case Study of the Benares Region,' p. 418.

## The experience of the Delhi Territory

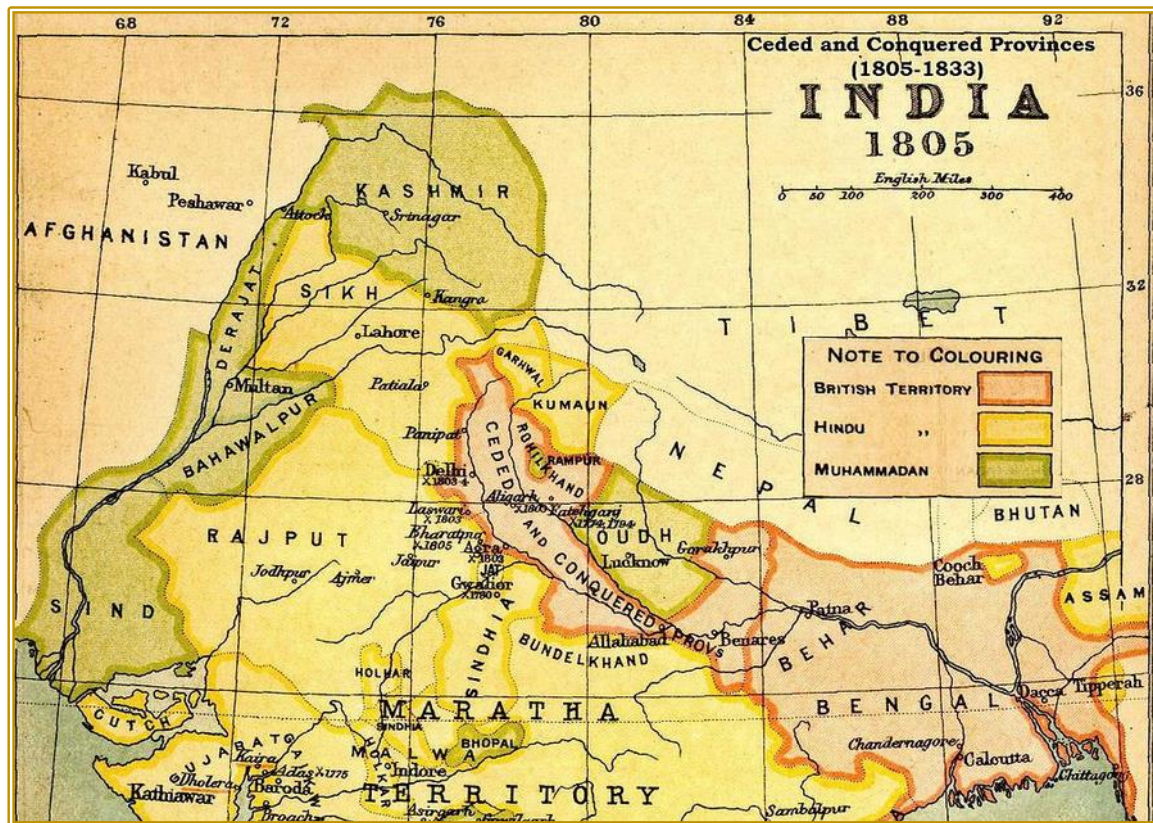


Figure 4.1. Ceded and Conquered Provinces 1805. Public Domain.

By the early nineteenth century when this thesis is focused, the principles behind the Permanent Settlement of Bengal had fallen out of favour.<sup>10</sup> It was widely held that exclusively making the settlement with large landholders gave zamindars (again, here used in the common Bengal sense) property rights which they had not previously held, while at the same time it destroyed the property rights of all others within the region's customary system of landholding.<sup>11</sup> Moreover, and perhaps more importantly from the Company's perspective, the Permanent Settlement had not stabilized the Company's revenue flows, with much of the revenue only being realized by selling up defaulting zamindars. As Baden Henry Baden-Powell was later to comment in his authoritative

<sup>10</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, p. 46.

<sup>11</sup> John Stuart Mill, *The History of British India*, Six vols., vol. V (London: Baldwin, Cradock, and Joy, 1820). See Chapter VI 'Result of Lord Cornwallis's Financial and Judicial Reforms' especially p.538.

work *Land Revenue and Tenure in British India*, '[t]he Permanent Settlement, as a system, has but little to recommend it either for study or imitation.'<sup>12</sup>

After 1801, the Company began yet another wave of territorial expansion and found themselves in control of the upper Ganges region starting up at the cool heights of Kumaon. Known as the Ceded and Conquered Provinces from 1803 to 1832, this was a complex and fractured political geography with many spaces controlled by local petty Rajas as well as spaces directly controlled by the Company.<sup>13</sup> Here, distant from Calcutta, Charles T. Metcalfe, acting first as revenue officer and later as Resident, became the central figure in the development of a very different model of revenue extraction known as 'The Delhi System.'<sup>14</sup> As Kumaon was to become, the Delhi Territory—only a small component of the Ceded and Conquered Territories—was a non-regulation space under the control of a Resident. There was to be no permanent settlement with the zamindars of Delhi. Not only did Metcalfe feel that permanently alienating the Government from any increased productivity in the soil was imprudent 'but what was much worse, we destroyed all the existing property in land, by creating a class of proprietors to whom we recklessly made over the property of others.'<sup>15</sup> Rather than follow the Bengal model, Metcalfe made relatively short-term settlements directly with the people that he saw as the proprietors of the soil.<sup>16</sup>

Metcalfe's settlements were not struck with each individual landholder though. While he saw the advantages of the *ryotwari* system of South India where each landholder had an individual agreement, he believed that the local political economy and its constitution were centred on 'village republics' and the settlement should be made with the headman of each village as that republics representative.<sup>17</sup> Ever practical, Metcalfe instructed that if no regular proprietary right to land or headman could be easily identified, it was 'a wise and politic measure ...to create that right.'<sup>18</sup> Metcalfe's focus on

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<sup>12</sup> Baden Henry Baden-Powell, *Land Revenue and Tenure in British India* (Oxford and New York: Oxford at the Clarendon Press, 1894), p. 154.

<sup>13</sup> Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835*, See map insert between pp. xiii and 1

<sup>14</sup> *Ibid.*, pp. 24-70.

<sup>15</sup> John William Kaye, ed. *Selections from the Papers of Lord Metcalfe* (London: Smith, Elder, and Co, 1855), p. 253.

<sup>16</sup> Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835*, p. 28.

<sup>17</sup> See Baden-Powell, *Land Revenue and Tenure in British India* Sec.III pp. 66-101 for a more developed analysis; For a more theoretical analysis of the same issues see *The origin and growth of village communities in India* (London, Sonnenschein & Company, Limited, 1899).

<sup>18</sup> Seton to Metcalfe, 21 December 1807 in Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835*, p. 29.

the village in his settlements bypassed the region's aristocracy wherever he could ignore or discredit the legitimacy of their title to the land.<sup>19</sup> This practice did not entirely disenfranchise the petty aristocracy in the Delhi Territory, but it did reduce their influence. However, and again in contrast with the Permanent Settlement, Metcalfe did not dispense with the traditional members of the territory's legal and administrative apparatus such as *canoongoe* (an expounder of the laws, but applied in Hindustan especially to district revenue officers), and the machinery of revenue collection largely remained indigenous in character.<sup>20</sup> Another significant feature of the Delhi model was Metcalfe's firm belief that a moderate rate of assessment was the best way to gain the confidence of the cultivators and ensure ready compliance. He also eschewed the practice of closely measuring cultivators' crops as a basis for his settlements. Metcalfe believed that this emerging practice, popular with the utilitarians and others urging a scientific approach to settlement making, engendered 'disgust' on the part of cultivators, while at the same time, opened them up to abuses by the Native officers measuring the crops.<sup>21</sup>

It was from Metcalfe's Delhi that the British launched much of their assault on the Gurkha Empire in 1814, and it was Metcalfe's Senior Merchant and Second-Assistant Edward Gardner, who first took control of Kumaon.<sup>22</sup> Given these circumstances, the Delhi System had a greater influence on the revenue and property practices that emerged in Kumaon than the model of distant Bengal a generation earlier.

## **A revenue system for the Pahar**

However, while the Delhi model certainly influenced the revenue systems that emerged in the Extra-Regulation Order, Cohn's caution against generalizing on the impact of the British on the spaces they conquered must be taken to an extreme in Kumaon. At least on the Gangetic plain, all the spaces the Company had conquered or incorporated shared an experience with and the normative influence of late-Mughal legal,

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<sup>19</sup> Ibid., p. 71.

<sup>20</sup> Ibid., p. 31; Stokes, *The English Utilitarians and India*, pp. 18, 144.

<sup>21</sup> Kaye, *Selections from the Papers of Lord Metcalfe*, p. 49; Michael Mann, 'A permanent settlement for the Ceded and Conquered provinces: Revenue administration in North India, 1801-1833,' *The Indian Economic & Social History Review* 32, no. 2 (1995): pp. 447-248; Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835*, p. 28.

<sup>22</sup> East India Company, *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War*, p. xi, 569; Pemble, *Britain's Gurkha War: The invasion of Nepal, 1814-16*, pp. 96-97.

revenue and administrative practices and associated machinery of Government. As such, on the plains, the Company's Regulation Order was always a palimpsest written on underlying structures of late-Mughal systems. Kumaon, however, had never been conquered by the Mughals, and all other incursions by empires of the plains had been fleeting and transitory. Consequently, plains revenue models, Mughal or otherwise, had had little or no substantive impact on Kumaon's pre-colonial revenue system. Unconstrained by the standard palimpsest then, the formal revenue and property practices that emerged in Kumaon under the Extra-Regulation Order are better understood as an independent creative adaptation to meet the needs of the Company in the political, economic and cultural conditions of Kumaon.

### *The pre-colonial revenue models of Kumaon*

The Company saw revenue collection as a basic expression of its rights as a sovereign, and Gardner began to implement a collection system to achieve this within a week of occupation.<sup>23</sup> This first tranche of revenue collection bore little resemblance to the settlements of the plains. In the absence of any detailed knowledge of the resources of the region, and entirely as a stop-gap measure, the first year of revenue collection was based on the revenue collection system the Gurkhas had used.<sup>24</sup> However, while the Company recycled the Gurkha model, it departed from that model in two significant ways. The Company made a significantly lower level of demand than the Gurkhas had, and the revenue flow became centred on the Company's treasuries.

The Gurkhas' overall revenue demand had been set impossibly high.<sup>25</sup> This had led to much of the land tax being realized not by direct payments, but by selling up defaulting landholders' estates. In cases where this yielded a deficiency on the debt, the landholder and his family were sold into slavery down on the plains.<sup>26</sup> Combined with people fleeing the region to escape the Gurkhas' excessive tax demands, the sale of many Pahari into slavery had led to the depopulation of the region and, consequently, a

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<sup>23</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 18/5/1815, KDMLR, vol: 3.

<sup>24</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 27/5/1815, KDMLR, vol: 4.

<sup>25</sup> Traill himself thought the actual land revenue set by the Gurkhas was reasonable. However, suppliments to the demand in the form of unauthorised taxes, court fines, taxes on doms and taxes on looms had raised the demand to unreasonable levels. See Traill, 'Statistical Sketch of the Kumaon,' p. 190 and 'Statement B', p. 229.

<sup>26</sup> Raper, 'The Sources of the Ganges,' p. 459.

significant reduction in the level of cultivation. A reduced level of cultivation had, in turn, led to an ever-shrinking revenue base.<sup>27</sup> The Government in Kathmandu had attempted to take steps to correct the dysfunctional long-term effects of this level and style of extraction.<sup>28</sup> However, the Gurkhas' military frontier had expanded so quickly and so far from Kathmandu that the Gurkha government was unable to develop and deploy effective bureaucratic systems to ameliorate the problems.<sup>29</sup>

The Company hoped that through 'improvement' that Kumaon would eventually become a financially valuable, revenue-positive acquisition.<sup>30</sup> Continuing to sell off the population for a short-term gain would have been counterproductive to this ambition. Moreover, selling revenue defaulters into slavery was not an option for the Company. In response to the Gurkhas' practices, the Company had earlier prohibited the sale of slaves beyond their native country right across the Company's territories (see chapter 7).<sup>31</sup> Given this prohibition, and with an eye to gaining the acquiescence of the region's population in their occupation, the Company set the demand at the rate the Gurkhas had been able to collect as standard tax receipts rather than their impossibly high ambit claim. In addition, the Company granted considerable remissions on land-taxes due in pargana that had been damaged, disturbed or depopulated by the war, particularly districts close to the strategically important eastern front such as Kali Kumaon.<sup>32</sup>

Given these policies, the first year's land-tax demand by the Company was only a paltry Rs.1,23,350, with some of this realized in trade goods at rates regarded as artificially high.<sup>33</sup> However, the receipt of even this paltry amount into the Company's treasury marked a major change in the structure of Kumaon's revenue system.

Under the Gurkhas, the settlement had not been based on an agreement between landholders and a central civil authority, and little or no cash flowed to the state centre. Rather the *jumma* of the country (amount of tax on land demanded by the state) had been

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<sup>27</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 190.

<sup>28</sup> Items '46 and 47' in *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepal War*, 233-34.

<sup>29</sup> Stiller, *The Rise of the House of Gorkha: A study in the unification of Nepal, 1768-1816*, pp. 265-69.

<sup>30</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 2/6/1815, KDMLR, vol: 4.

<sup>31</sup> Bengal Presidency, 'Regulation X of 1811' (1811), Section II. Dewar, *A hand-book to the English pre-mutiny records in the government record rooms of the United Provinces of Agra and Oudh*, p. 150.

<sup>32</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 21/3/1816, KDRLI, vol: 2.

<sup>33</sup> Ibid.



parcelled out to troop commanders in *jaedad* (in this context, an assignment of the revenues of a tract of land for the maintenance of troops).<sup>34</sup> Garhwal, for example, had been divided into 84 pargana under three Gurkha officers.<sup>35</sup> With these officers largely engaged at places of military action further to the west, direct administration of revenue had been devolved to deputies called *bechari* who were free to set the revenue demand as they saw fit.<sup>36</sup> More often than not though, the *bechari* then farmed the revenue demand to local principal landholders and clan leaders known as *kamin* in Kumaon and *siana* in Garhwal. These, in turn, imposed the demand on village headmen, *pudhan*.<sup>37</sup> Each of these intermediaries between the military and cultivator was able to extract fees, a percentage and a range of traditional offerings.<sup>38</sup> The Gurkha government in Kathmandu saw none of the revenue.

However, the Gurkha revenue system, although of a particular form and highly extractive, should not be seen as a distinct break with the longer-term customary practices of the region in pre-colonial times. Traill himself had no direct experience with the earlier system under the Chand Rajas. Nevertheless, through interrogation of local informants with a living memory of the Chand system and patient assembly of the scattered documentation he could find, Traill was eventually able to construct a broad understanding of the revenue and property system under the Chand Rajas. While this understanding was plainly constructed from a pro-British perspective, it is widely accepted as the best available.<sup>39</sup> Importantly, and given the absence of alternative sources, Traill's understanding of customary property rights during the early occupation of Kumaon took on an almost unchallengeable status in all later legal texts.<sup>40</sup>

Fortunately, we do not have to take Traill's pronouncements entirely on faith. His 'Statistical Sketch', 'Statistical Report' and his widely reproduced 'Settlement Report' of January 1829, which collectively contain the essence of his understanding of Chand-era revenue systems and property rights, show a remarkable concordance with the principals

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<sup>34</sup> 'Traill, G. W. to Gardner, E. 1 March 1816' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp.26-26.

<sup>35</sup> Unfortunately, the number of pargana and officers in Kumaon is not available from the archive.

<sup>36</sup> Raper, 'The Sources of the Ganges,' p. 499.

<sup>37</sup> Traill 'Statistical Sketch of Kumaon,' pp. 173-74.

<sup>38</sup> *Ibid.* p. 174.

<sup>39</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 11.

<sup>40</sup> *Ibid.*

if not all the details of reports available from the mosaic of Hill States to Kumaon's west. This variation in detail does not invalidate Traill's report. As discussed earlier in chapter 2, each Pahari community, while similar, was particular and unique and details varied not just between Hill States but within those Hill States.

One of the most useful and lively of these alternative accounts of Pahari revenue systems again comes to us from G. C. Barnes, this time from the Hill State of Bashahr to Kumaon's west that sat athwart the Sutlej valley with its trade route into Tibet.

The revenue of Bussahir is realised by eighteen different imposts or 'Kurrads.' The State has a distinct share in every department of industry, and is not above receiving its income in a little ghee, oil, corn, honey, wine (made from the juice of grapes), ingots of iron - where iron abounds, wool, as also contributions from the flocks and herds of the people. ...[additionally] the cost of such [royal] festivals as the Ram-Nowmee, the Dussarah, and the Holee, is provided for, each by its separate money tax. The Raja's elephant has a cess specially imposed for its maintenance to which every peasant contributes at the rate of three annas a house. A similar impost exists for furnishing the Raja's magazine.<sup>41</sup>

Barnes' account of the Bashahr revenue system outlines that revenue in Bashahr was collected from a wide range of sources closely matched to the particular products of each locality. Moreover, given the unmonetized nature of the economy, revenue was largely collected in kind rather than easily transported and stored cash. Indeed, Barnes would go on to relate that in Bushahr cash money was only really found close to the main Indo-Tibetan trade route that ran along the valley floor. This meant that, by and large, the imposts mentioned above such as 'three annas' do not generally relate to actual cash imposts. Rather, they generally relate to imposts in kind referenced on traditional rates of exchange.<sup>42</sup>

What is not apparent from Barnes account of tiny Bashahr, and a point Traill takes particular care to emphasize in his 'Statistical Sketch', 'Statistical Report' and 'Settlement Report' was that Pahari revenue flows and political systems were not centred on the sovereign, but were dispersed amongst the region's clan leaders, aristocracy and

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<sup>41</sup> G.C. Barnes, 'Memorandum on the District of Bussahir,' in *Selections from the public correspondence of the Punjab Government* ed. Henry Gregory (Lahore: Hope Press, 1859), pp. 108-110.

<sup>42</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 32-96.

theocracy.<sup>43</sup> In Kumaon, the aristocracy consisted of the principal civil and military office holders and a few of the larger landholders. Rather than being remunerated by the sovereign, the aristocracy independently collected rent from land grants and 32 forms of traditional offerings in which the sovereign took little or no share.<sup>44</sup> Financially independent of the sovereign, the aristocracy's influence was 'boundless in their several departments.'<sup>45</sup> Combined with the substantial alienation of land revenue through grants to Brahmins and religious intuitions by the sovereign, this absence of revenue flow to the centre meant that 'the actual amount of rents which reached the [sovereign's] treasury was extremely small.'<sup>46</sup> Rather than rents, the primary income for the sovereign was in the form of a series of 36 traditional offerings such as 'Ch,Hatees, Rukum and Buttees Kulam' proffered at various festivals and on occasions such as royal weddings.<sup>47</sup> Unfortunately for the sovereign, however, the expenses he incurred in conducting these events were so high that there was little profit and 'the sovereign was ever poor, and during some of the latest reigns was frequently reduced to absolute indigence and want.'<sup>48</sup>

The impecunious state of earlier Kumaoni sovereigns was not an acceptable outcome for the Company and the revenue model that emerged under Traill's direction was focused on delivering land-tax revenue to the Company's treasuries.

The Gardner–Traill settlement of 1815–16, based as it was on the Gurkha system, was intended entirely as stop-gap measure until a 'complete investigation shall have put Government in possession of an accurate knowledge of the resources of the province of Kumaon, and of the several local considerations which must necessarily bear on the question.'<sup>49</sup> Nevertheless, the question of what form the settlement would eventually take was not entirely open-ended. Right from the start, Gardner advocated a settlement loosely based on Metcalfe's village model, which Government advised was the likely form

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<sup>43</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 168-70.

<sup>44</sup> Ibid., p. 169; Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>45</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 169.

<sup>46</sup> Ibid.

<sup>47</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>48</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 169.

<sup>49</sup> Adam, J. - Adjutant General and Secretary to Government to Gardner, E., 2/6/1815, KDMLR, vol: 4.

the settlement would take, but that ‘the Governor-General reserves the subject for future and deliberate consideration.’<sup>50</sup>

## **Traill and the development of the Kumaon model**

George Traill joined Gardner in Kumaon as Assistant Commissioner on 22 August 1815 and assumed charge of civil duties in Almora.<sup>51</sup> With Gardner by then focused on political matters, Traill took the lead in both policy development of the future settlement and its implementation on the ground from this time onwards.<sup>52</sup> Working first in Garhwal and then later in Kumaon proper, Traill was almost constantly on tour and in intimate daily contact with the local people.<sup>53</sup> With his established language skills in Hindustani and rapidly growing skills in the local dialects, Traill quickly began to develop a deep understanding of and empathy with local customs and feelings around revenue and property matters. The Company was delighted by this rapid acquisition of knowledge and he received the most remarkable praise for his efforts from all levels of Government including the Governor-General.<sup>54</sup>

Working from this knowledge base, Traill was able to put a substantive proposal to Government on the form of the 1815–16 settlement. This proposal was approved by Secretary Adams a week after Traill’s appointment as Acting Commissioner on 13 April 1816.<sup>55</sup> This confidence in Traill found formal expression in a flurry of proclamations, all dated 19 October 1816, that provided the formal legislative basis for the Extra-Regulation Order.<sup>56</sup>

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<sup>50</sup> Ibid.

<sup>51</sup> Gardner, E. to Traill, G. W. - Assistant Commissioner, 25/8/1815, KDRLI, vol: 1.

<sup>52</sup> Gardner’s voluminous correspondence in East India Company, *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War*, including his prominent role in negotiations with Gurkha diplomatic representatives, suggests that he would have had little time for local administration in Kumaon.

<sup>53</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 21/3/1816, KDRLI, vol: 2.

<sup>54</sup> Adam, J. to Traill, G. W., 20/4/1816, KDMLR, vol: 8.

<sup>55</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 21/3/1816, KDRLI, vol: 2., Gardner, E. to Traill, G. W., 13/4/1816, KDRLI, vol: 2; Adam, J. to Traill, G. W., 20/4/1816, KDMLR, vol: 8.

<sup>56</sup> Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon with an enclosure of a copy of a ‘Letter to Major General Sir David Ochterlony’, 19/10/1816a, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, 19/10/1816b, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, 19/10/1816c KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, with enclosure of ‘Extract from the proceedings of His Excellency the Right Honorable the Governor General in Council in the Secret Department,’ 19/10/1816d, KDMLR, vol: 9.

The order relevant to revenue matters outlined that:

The Governor-General in Council, adverting to the general state of the province of Kumaon and too the progress which has been made in ascertaining the resources of that country, is of opinion that the public convenience will be promoted by placing the administration of the revenues of Kumaon and the annexed pergunnahs of Gurhwal under the general superintendence of the Board of Commissioners.

*His Lordship in Council does not contemplate the introduction into that territory of the regulations generally as a part of the proposed arrangement, but it appears expedient that the Commissioner should in his capacity of Collector of the Revenue, be placed under the control of the Board of Commissioners, and that their relative duties and powers be defined by the general principles established throughout the provinces.*<sup>57</sup>

The proclamation explicitly distanced Kumaon's revenue system from the specifics of the regulations of the plains and put practical control of the settlement process in Traill's hands. The Board of Commissioners located on the plains below Kumaon at Moradabad had broad oversight and formal control of Traill's work but, given the difficulties of communication and their lack of awareness of local conditions, they were to have only a limited influence over day-to-day matters.

Fortunately for this study though, the Secretary to the Board of Commissioners at the time was Henry Newnham. Newnham had an abiding scholarly interest in agricultural economy and was fascinated by Kumaon.<sup>58</sup> In a series of letters over the following years, he asked for detailed information on a broad range of subjects, but he was particularly interested in the rights and tenure of landholders and their relationship to the interests of *kamin*, *siana* and *pudhan*. Newnham felt that these topics were not only 'of first importance... but extremely interesting.'<sup>59</sup> Much of this curiosity arose from an awareness of Kumaon's distance and distinction, particularly the absence of any overlay of Indo-Islamic practices around property in land. To satisfy both his and other Board members' curiosity on these matters Newnham asked Traill to prepare reports that would give '[a]n insight into the whole operations of a village, which may explain either the

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<sup>57</sup> 'Extract from the Proceedings of His Excellency the Right Honourable the Governor-General in Council, in the Secret Department, dated 19th October, 1816' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government*, N.W.P., pp. 28-29. Emphasis added

<sup>58</sup> Henry Newnham, *Agriculture; its Practice with Profit, Elucidated by a Contrast of oriental & British Usages: In a Correspondence with the Royal Agricultural Society of England*, Second ed. (London: Roake & Varty, 1844).

<sup>59</sup> Newnham, H. – Secretary Board of Commissioners to Traill, G. W., 26/12/1816, KDMLR, vol: 9.

tenures of land or fiscal management according to the Rules and Customs of a Hindoo Government.<sup>60</sup>

It was in this correspondence between Traill and Henry Newnham, along with that of his successors over the next decade or so, that the colonial law of Kumaon relating to revenue and property was first to find its expression in a textually mediated form. This law did not emerge suddenly in a single statement. Rather it emerged in an incremental process that, like the Coolie Laws, was a dynamic product of memory, experience and ambition.

This dynamic process was not unbounded though, and the law regarding revenue and real property found a consolidated form in Traill's extensive 'Settlement Report' to David Home, the then Acting Secretary to the Board of Revenue N.W.P. in January 1829.<sup>61</sup> This document would go on to form the authoritative basis for the law on revenue and property in Kumaon for the rest of the nineteenth century.<sup>62</sup> In taking on this authority, the document itself would be subject to an important transformation. Initially, Traill's 1829 report was embodied as a handwritten document that had to be laboriously transcribed for each user. Other than for the limited few with access to the KDPMR then, Kumaon's revenue and property law existed essentially as memory or in the unconsolidated form of transcripts of individual court judgements (see chapter 6). However, in 1851, John Hallet Batten, Kumaon's Settlement Officer, committed Traill's original manuscript to a printed form as an inclusion in his *Official Reports on the Province of Kumaon*.<sup>63</sup> In transitioning to a printed form, Traill's property law report of 1829 moved beyond being grounded in memory to a consolidated and relatively fixed form easily transmitted and shared across Kumaon's judicial and political community.

The following sub sections will bring to light the process of change and transformation seen in Kumaon's customary practices regarding revenue and property as

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<sup>60</sup> Ibid.

<sup>61</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>62</sup> Traill's 1829 Settlement Report was eventually supplanted by V. A. Stowell, *A Manual of the Land Tenures of Kumaon Division* (Allahabad, Govt Press, 1907). Even here though, Stowell drew heavily on Traill's 1829 report.

<sup>63</sup> Batten, *Official Reports on the Province of Kumaon*, pp. 136-43.

they transitioned to a basis in the state-centred, textually mediated governmental practices documented in Traill's 1829 report.

### ***Displacement of the minor and petty aristocracy***

One of the earliest tactics to emerge in the strategy to centre revenue flows on the Company as the sovereign was removing or minimizing the participation of the region's largely *thuljat* petty aristocracy and theocracy from the revenue streams that they had enjoyed in pre-colonial times.

In contrast to Metcalfe's project in the Delhi Territory, in much of the Ceded and Conquered Provinces on the plains just below Kumaon, the Company had recognized many of the Mughal-era revenue and judicial rights of minor and petty aristocrats as well as creating such rights by auctioning them off.<sup>64</sup> Many of these talukdar (district holders) acted as tax agents for the Company and made significant extractions from their tenants. Traill argued that if this policy of the plains was employed in Kumaon—recognition of existing talukdars as well as the creation of new talukdars—the level of extractions they would make would result in the actual cultivators being 'ruined and dissatisfied, and an irrecoverable check be at once given to the progress of improvement.'<sup>65</sup>

Traill, immersed in the discourse around Coke's concept of the 'ancient constitution,' argued that the hills had remained largely free of the despotic accretion of talukdari rights that blighted the plains and that:

... the ancient form of landed tenure in India, still exists in an undisturbed state in these hills – the actual cultivators almost universally claiming a right of property in the soil, founded on immemorial possession and denying all superior or intermediate rights except that vested in actual government.<sup>66</sup>

Some land was alienated from the listing of properties liable to pay rent to the Company. Nine hundred and seventy-three villages, around one fifteenth of the region's arable land, were assigned in *gunt* to religious institutions, most notably the great temples

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<sup>64</sup> Mann, 'A permanent settlement for the Ceded and Conquered provinces: Revenue administration in North India, 1801-1833,' pp. 250-58.

<sup>65</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furukabad, 1/11/1817c, KDRLI, vol: 7.

<sup>66</sup> Ibid.

at Kedarnath and Badrinath in Garhwal.<sup>67</sup> Stripping these institutions of this revenue stream may well have been tempting to Traill. However, early in 1816, the Company-Government had articulated a firm policy of not resuming the right to collect rent on land granted to religious institutions where this would create ‘disaffection.’<sup>68</sup> This policy was particularly insistent that lands allocated to the maintenance of the militant and marshal bands of ‘Ghuseins’ (Sadhus) associated with temples such as Kedarnath and Badrinath should not be resumed. Indeed, as will be discussed more fully in chapter 6, rather than stripping revenue streams from religious institutions, over time, Traill took the opportunity to increase the number endowment to religious institutions.<sup>69</sup>

Compared with religious endowments, the amount of land alienated from the rent roll in favour of individuals was comparatively small in Kumaon with only 325 villages assigned in either *maafi* or *nankar* to minor aristocrats, civil officers, and Brahmins. Traill attributed this small number of assignments to individuals—small when compared to the conditions of the plains—to the actions of the Gurkhas who, on occupation of Kumaon, resumed all grants including grants to individuals and then regranted this land as they saw fit.<sup>70</sup> The Company-Government’s policy was to recognise the talukdar rights granted by the Gurkhas as a means of gaining ‘the confidence and attachment of a class of persons, from whom it appears that considerable aid, might be derived.’<sup>71</sup> In line with this policy, Traill broadly accepted the legitimacy of the Gurkha grants when they had been made by the Nepali government using what he saw as valid, textually mediated, legal instruments.<sup>72</sup> However, where he could establish any doubt about the legitimacy of the grant, and in particular, the validity of the instruments attesting to that legitimacy, he asserted that such lands ‘had been surreptitiously abstracted from the public assessment, by...connivance’ and returned the lands to the rent roll.<sup>73</sup> Using these arguments in his courts and in

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<sup>67</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 205 and ‘Statement C’, p. 231.

<sup>68</sup> John Adam, Secretary to Government to Major-General Sir David Orchtelony dated 17 february 1816’ in East India Company, *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War*, pp. 918-19.

<sup>69</sup> Rubakari of Traill's Court, 19/7/1829, KDMLR, vol: 40.

<sup>70</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 206.

<sup>71</sup> John Adam, Secretary to Government to Major-General Sir David Orchtelony dated 17 february 1816’ in East India Company, *Papers regarding the administration of the Marquis of Hastings in India: Papers respecting the Nepaul War*, p. 919.

<sup>72</sup> John Adam, Secretary to Government to Major-General Sir David Orchtelony dated 17 february 1816’ in *ibid.*, pp. 918-19.

<sup>73</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 206.



administrative decisions, over time, Traill reduced the number of villages granted to individuals by about 150 and, by 1823, only around 175 remained.<sup>74</sup> However, where Traill could not find grounds to dispute the validity of the talukdar's entitlement, he allowed these arrangements to continue. This policy included recognizing the petty Rajaship of Askote in Shore pargana close by the Nepali border.<sup>75</sup> In this remote corner of Kumaon a week's walk from Almora, the semi-autonomous *Rajwar* only paid 50 per cent of the standard revenue demand to Traill's treasury and 'continued, in practice if not in strict law, as a feudal chief far removed from any control from above.'<sup>76</sup> This anomaly persisted right through the Extra-Regulation Order, with the *Rajwar* able to demand many customary payments from his tenants that were above the standard rent rates seen elsewhere in Kumaon.<sup>77</sup>

Traill's denial of claims for talukdar and other rent-free property rights also extended to several claims from persons and their heirs who had long departed Kumaon. Unable to assert these claims successfully in Traill's courts, plains-based claimants turned to lobbying through connections with the Board of Commissioners to regain control of rent-free land.<sup>78</sup> Traill's response was to successfully assert to the Commissioners that the decrees of his court could not be appealed to a higher legal authority and that a right to rent-free land was only recognized where the claimant had uncontested documentation of that right in the form of a written sanad (a deed granted to the rulers of the princely state). Moreover, and in doing so asserting the English legal principle of adverse possession, the claimant had to be in actual possession of the land at the time of the Company's occupied Kumaon for it to be accepted. In his discussions with Government on the issue in support of this ruling, Traill argued that 'should this principal be now infringed and claims of those who emigrated or were ousted under Goorkha

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<sup>74</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Gardner, E. to Traill, G. W., 26/3/1816, KDRLI, vol: 2; Traill, 'Statistical Sketch of the Kumaon,' 'Statement C' p. 231.

<sup>75</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furukabad, 1/11/1817c, KDRLI, vol: 7.

<sup>76</sup> Jawaharlal Nehru, 'Askote,' in *The unity of India: collected writings, 1937-1940*, ed. Krishna V. K. Menon (New York: The John Day Company, 1942), p. 145.

<sup>77</sup> *Ibid.*, pp. 144-46.

<sup>78</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furruckabad, 9/3/1819, KDRLI, vol: 6.

Government, be admitted a very great revolution in landed property of the Province will be the consequence.<sup>79</sup>

### *Transformation of the canoongoe*

In March 1816, Gardner and Traill began another move in their ambition to wrest control of the revenue system from existing customary practices and bring them under the direct control of the Company by changing the mode of financial compensation of the senior civil administrators of the region.<sup>80</sup> While salaries had remunerated most municipal and revenue officers from the first weeks of Company occupation, the senior positions, *daftarees* or 'Ministerial Brahmins' as they were later contemptuously referred to, had continued to be compensated by grants of *nankar*, rent-free lands.<sup>81</sup> Gardner and Traill proposed to resume their *nankar* lands to the rent roll and, as an alternative, compensate the *daftarees* with a salary. Incidentally, within this proposal, Gardner and Traill rebranded the *daftarees* with the plains-derived term *canoongoe*. In Hindustan especially, the term *canoongoe* (speaker) was applied to village and district revenue-officers who were responsible for recording all circumstances concerning landed property and the realization of the revenue, keeping registers of the value, tenure, extent and transfers of lands, reporting deaths and successions of revenue-payers, and explaining, when required, local practices and public regulations.<sup>82</sup> However, in Kumaon the *canoongoe* performed a wider range of municipal and other clerical functions than their namesakes on the plains, and their position was 'one of greater dignity.'<sup>83</sup>

Gardner and Traill's initial proposals of 1816 do not seem to have found a response with the Company-Government, but Traill took up the issue again with Henry Newnham late in 1818. Here, Traill outlined that transitioning the office of *canoongoe* to a salaried position was the only measure by which 'the efficient services of these officers can be secured...[because] as long as their remuneration is derived from lands the grants

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<sup>79</sup> Ibid.

<sup>80</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2.

<sup>81</sup> Ibid.; Gardner, E. to Morton, W. - Civil Auditor Fort William, 1/9/1815, KDRLI, vol: 1; Lushington, G. T. to Secretary of Government Judicial and Revenue Department, 3/1/1839, KDJLI, vol: 34.

<sup>82</sup> Wilson, *A Glossary of Judicial and Revenue Terms*, p. 260.

<sup>83</sup> Batten, *Official Reports on the Province of Kumaon*, p.464. 'Appendix K.O. Notes on Canoongoes of Kumaon' in P. Whalley, *British Kumaon*, 1870, pp. 36-37.

which emanated from a former Government they can hardly consider themselves a being under any obligation to the present Government [.] whereas in the case of a monthly salary they would be sensible that its continuance depended on their good behaviour and exertions.<sup>84</sup> Newnham and other members of the board were generally supportive of translating remuneration for holders of traditional offices from grants in land to salaried positions, but were nevertheless cautious about disturbing such customary arrangements and asked Traill to ascertain whether local opinion would support such a change.<sup>85</sup>

Traill, perhaps bolstered by a quite remarkable letter of approbation for his work from ‘The Most Noble Francis Marquis Hastings the Governor General’ that he received shortly after Newnham’s caution, felt confident enough to go ahead with his proposed change without apparent specific authorization by the Commissioners.<sup>86</sup> From the pair of existing ill-defined and overlapping offices, Traill created five salaried *canoongoeships*, each with defined responsibilities for a geographically bounded region, three controlled by families of Joshi and two by Chowdree.<sup>87</sup> As part of this process, *canoongoe* were also required to reside in their jurisdiction.

### ***The emergence of the hill patwari***

The resumption of the *canoongoe*’s *nankar* lands resulted in a Rs. 500 annual surplus over the costs of the salaries that they were subsequently paid. It is reasonable to speculate that Traill was aware of this potential from his original modelling. He was certainly numerate and, as was so often the case, he seemed to have a ready-to-hand option for the newly freed up cash that furthered his ambitions. In this instance, the option ready to hand was the introduction of a new petty official, the hill patwari.<sup>88</sup> On the plains, patwari were simple accountants and a long-established institution of custom. Found in every village, the plains patwari had been co-opted into the Company’s formal

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<sup>84</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furruckabad, 9/3/1819, KDRLI, vol: 6.

<sup>85</sup> Mackenzie, Holt – Secretary to Government to Colebrooke Bart, Sir J. E. and Trant, W. H. – Board of Commissioners in the Ceded and Conquered Provinces, 1/1/1819, KDMLR, vol: 14.

<sup>86</sup> Newnham, H. to Traill, G. W., 19/1/1819, KDMLR, vol: 14.

<sup>87</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furruckabad, 9/3/1819, KDRLI, vol: 6; Newnham, H. to Traill, G. W., 19/1/1819, KDMLR, vol: 14.

<sup>88</sup> Traill, G. W. To Newnham, Henry - Secretary to the Board of Commissioners at Furruckabad, 1/11/1819, KDRLI, vol: 7.

governmental practices under Regulation XII of 1817 but had continued to be nominated and remunerated by the village zamindars and were not directly responsible to the Company.<sup>89</sup>

Traill's hill patwari were essentially a new institution in Kumaon and functionally distinct from plains patwari.<sup>90</sup> Rather than being a servant of a single village as the plains patwari were, hill patwari were nominated, remunerated and reporting directly to the Company and were responsible for revenue collection in a number of pargana. Their role was to expand over time and, as their numbers grew, they progressively took on roles such as the settlement of minor disputes, policing including reporting of crime, apprehension of offenders, reporting of casualties, and later, recording of land-holdings, like their counterparts on the plains.<sup>91</sup> By 1830, the number of hill patwari had grown to 67 and were found in every pargana and district.<sup>92</sup> All of the hill patwari were literate, none could draw status or allegiance from a customary role or position, and all were directly answerable to Traill. Functioning as the primary point of interface between the Company-Government and the Kumaoni people, the establishment of the hill patwari as the 'all purpose' government officer of the hills marked a significant point of change between the earlier practices of custom and the formal governmental practices of modernity.

### ***Kamin and siana***

In another move to orientate the revenue apparatus of Kumaon to the state centre, Traill sought to diminish the role of *kamin* and *siana* of the region (clan leaders *kamin* in Kumaon and *siana* in Garhwal) in the region's revenue system. In the first year of occupation, Gardner and Traill had made the settlement with these men as an expediency. However, Traill held a strong ambition to remove them as an intermediary

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<sup>89</sup> 'Office of Putwarry' in House of Commons, *Appendix to the Report from the Select Committee of the House of Commons on the Affairs of the East-India Company 16 August 1832 and Minutes of Evidence* (London: The Honourable Court of Directors, 1833), pp. 828-29.

<sup>90</sup> Traill, G. W. to Newnham, Henry – Secretary to the Board of Commissioners Furukabad, 24/1/1817, KDRLI, vol: 4.

<sup>91</sup> 'Appendix K.Q. Putwarees' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 38-39; Batten, *Report on the Settlement of the District of Gurbwal in the Province of Kumaon: 15th August 1842*, pp. 93-94.

<sup>92</sup> Traill, G. W. to Newnham, Henry, 10/2/1830, KDRLI, vol: 10.

between landholders and the Company. Indeed, in 1821 he reported to the Board of Commissioners that ‘[t]he emancipation of the petty landholders from the thralldom in which they were held by the Kumeens and Seenas, has invariably formed a most particular object of my attention.’<sup>93</sup> Traill believed that these clan leaders, who had significant power in their respective *puttee* (locality), had long used their position to extort money and goods from villagers with impunity and had been a significant barrier to ‘improvement.’<sup>94</sup> From 1817 onwards, Traill progressively removed the *kamin* and *siana* from the settlement process and revenue flow and their role was taken up by state-employed tehsildar (revenue officers) and the hill patwari.

Traill argued that *kamin* and *siana* claimed no property rights over their office and that they retained their situation and its perquisites at the government’s pleasure.<sup>95</sup> To support this position he cited the many and frequent changes the Gurkhas had made to who was a *kamin* or *siana*. Later in his ‘Statistical Sketch’ Traill went on to assert that the positions of *kamin* and *siana* had largely been a creation of the Gurkhas and had not formed a significant feature of the political economy of Kumaon before the Gurkha conquest.<sup>96</sup> The validity of this assessment should be questioned, however, as it both plays into his ambition of removing extractive intermediaries between landholders and the state and contradicts evidence from other historical and literary sources.<sup>97</sup>

In his recent study of the Shimla hills just to Kumaon’s west *Becoming India*, Aniket Alam argues that these clan leaders—he uses the terms *seana*, *mawana* and *rubud*, but explicitly extends his analysis to Kumaon—were the heads of the local clans structured around lineage and territory.<sup>98</sup> In earlier times, these positions had been elected by all male clan members. However, by the time of the Company’s occupation of the region, the position of clan leader had drifted towards being inherited although examples of

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<sup>93</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>94</sup> Ibid.

<sup>95</sup> Traill, G. W. to Newnham, Henry – Secretary to the Board of Commissioners Furukabad, 24/1/1817, KDRLI, vol: 4.

<sup>96</sup> Ibid., p. 174.

<sup>97</sup> Budhwar, *Where Gods Dwell: Central Himalayan Folktales and Legends*; Aditya Malik, *Tales of Justice and Rituals of Divine Embodiment: Oral Narratives from the Central Himalaya* (New York: Oxford University Press, 2016); Helle Primdhal, *Central Himalayan Folklore: Folk Songs in the Rituals of the Life-cycle* (Copenhagen: National Institute of Asian Studies, 1993).

<sup>98</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 84-88.

dispossession by popular demand are available from the 20<sup>th</sup> century.<sup>99</sup> In the hills, '[t]he clan was the main social and political organization and was essentially a patrilineal exogamous kin group.'<sup>100</sup> The position of the clans had been superseded to some extent with the rise of the *thuljat*-led Hill States in the last half of the second millennium. However, the rise of the Hill States had not destroyed their power or legitimacy, and the clan leaders had retained a central role in social relations amongst the small and widely scattered communities in which most Pahari lived. Alam argues that in the pre-colonial Pahar, the clan and the Hill State represented the two foci of political power.<sup>101</sup> Each existed in dynamic tension with the other and that tension was largely negotiated through complex processes of mytho/praxis including trance, possession, divination and procession, where locality, clan and state are embodied in both persons and deities. These processions are a common feature of Pahari culture, and, like the performance of perambulation and renewal of oral traditions that E. P. Thompson referred to, are a significant forum for both expression of the law as *lex loci* and the negotiation of interpersonal, community, property and political issues.<sup>102</sup>



**Figure 4.2. Nanda Devi Raj Yatra. A site of negotiation of interpersonal, community, property and political issues.**

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<sup>99</sup> Ibid., p. 62.

<sup>100</sup> Ibid., p. 86.

<sup>101</sup> Ibid., p. 70.

<sup>102</sup> William Sturman Sax, *God of justice: Ritual healing and social justice in the central Himalayas* (New York: Oxford University Press, 2009), pp. 27-59; Taylor, 'Village Deity and Sacred Text: Power Relations and Cultural Synthesis at an Oral Performance of the Bhāgavatapurāna in a Garhwal Community,' pp. 198-206.

The negotiations were not always pacific, however, and Alam documents a series of rebellions and agitations in the Hill States during the nineteenth century.<sup>103</sup> If Traill was to assert the supremacy of the Company-Government as sovereign and centre revenue flow on his treasury, he would have to diminish the power of the clans and *kamin* and *siana* who led them without invoking significant resistance.

This concern for not provoking resistance is apparent in Newman's response to Traill's initial proposals to remove the *kamin* and *siana* from the revenue apparatus. Newnham cautioned Traill that '[t]he Board would regret that the conquest of the country should be followed by any precipitate interruption to established usage.'<sup>104</sup> This position was not just a concern for the property rights of the *kamin* and *siana*, and he went on to ask for information '[i]n regard to the rights of the *several classes*.'<sup>105</sup> In particular, Newnham was concerned about the rights of the small landholders and tenants and argued that 'it is still doubtful whether in these provinces either the Talookdar or the village zemindar possesses the power of disturbing the Ryot's [small holders and tenants] occupancy in case he conforms to the rules and customs of the country.'<sup>106</sup>

With this caution for not disrupting the *kamin* and *siana* too much in mind, Traill's second annual settlement of 1816–1817 was a cobbled together hybrid between the earlier Gurkha settlement and the village model it was his ambition to introduce. In this settlement, only a few of the *kamin* and *siana* played a major role in the negotiations over setting the *jumma* and its subsequent collection. Rather, in most cases, the *jumma* for each *puttee* (locality) was set in negotiations with a panchayat composed of all of the *pudhan* (village headman). The *kamin* and *siana* were not totally excluded from the political economy, however. As an alternative to access to the revenue flows to the sovereign, they were allowed to collect a number of traditional offerings independently. These included a *nuzurana* (a gift or present) of between three anna and one rupee from each village annually, a gift from each *pudhan* on occasions such as a wedding, as well as a leg

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<sup>103</sup> Alam, *Becoming India: Western Himalayas under British Rule*, pp. 147-207.

<sup>104</sup> Newnham, H. – Secretary to the Board of Commissioner, Moradabad to Traill, G. W., 8/2/1817, KDMLR, vol: 10.

<sup>105</sup> Ibid. Emphasis added.

<sup>106</sup> Ibid.

from every goat butchered.<sup>107</sup> At least in Traill's mind, these *nuzurana* were not drawn from the revenue flow to the state. Rather they were a separate, clearly identifiable customary obligation in their own right that varied but was generally not above 3 per cent of the *jumma*.<sup>108</sup>

Traill assured the Company-Government in Calcutta that '[i]n this measure...the rights of no individuals have been compromised as the Kumeens continue to receive their established *nuzuranas* etc from the villages included in their *puttee* and are the channel of communication in matters of police etc. between Government [and] the inhabitants of the hills.'<sup>109</sup>

The process of removing the *kamin* and *siana* from the revenue apparatus continued with Traill's third triennial settlement of 1818–1820, and he reported to Newnham that this settlement 'ha[d] in all practicable instances been made with the village proprietors [*pudhan*].'<sup>110</sup> Even in this tranche of settlement, Traill noted the exceptions of the remote Nagone district of Garhwal. Here, far from Almora and its Suddar station, the settlement had been made with the *siana* in an attempt to increase the influence of these principal landholders.

This progressive and opportunistic removal of *kamin* and *siana* from the revenue system appears to have been completed by the time of the settlement of 1820–1821. Traill's report on the settlement makes no mention of them at all.<sup>111</sup> However, maintaining the hybridity of the process, they continued to be responsible for policing in their *puttee* and continued to receive their *buq kumeen/sianacharee* fees and other customary offerings, but they had no role in revenue collection.<sup>112</sup>

In parallel to these changes in the revenue apparatus, Traill, continuing a process begun by the Gurkhas, also disturbed the complex customary geography of the region's

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<sup>107</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 174.

<sup>108</sup> Lushington, G. T. to Hamilton – Officiating Secretary to the Governor, 9/2/1842, KDJLI, vol: 36.

<sup>109</sup> Traill, G. W. to Adam, J. – Secretary to the Political Department Fort William, 1/5/1817, KDRLI, vol: 5.

<sup>110</sup> Traill, G. W. to Newnham, H. - Secretary to the Board of Commissioners Furukabad, 21/6/1818, KDRLI, vol: 6.

<sup>111</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>112</sup> Ibid., para. 28; Traill, G. W. to Shore, J. - Assistant Commissioner at Dehra Dun, 14/12/1826, KDJLI, vol: 28.



pargana.<sup>113</sup> In pre-colonial times, these customary administrative units had not been formed as discrete contiguous territories. Lands had been allocated to pargana on the basis of who controlled the land at any particular time. Given the region's inheritance practices where land was equally divided amongst all heirs and this practice's interplay with occasional land and mining grants made at the sovereign's will, pargana were often scattered entities with many discontinuous elements. The most complex of these pargana was a dotted line of villages called Hiun Pal running from the snowline to Almora 'being appointed for the supply of snow to the Raja's Court.'<sup>114</sup> Over time, Traill changed these complex spaces into defined contiguous geographic entities. In doing so, the pargana were uncoupled from their historical allegiances, perquisites and functions and realigned to the remit of his new hill patwari and *canoongoe*.

## The settlements

Surprisingly, reports of a strong negative reaction to all these usurpations of the customary officers of revenue and the allocation of villages to rationalized pargana are not apparent from either the KDPMR or alternative sources. There are no records of significant disturbances, and revenue flowed to the Company treasuries with ease and on a scale unprecedented in the hills. Indeed, so easily was the revenue collected that Traill was able to progressively reduce the number of tehsildars (tax officers) by around half.<sup>115</sup>

Traill's view was that this positive outcome to his ambitions was predicated on a simple political equation. He believed that destroying the ability of the *kamin, siana* and other elites to extract revenue was a cause of regret to themselves, but 'to the great bulk of the population, this event has been a source of unceasing benefits and congratulation.'<sup>116</sup> The village-based settlement model Traill introduced had emphasized the interests of small landholders while, at the same time, promoted the role and status of village *pudhan*. In doing so, Traill continued and enhanced the community of interest of

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<sup>113</sup> Traill, G. W. to Williams, R. – Secretary to the Board of Commissioners Furuckabad, 3/4/1821, KDRLI, vol: 8; Traill, G. W. to The Secretary of the board of Commissioners 18/3/1822, KDRLI, vol: 8; Traill, 'Statistical Sketch of the Kumaon,' pp. 177-78.

<sup>114</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 177.

<sup>115</sup> Traill, G. W. to Adam, J. - Secretary to Gov't in the Political Department, 24/6/1816, KDRLI, vol: 3. Note that Traill reorganised and reduced the tehsildari in six tranches from 1816 to 1834, see Tolia *Founders of Modern Administration in Uttarakhand, 1815-1884*, pp. 12-13.

<sup>116</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 207.

what he saw as the atomic political unit of the region, the village. He believed that this natural political structure then acted as a counterpoise to the usurped interests of the higher levels of the pre-colonial customary apparatus of revenue collection.

Perhaps just as importantly, Traill also began to take on the symbolic status and authority of a monarch. Initially, this was articulated through his settlement tours which can be usefully described as royal progressions. These tours, punctuated by set-piece panchayats at which the settlement was negotiated for each locality, directly acquainted him with the conditions and sentiments current in each pargana and, in responding to those conditions, allowed him to develop a direct, personal and visible relationship with its inhabitants. This style of settlement making, whether intentionally or merely serendipitously, was a significant factor in establishing and enhancing his status and authority which would, over time, bestow on him something of the aura of a raja.<sup>117</sup> This assumption of the status of a sovereign of old by Traill again emphasizes that the early years of the Extra-Regulation Order were often a hybrid between an older form of rule based on the personal relationship between the sovereign and the people and a form of rule based on the impersonal, formal governmental practices of modernity.

Traill brokered seven settlements in all during his tenure. First, two annual settlements running 1815–1817 followed by two triennial settlements running 1818-1822 and lastly, three quinquennial settlements running 1823-1837.<sup>118</sup> Comparing the Kumaon settlement model with other models current in India was something that Traill struggled with, and his writings on the subject were not entirely consistent even within the same text. This confusion is most clearly seen in his ‘Statistical Sketch.’ Initially, he states that a village-based revenue model, broadly corresponding to the Delhi Model that Gardner had first proposed to John Adam in 1815, had emerged and that ‘[t]he revenue administration is here conducted on the same principles as in force in the plains.’<sup>119</sup> Yet,

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<sup>117</sup> Other significant factors in Traill establishing the aura of a Raja include many donations to charitable and religious institutions, dispensation of justice in a personal style and his constant attention to ordinary people’s petitions and entreaties.

<sup>118</sup> Traill, ‘Statistical Sketch of the Kumaon,’ pp. 200-01. Please note that here I have used the Gregorian calendar here while Traill used ‘Sambat’ which has a variable New Year’s Day usually in April or May of the Gregorian calendar. The apparent confusion in settlement dates disappears if Sambat is used.

<sup>119</sup> Ibid., p. 200.

only five pages later, Traill likened his mature settlement model to the major alternative model current in India, Munro's *ryotwari* system used in South India.<sup>120</sup>

However, emphasizing that all comparisons are flawed, the Kumaoni revenue model only superficially resembled models that emerged in other Company controlled territories. The model that emerged in Kumaon had its own historical trajectory and was the product of a three-cornered dialogue between Traill, the limits the conditions the region imposed and the agency of the Kumaoni people. It is best, then, to understand the Kumaon revenue model as distant and distinct from other revenue models developed by the Company in other spaces.

From the outset, Traill had been confronted by the absence of detailed landholding records on which to base his settlements—records that were readily available to both Metcalfe and Munro. On the plains, these records had been compiled and maintained by the patwari attached to every village and took the form of a *rakbabandi*.<sup>121</sup> *Rakbabandi* included a statement of all landholders and their holdings and related this to a map measured to a standard metric.

No one had ever attempted to compile a *rakbabandi* for every village in the hills. Most villages were small, often with only a handful of households.<sup>122</sup> Most did not have a village resident with sufficient literacy or accounting skills to compile a *rakbabandi* nor could most villages have afforded to support such a specialist and dedicated worker. As Traill was to put it, '[s]uch small communities could not from their poverty admit of a constitution similar to that existing in the plains.'<sup>123</sup> Moreover, concepts such as measurement of land using a standard metric were alien. In the hills, land was measured by *nalli* or the amount of seed required to best sow it. More seed was used on fertile soil while less seed was used on poor land and because farming practices varied from place to place, the *nalli* varied from locality to locality in line with local customs and conditions. Complicating matters even further, land granted to religious institutions always used a

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<sup>120</sup> Ibid., p. 205.

<sup>121</sup> Traill, G. W. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Traill, G. W. to McFarlane, D. - Secretary to the Presidency Committee of Records, 4/7/1823, KDRLI, vol: 8.

<sup>122</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners Furukabad, 24/1/1817, KDRLI, vol: 4.

<sup>123</sup> Ibid.

smaller *nalli* to boost the stated size of the grant.<sup>124</sup> Given all these difficulties, compiling a detailed record of all landholdings in Kumaon was not completed until the 1870s after ten years work.<sup>125</sup> The best that could be achieved during Traill's tenure was a 'guess measurement' conducted in 1823.<sup>126</sup> This was conducted by public officers sitting in commanding positions who then wrote down the names of villages that they could see or were acquainted with. This listing played some role in settlements thereafter but was only a crude starting point for negotiations.

Given the absence of *rakbabandi* or an infrastructure that could have quickly created such detailed and reliable textually mediated records, Traill turned to a two-step settlement making process that left much of the process in the hands of the small landholders and their representatives, the *pudhan*.<sup>127</sup>

For the 1816–1817 settlement, the process began with Traill touring and calling a panchayat (council meeting) of all the *pudhan* of a locality.<sup>128</sup> The negotiations began with the amount of *jumma* levied for the locality in the previous settlement used as a base figure. This figure was then adjusted either up or down in the light of the change in the productive capacity seen locally. This productive capacity was as much a product of the change in the population as it was a product of the amount of arable land available. Epidemics, panics about demons and ghosts, predation by tigers and the fear this engendered, as well as natural calamities, could result in considerable rapid change in the population of a locality.<sup>129</sup> This assessment of the locality's productive capacity was informed by both Traill's observations of local conditions and the opinions of all who attended the meeting. Once the adjusted figure was agreed, the new gross *jumma* was then put to the *pudhan* who distributed responsibility for the gross *jumma* 'according to

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<sup>124</sup> Traill, G. W. to Fraser, S. - Secretary Presidency of Records, 20/7/1826, KDRLI, vol: 9; Traill, G. W. to McFarlan, D. - Assistant Secretary to the Presidency Committee of Records, 6/7/1822, KDRLI, vol: 8; Traill, G. W. to Oldfield, H. L. - Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>125</sup> H. Ramsay, *Report on the Revision of Settlement in the Kumaon District carried out by J. O'Beckett, 1863–1873* (Allahbad: N.W.P. Government Press, 1874).

<sup>126</sup> Ibid.

<sup>127</sup> Traill, G. W. to Adam, J. - Secretary to Government in the Political Department, 28/3/1816, KDRLI, vol: 2; Traill, G. W. to Oldfield, H. L. - Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>128</sup> Note that, as mentioned earlier, a limited number of these settlements were made with various 'big-men' not the *pudhan*.

<sup>129</sup> There were major outbreaks of cholera in 1823 and 1828 that killed around 5% of the population - often entire villages, while tigers often killed more than 100 people a year leading to whole *puttee* being abandoned. Traill, G. W. to Shakespeare, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29; Traill, G. W. to Bayley, B. - Secretary to Government in the Judicial Department, 1/2/1825, KDJLI, vol: 26.

the present state of cultivation and population to the cess thus framed.<sup>130</sup> This resulted in 7,892 *pottab*—individual village focused agreements—for the settlement of 1823–1827, a figure that was to rise to over 9,000 for Traill’s final Settlement of 1833–1837 when the population had increased substantially, and many new villages had sprung up to cultivate newly opened up lands.<sup>131</sup>

At the conclusion of the locality-level panchayat, each *pudban* would return to his respective village and conduct a village level panchayat. Armed only with the symbolic value of the written *pottab*, a document that few were able to read including the *pudban*, the village level *jumma* was then ‘apportioned on the several shareholders agreeably to the nominal interests possessed by each in the estate.’<sup>132</sup> Emphasizing the region’s egalitarian social structures, this division was not imposed on the community by the *pudban*. While he did receive some modest fees and offerings as compensation for his role—a role that was wider than just revenue matters—the *pudban* was merely an elected representative, and no graduation of rank existed between the *pudban* and other landholders.<sup>133</sup> All sharers in the village were of equal status and had an equal voice in the panchayat. This level of equality was no doubt enhanced by the availability of large amounts of uncultivated land in the region, a good deal of which had been previously terraced and then abandoned. Zamindars could simply move to this abandoned land if they were unhappy with the share of the *jumma* apportioned to them. Moreover, Traill argued that with an average *jumma* of only Rs. 15 per village, these communities were simply too small and too poor for a complex hierarchical political economy to emerge. This egalitarian condition was even further enhanced by Traill’s practice of asserting the rights of the shareholders to choose their own *pudban* in his courts which he believed prevented a shareholder rising above other villagers in status.<sup>134</sup>

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<sup>130</sup> Traill, G. W. To Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI vol: 7.

<sup>131</sup> Data for 1823 drawn from ‘Statement C’ in the Appendix to Traill, ‘Statistical Sketch of the Kumaon,’ p. 203. Does not include Rent Free - 148, Assigned to temples - 472, and Deserted villages - 1137; Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 22.

<sup>132</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>133</sup> Traill, G. W. to Newnham, Henry – Secretary to the Board of Commissioners Furukabad, 24/1/1817, KDRLI, vol: 4.

<sup>134</sup> Ibid.; Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821b KDRLI, vol: 7.

Other than in the tiny number cases where disputes were brought to his court, Traill took no part in the setting of shares of the *jumma* at the village level. He believed that the micro division of land within each village, combined with the presence of fields cultivated by persons from other villages (*paekash*), meant that who was responsible for every particular tiny field and his fair share of the *jumma* could only be known his neighbours. Traill did not try to reduce this complexity to a textually mediated database that would have made it legible to the state. Rather, he trusted such matters to local custom and it was ‘on this principle chiefly that the affixing of the assessment has been entrusted to themselves.’<sup>135</sup>

Maximizing the agency of the *pudban* in setting and distributing the *jumma* at both the locality and village level bound the collective into Traill’s novel revenue practices. Not only did the practice minimize administrative costs and leverage existing customary practices, it also produced remarkably high compliance levels that Traill attributed to the ‘fairness’ of the practice.<sup>136</sup> His evidence for the ‘fairness’ of his system was that:

At this moment [March 1821] there is not a fraction of balance outstanding on account of former years and this total realization of the Jumma has been affected without a sale, without the imprisonment of a single malgoolzar [*pottab* holder] and without recourse to the process of distraint.<sup>137</sup>

The success of Traill’s revenue practices in maximizing and centring revenue flows on the Company and their acceptance by the landholders cannot be attributed solely to the sense of fairness they engendered. Just as important, the revenue rates he set were both very light and collected in a manner closely matched to the landholders’ ability to pay.

First, Traill reduced the number of heads on which revenue from cultivators was based in the pre-colonial era from 68 (36 royal and 32 ministerial) to one single cess—the Company’s land revenue demand.<sup>138</sup> Traill believed that this single figure made the

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<sup>135</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7.

<sup>136</sup> Ibid., para. 10.

<sup>137</sup> Ibid.

<sup>138</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10. Note that Traill acknowledges that zamindars never actually had to pay all 68 heads of tax in any one year, but

amount a landholder had to pay in a year clearly understandable to him as it was not dependent on contingent factors such as royal births, deaths and marriages. Moreover, this single figure was comparatively light and widely acknowledged to be light by the landholders.<sup>139</sup>

The lightness of the rate of land tax levied in Kumaon, constituting only 32 per cent of total Company expenditure in the region in 1822, is a common theme in the KDPMR and the 'Statistical Sketch.'<sup>140</sup> As Traill was to put it, '[t]he assessment throughout the province is still extremely light and falls very short of the amount which Government might on a strict calculation of assets be expected to demand.'<sup>141</sup>

It is possible to speculate several motivations for why land revenue was set at such a modest rate, but there is no explicit contemporary discussion of this in the early KDPMR. The low tax rate may have been a tactic in forestalling any dissent to Company rule, it may have been a continuation of customary land tax levels that were set in reference to the multiplicity of other taxes or, it may also have been a reflection of Metcalfe's principal that a low rate of assessment would engender the long-term confidence of proprietors to improve cultivation. Whatever the motivation, right from the first settlement report of 1816, Gardner did not foresee problems in collecting land tax because the rate was so low.<sup>142</sup>

Traill himself provides various estimates of the share of the produce the Company extracted. In his 1821 reports of Kumaon's revenue affairs he opined that on average, the land tax rate imposed did not amount to one-third of the gross produce and contrasted this to the region's 'ancient and established usages' where he claimed the sovereign's share was always one-half.<sup>143</sup> However, a revision of this estimate is implicit in his 'Settlement Report' of 1829. Here Traill forwards an estimate that proprietors

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there was 68 'potential' heads of cess and what a landholder had to pay for the following year was effectively unknowable to him.

<sup>139</sup> Lushington, G T to Elliot, H M - Secretary to the Suddar Board of Revenue N.W.P. – Allahabad, 9/7/1842, KDRLI, vol: 14.

<sup>140</sup> Traill, G. W. to Sherer, J. W. – Accountant General, Fort William, 22/8/1822, KDRLI, vol: 8.

<sup>141</sup> Traill, G. W. to Newnham, H. - Secretary to the Board of Commissioners Furukabad, 21/6/1818, KDRLI, vol: 6.

<sup>142</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 21/3/1816, KDRLI, vol: 2.

<sup>143</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821b KDRLI, vol: 7.

holding land in *th'batwan* (approximating modern freehold, see discussion below) only paid 20 per cent of the value of the produce of their land in land tax (see table 4.1).<sup>144</sup> In this, his mature account of the region's revenue affairs, Traill attributed setting the land tax rate much lower than on the plains to Kumaon's environmental conditions. He argued that the limited surplus available, engendered by the low productivity of the soil combined with the absence of markets, made it essential to set a low rate if landholders were to thrive and have an existence above mere subsistence. His assessment of the outcome of this policy was that 'their condition, as a body, is no doubt superior to that of any similar class of tenants, in any part of the Company's territories' an assessment that echoed down through the nineteenth century.<sup>145</sup>

Not only was the land revenue rate in Kumaon relatively light, each *kisht* (instalment) was collected at the time most convenient to the landholders of each pargana and community to pay. On the plains, each *kisht* was of an equal amount and rigidly tied to nearly monthly payments.<sup>146</sup> This schedule of payments had no correspondence to the cash flow pattern of plains landholders who often had to go into debt to meet the payments. In contrast Traill initially set four *kisht*—three on the *kharif* or monsoon-autumn crop and one on the *rabi* or winter-spring crop—that matched up to what he believed was the cash flow pattern of farmers.<sup>147</sup> Highlighting Traill's desire to match the *kisht* pattern to specific local contingencies, the main *kisht* in the northern Bhotiya districts varied from the standard pattern and was matched to the Bhotiya's return from Tibet while for farmers who moved to the Terai in the cool season the *kisht* fell most heavily on the *rabi* crop and was collected as they returned to the highlands.

## Property rights

Factors promoting acceptance of the package of formal practices Traill introduced regarding revenue during the early Extra-Regulation period were not limited to their alignment with the sentiments and interests of ordinary cultivators, their light rate of

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<sup>144</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>145</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 207.

<sup>146</sup> Lieutenant-Governor N. W. P, *Directions for Settlement Officers: Promulgated Under the Authority of the Honorable the Lieutenant-Governor of the North-Western Province*, (Agra: Miller, R, 1844). Agra, 1844.

<sup>147</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 205.



assessment and the convenience of the modes of collection, however. Just as importantly, rather than the customary rights over land of most landholders being obliterated as they had been by the Permanent Settlement in Bengal a generation earlier, the property rights of the vast majority of Kumaonis over arable land were both affirmed and enhanced through Traill's formal governmental practices. As with Traill's revenue system, these affirmed and enhanced property rights did not emerge suddenly in a single legislative statement.

Traill appears to have rapidly acquired a working knowledge of property law in Kumaon through consultation with both prominent and ordinary Kumaonis—a working knowledge that he was able to test in his open court and at the revenue panchayats he conducted while on tour. Despite the then emergent understanding of law as 'a rule prescribed by a superior power' as advanced by Blackstone, English jurisprudence of the time remained centred on a network of maxims, practices, and remedies that could not be reduced to a set of textually mediated rules. Within these mainstream juridical practices of the time, law was largely unwritten *leges non scriptae* and found in the everyday propertied lives of the community.<sup>148</sup> It was, as William Jones put it, '[t]he will of the whole community as far as can be collected with convenience.'<sup>149</sup>

For Traill, the property law of Kumaon may have existed initially and briefly as unwritten law functioning entirely on an oral basis. However, he was a creature steeped and trained in the formal governmental practices of the Company. As soon as Traill began to record his judgments in his case reports, in each instalment of his correspondence with Newnham, and when he communicated his understanding of property law to the world in his 'Statistical Sketch' of 1828, the property law of Kumaon began its transformation from being based in orally mediated custom to being based in a textually mediated form.<sup>150</sup>

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<sup>148</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, p. 79.

<sup>149</sup> 'No. 187 Jones to Vicount Althorp, 21 November 1779' in Garland Cannon, ed. *The Letters of William Jones*, 2 vols., vol. 1, 2 (Oxford: Clarendon, 1970), p. 334. Original emphasis.

<sup>150</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7; Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

As outlined earlier, the property law of Kumaon found its mature form in Traill's report of his second quinquennial 'Settlement Report' dated 2 January 1829.<sup>151</sup> It is from the understanding of land tenures in Kumaon found in this Report, while not dispensing with his earlier texts, that much of the following description of Traill's Kumaon settlement and property rights model flows.

Traill began by asserting that, in accordance with the custom of the region, the paramount property right to the soil was vested in the sovereign and that the Company now held this right by conquest.<sup>152</sup> He reported that this right was not only universally theoretically acknowledged, but could also be deduced from the sovereign's ability to divest property holders of their lands without compensation.<sup>153</sup> Traill argued that it was on this paramount property right that the right of the sovereign to levy rent was founded.

Excluding a small number of royal estates, arable land (other than in the Terai) was parcelled out to landholders who held the land in inheritable and transferable, but not indefeasible 'customary tenancies.'<sup>154</sup> Traill asserts that these tenancies had two origins. Those of the tiny immigrant *thuljat* elite were based in royal grants, while those of the majority indigenous Khasa 'derive[d] their title solely from long-established occupancy.'<sup>155</sup> Both of these forms of tenancies gave the tenant property in the soil granted in *th,hat* or *rote* (*rote* when granted to the heirs of those killed in battle).<sup>156</sup> Emphasizing the egalitarian nature of Kumaoni society and the small size of most holdings, Traill estimated that more than 60 per cent of cultivators held their land on the basis of *th,hatwan*. Land newly brought into cultivation, an accelerating phenomenon during the Extra-Regulation Order, was granted to the reclamer in *th,hatwan* as compensation for the expenses of his enterprise.<sup>157</sup>

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<sup>151</sup> A good deal of Traill's views on Hill Tenures and modes of disposal is found in Traill, 'Statistical Sketch of the Kumaon,' pp. 175-77. However, his Settlement Report of 1829 was considered by him and widely accepted as the mature form of his analysis.

<sup>152</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10, para. 12.

<sup>153</sup> Ibid., para. 13.

<sup>154</sup> Ibid., para. 12.

<sup>155</sup> Traill, G. W. to Oldfield, H. L. - Secretary to the Board of Commissioners Furukabad, 14/3/1821a, KDRLI, vol: 7, para 21-21.

<sup>156</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>157</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 203-04.

Of the remaining 40 per cent of cultivators, about half were resident tenants, who, although not holding the *th,hatwan*, held rights of occupation to that soil.<sup>158</sup> The first category of these tenants were designated as *khaekur* who enjoyed an inheritable, though not transferable right of cultivation. The second category of tenants were designated as *kurnee* who, as long settled tenants, differed little from the *khaekur* except in a small difference in the share of their produce that they paid in rent. Both *khaekur* and *kurnee* paid rent in *koot* (kind) to the *th,hatwan* holder with the *kurnee* also liable to perform service.<sup>159</sup>

The final 20 per cent of proprietors were non-resident and designated as *paekasht* who paid a negotiable cash quit rent not tied to custom. With an abundance of uncultivated land at the time and a shortage of tenants, Traill asserted that rent for *paekasht* was always at a rate more favourable than that paid by the *khaekur* and *paekasht*.<sup>160</sup>

Traill's categories of property rights can be summarized as:

<b><i>Name of tenancy and subtenancy</i></b>	<b>Nature of tenancy and percent of total produce ON AVERAGE retained by the cultivator</b>
<i>th,hatwan</i>	80% - Head tenant
<i>khaekur</i>	70% - Sub-tenant with hereditary, but not transferable rights to the land. Pays his rent in <i>koot</i> (kind).
<i>kurnee</i>	66% - Sub-tenant-serf without hereditary rights, but by long occupancy coming to acquire them. Pays his rent in <i>koot</i> (kind)
<i>paekasht</i>	75% - Sub-tenant who paid a cash quit rent at a favourable market rate.

<sup>158</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

<sup>159</sup> Ibid., para. 21.

<sup>160</sup> Ibid., para. 22.

**Table 4.1 Tenancies in Kumaon. Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10, para 33.**

Traill's four categories of tenancy are far from unnuanced though, and he takes account of how a plethora of practices, especially forms of sale, added great complexity to the nature of each tenancy.<sup>161</sup> Sales could be *dhali boli* (absolute) where the purchaser became vested with the same rights and obligations as the seller. Alternatively, the sale could be *mat* where the vendor remained responsible for the annual tax demand until his death. There was also another form of *mat* where the vendor could resume the lands on payment of the purchase price as well as a form of mortgage called *banbak*, where redemption was expressly barred after a designated period or barred indefinitely.

Recognition of and then translation of these customary tenures into a legible form that could be used in the everyday practices of Traill's courts was a basic factor in the acceptance of the new Company revenue practices in Kumaon (see chapter 6). However, over and above the impact of these everyday practices, there was also an implicit fundamental transformation in the basis of property rights during the Extra-Regulation Order that, in the longer run, was an even more important factor. This was that the Company abandoned its despotic right to dispossess landholders without compensation.

As outlined earlier, Traill began his discourse on tenures in both the 'Statistical Sketch' and his 'Settlement Report' of 1829 with the assertion that paramount property in the soil is vested in the sovereign and it was on this basis that the sovereign was able to demand a share of the produce of the land.<sup>162</sup> He outlined that as part of this paramount property right, the sovereign was able to dispossess any landholder from his land without the landholder defaulting in his obligations and without the sovereign having to compensate the landholder for his dispossession. Such dispossessions were undoubtedly 'highly unpopular,' as Traill put it, but, given the turbulent nature of Kumaoni politics in the eighteenth century and the sovereign's need to reward his changing group of supporters with land, such arbitrary transfers had been frequent in the area around Almora prior to Company occupation.<sup>163</sup>

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<sup>161</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 176-77.

<sup>162</sup> Ibid., p. 176; Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10, para. 12.

<sup>163</sup> Ibid.

However, once Traill had used this argument to support the Company's right to collect land taxes, he then entirely dispensed with it in his day-to-day legal, revenue, and administrative practices. Traill never, in practice, asserted the right to dispossess a landholder without compensation and went to significant lengths to protect landholder from encroachments and dispossession by the military and any other persons. Most importantly, Traill never dispossessed a landholder from his land, even if the landholder had defaulted on his revenue obligations—a practice that had proven to be incredibly destructive in Bengal.<sup>164</sup>

Traill's sustained unwillingness to dispossess landholders, either arbitrarily or when they were in default of their land-tax obligations, eventually negated the right of the sovereign to make such dispossessions. In doing so, he transformed the customary rights of Kumaoni cultivators over arable land into the property rights that continue to the present day. This more stable form of property rights would prove to be very popular with Kumaonis.

Traill himself summarized the impact of the new revenue and property model on the clear majority of Kumaonis, probably without too much hubris, as:

With all these advantages, the circumstances of the great mass of agriculturalists are easy, and though instances of wealth in that class be rare, at the same time similar destitution as prevails among the low cultivators in the plains, is uncommon.<sup>165</sup>

Similarly, in his valedictory report, and again probably without too much hubris, Traill summarized the impact of his revenue and property systems on Company coffers as:

In relinquishing a charge of 20 years duration I may be pardoned for offering a brief notice of my revenue management.

The land revenue of the province has during that period been doubled, & the whole up to the past year has been realized, without a single

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<sup>164</sup> Traill, G. W. to Macaulay, Charles - Secretary to the Government of the Agra Presidency Judicial and Revenue Department, 30/11/1835, KDJLI, vol: 30.

<sup>165</sup> Traill, G. W. to Home, D. - Acting Secretary to the Board of Revenue indecipherable, 2/1/1829, KDRLI, vol: 10.

resumption, without a sale of a single estate & without the imprisonment of a single Mazuldoorar (*pottab* holder).<sup>166</sup>

The meeting of Kumaoni customs around land-tax revenue and property rights with the emergent governmental practices of the East India Company during the early Extra-Regulation Order stands in sharp contrast to the experience of much of the North Indian heartlands. There was no Permanent Settlement in Kumaon, rent extraction would not reach destructive levels, and the property rights of ordinary cultivators were not obliterated. Free of the palimpsest of the late-Mughal machinery of government and the imperative to show an immediate profit, Traill developed a novel revenue system that emphasized the interests of most Pahari farmers and yet, in the longer term, maximized the flow of revenue to the Company's treasuries. Moreover, within the process of documenting his settlements, Traill gave the hill men's property rights a stable and enhanced textually mediated form that would shape financial relations between the zamindars, the region's elites and the Company for the remainder of the Extra-Regulation Order.

However, these financial relations were not the sole factor shaping relations within Kumaon's colonial political economy. Of equal significance was the direct, personal and positive relationship that began to develop when Traill and the zamindars met to set the *jumma* in open panchayat. This relationship would also play out and be enhanced in Traill's everyday court practices where he took on the role and function of a sovereign of the ancien régime as the dispenser of justice.

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<sup>166</sup> Traill, G. W. to Macaulay, Charles - Secretary to the Government of the Agra Presidency Judicial and Revenue Department, 30/11/1835, KDJLI, vol: 30.

## Chapter 5, Criminal Justice

It will be evident that crimes are in no way prevalent [in Kumaon]. Indeed there is probably no similar portion of the Globe of similar extent where there exists a greater absence of every kind of criminal offences, any measure therefore of prevention would be wholly superfluous.<sup>1</sup>

G. W. Traill, July 1822

Traill believed the Paharis to be the most honest and crime free people on earth. They were ‘nature’s children’ and what sins they had were the sins of innocents. Like innocents, they needed instruction, gentle correction and protection from a cruel and corrupting world far more than they needed harsh punishment.

Traill was not alone in these views, and this positive assessment of the character of the Pahari arose spontaneously and independently at every point of contact between Company and the hill people whether in Kumaon or amongst the petty Hill States to the West. Rapidly shared and generalized amongst the foreign community, and applied to all the people of the Company’s Himalayan territories, this widely held ‘affective feeling,’ as the anthropologist Karine Gagné put it recently, formed the basis of a positive emotional disposition towards the people of the hills.<sup>2</sup> In the light of this disposition, and as they had with revenue matters, the Company-Government decided not to impose their regulations on crime, policing and punishment in Kumaon. Rather, they enacted Regulation X of 1817 (see Appendix 5.1), which decoupled criminal justice in the hills from the practices of the plains and placed much of the development of an alternative criminal justice model into George Traill’s hands.

With crime so rare in the hills, Traill’s criminal justice model was not a major site of interaction between the Kumaoni people and the Company’s emergent formal governmental practices. Unlike the provision of *begar* or interaction with the revenue system, most Kumaonis had little or nothing to do with the Company’s practices around crime, policing or punishment. Nevertheless, the hybrid criminal justice system that emerged was a site of intense innovation that was both firmly grounded in the practices

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<sup>1</sup> Traill, G. W. to Glyn, R. T. as Commissioner under Regulation X of 1817, 19/7/1822, KDJLI, vol: 25.

<sup>2</sup> Karine Gagné, ‘Building a Mountain Fortress for India: Sympathy, Imagination and the Reconfiguration of Ladakh into a Border Area,’ *South Asia: Journal of South Asian Studies* (2017).

of the region's customs and yet also at the cutting edge of modern administrative practice.

## Nature's children

As noted in chapter 2, Jon E. Wilson has recently highlighted the role that the emotional reaction of Company officers to Bengali culture played in framing and engendering the codified laws that the Company implemented in the Regulation Provinces.<sup>3</sup> He argues that this new model of legal practice was, as much as any other factor, a pragmatic response to the anxiety many British officials felt in applying law as an everyday reflexive practice in a cultural setting in which they were strangers. Traill's emotional reaction to Pahari culture, indeed the reaction of most of the foreign community to mountain cultures in South Asia more generally, was radically different from the general reaction to Bengali culture on which Wilson's analysis is based. Rather than feeling estranged and distant from the Pahari, Traill and others were plainly at home in the hills and felt comfortable engaging with Pahari culture and law.

The emotional reaction of the British and other members of the foreign community during colonial rule to the subcontinent's mountain people is a central theme in Dane Kennedy's work *The Magic Mountains*.<sup>4</sup> He argues that there was a persistent endeavour under both the Company and Crown Raj to cast Paharis and other mountain peoples as 'nature's children' who, being of superior moral and social character, were the antithesis to the intractable and unfathomable people of the plains.<sup>5</sup> Although disturbed by Pahari practices such as polyandry and the treatment of women, many of the foreign community saw '[t]he religion of the Puharies [as] a simple form of Hindooism, free from some of its worst features as followed on the plains.'<sup>6</sup> This positive view of Pahari culture vis-à-vis plains culture was not just a simple dichotomy and was differentiated by the degree of cultural and physical remoteness from the plains. James Baillie Fraser, travelling with his brother William Fraser, the Company's initial Political Agent to the

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<sup>3</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, pp. 56–74.

<sup>4</sup> Kumaon was a particular favourite of American missionaries; even establishing their own hill-station at Abbot Mount above Loharghat.

<sup>5</sup> Kennedy, *The Magic Mountains: Hill Stations and the British Raj*, pp. 63–87.

<sup>6</sup> Mountaineer, *A Summer Ramble in the Himalayas* (London: Hurst and Blackett, 1860), p. 187.



Hill States just after occupation, expressed this differentiation as '[t]he farther removed from the plains, the heat, and the more accessible parts of the country, the higher does the highlander seem to rise in activity of mind and body.'<sup>7</sup> In the hills of Kumaon, this put the sanskritized *thuljat* who often claimed plains origins at one end of this virtue spectrum, the native Khasa that demographically and culturally dominated the region in the middle, with the ethnically Tibetan Bhotiya (modern spelling of Bhotia) of the high Himalayan valleys at the other.<sup>8</sup> Recent immigrants from the plains and the various plains-based ne'er-do-wells who infested the Bhabar and Terai each cool season to engage in crime did not register on the spectrum at all.<sup>9</sup>

This emotional disposition towards the Pahari held complex views in dynamic tension. On the one hand, the Pahari were cast as a child-like people not yet despoiled by contact with the corrupting influence of the despotism of the plains. Indeed, Traill's and others writing is tinged with a regretful awareness that he and the Company more generally were to be the agent of their fall from grace. On the other hand, the treatment of women by the Pahari was challenging to even the most sympathetic of Company officers. This dynamic tension was perhaps most elegantly put by C. P. Kennedy, the Company's Political Agent to the Shimla Hill States in 1824, who wrote:

Where there is so little crime, it may be inferred that the morality the inhabitants is the cause; certain it is that there is less falsehood and theft than in any quarter of Asia. There is a degree of simplicity too amongst these people ...that induces an idea of a certain degree of morality existing, but when we take into consideration some of the customs peculiar to them, our belief is shaken. It must be remarked, however, the people consider them no crime whatever, and in consequence we ought to view them more leniently. It may not be so much *vice* as ignorance. No horror is expressed at the violation of female chastity. Shame hardly exists in some of the remoter states.<sup>10</sup>

In the light of his emotional disposition towards the Pahari, Traill tried to forestall or at least delay the inevitable pollution of Kumaon's pristine cultural environment. One

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<sup>7</sup> Fraser, *Journal of a tour through part of the snowy range of the Himālā Mountains, and to the sources of the rivers Jumna and Ganges*, p. 204.

<sup>8</sup> This is a simplistic schema of the ethnic kaleidoscope that makes up Kumaon but represents a useful summary. For a more nuanced analysis see Pande, 'Stratification in Kumaun circa 1815–1930.'

<sup>9</sup> Lushington, G. T. to Secretary Governor-General Judicial and Revenue Department, 18/9/1839, KDJLI, vol. 36.

<sup>10</sup> C. P. Kennedy, 'Report of the Protected Hill States Dated 6 July 1824 by Captain C. P. Kennedy, Assistant Deputy Superintendant Sikh and Hill States,' in *Records of the Delhi Residency and Agency*, ed. A. Raynor (Lahore: Printed at the Punjab Government Press, 1915), p. 269 para. 25.

tactic within this strategy was to limit contact between Kumaon and the rest of the world, and he actively discouraged the presence of non-essential plainsman and members of the foreign community. This reluctance to admit outsiders led one commentator of the time to describe Kumaon during Traill's reign as 'all but hermetically sealed to European travellers.'<sup>11</sup> Other tactics employed by Traill to limit contact with the outside world included actively seeking a significant reduction in the number of Company troops in the region and to confine those that were there to their cantonments.<sup>12</sup> This confinement included a strict curfew on troops and their followers being in Almora after dark with the curfew dramatically announced each evening with the firing of a small cannon and ceremonial closing of the town gates.<sup>13</sup>

Nevertheless, new ideas and ways of doing things flowed into Kumaon, and the criminal justice system went through a cascade of innovation in which both Kumaoni and Company practices were transformed. Traill introduced limited aspects of formality to court procedures, emphasized evidence-based decision-making and expunged many oppressive criminal laws and procedures introduced by the Gurkhas. However, inspired by the conservative trope of the likelihood of unintended consequences of reform, he made little change to the basics of what was and what was not considered a crime in the region.

In parallel, Traill made virtually no change to the substance of Kumaon's system of policing and, at least in the hills, policing largely remained embedded in the dispersed institutions and practices of custom. Moreover, he specifically restrained the tiny police force that he created from initiating prosecutions for all but the most serious offences, relying instead on complaints from the public and aggrieved persons themselves. While this did mean that the voice of some, especially women, could not be heard, this policy ensured that what was and what was not a crime was largely determined by local custom and sentiment, not the forces of the state.

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<sup>11</sup> Barron, *Notes of Wanderings in the Himmala*, p. 151.

<sup>12</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 52.

<sup>13</sup> Traill, G. W. to Faithful, Lieut. Colonel - Commanding in Kumaon and Major Thomas, Lieut. Moore and Lieut. Bean, Seven letters dated late 1826, KDJLI, vol: 28.

Traill may have only introduced limited change to Kumaoni customs around the substance of crime and policing themselves, but he introduced considerable change the forms and modes of their administration by grafting new ideas and practices on to existing modalities. This hybrid creativity was at its peak in the recording and monitoring of crime and casualties, and he introduced recognizably modern statistical reporting systems. The highlight of these new modes of administration was a series of Police and Judicial Reports that allows today's reader the benefit of deep insight into the structure and outcomes of the meeting of Kumaoni custom around crime with the Company's emergent formal governmental practices.

In contrast to the limited amount of change to the substance of crime and policing in Kumaon, Traill introduced significant change in practices around punishment. Under Company law, he was prevented from participating in existing Kumaoni practices that were cleaved by caste and involved enslavement, disfigurement and dismemberment of offenders. As an alternative, he introduced the novel practices of jailing offenders either locally, at prisons on the plains or, very rarely, beyond seas. These new forms of punishment were to have unforeseen consequences. While punishment by transportation beyond seas was so rare it is difficult to say what effect it had, Traill had concerns that the introduction of a local jail had led to a small but real increase in serious crime. He reported that most Kumaonis, particularly the less advantaged, were indifferent to the loss of their liberty. Conditions in the local jail were better than the common conditions of existence for many Kumaonis, and as a consequence, jail offered little or no deterrence. Even so, during the Traill era, the prison population remained tiny and the rate of serious crime insignificant.

## **Initial encounter and outcomes**

Traill was both the progenitor and most active early expounder of the paternalistic and infantilizing discourse of the Paharis as nature's children. This discourse was not unnuanced, however, and in his 'Statistical Sketch,' the first detailed publication on Kumaon to reach a wider audience, he expressed a complex view of the character of the Kumaoni people whom he described as:

Honest, sober, frugal, patient under fatigue and privations, hospitable, good humoured, open; and usually sincere in their address, they are, at the same time, extremely indolent, fickle, easily led away by the counsel of others, hasty in pursuing the dictates of passion, even to their own immediate detriment, envious of each other, jealous of strangers, capable of equivocation and petty cunning, and lastly, grossly superstitious.<sup>14</sup>

The complexities of Traill's views notwithstanding, his central belief, a belief that prefaced and framed the criminal justice system that emerged in the Extra-Regulation Order, was that '[o]f the honesty of the hill people, too much praise cannot be given.'<sup>15</sup> He went on to add that, as a consequence, the criminal justice system 'calls for little notice, as the general absence of crimes in this province, renders this branch of administration of minor importance.' The only exception to Traill's positive perception of general honesty of the Kumaoni people was to be found in his views of the outcaste *dom* (Dalits) whom he believed were 'commonly of loose and dissipated habits, confirmed, if not acquired, by continued intercourse with the plains.'<sup>16</sup>

On the plains, particularly in the disturbed Ceded and Conquered Provinces below Kumaon, imposing law and order had been a critical element to establishing and legitimating the Company's rule and ensuring the flow of revenue.<sup>17</sup> For much of this law, the Company had turned to the Sharia-based text of the '*Fatawa-i-Alamgiri*' developed under the Mughal Emperor Aurangzeb's patronage for use across his multi-faith empire (*Alamgiri* is an alternative name for Aurangzeb).<sup>18</sup> The Company took the view that this Indo-Islamic criminal law had been imposed by right of conquest and had long prevailed to the exclusion of earlier Hindu criminal law.<sup>19</sup>

However, as outlined earlier, Kumaon had never come under the direct sway of any of the Indo-Islamic empires of the plains and the criminal law of those empires had never been imposed to the exclusion of existing local custom. Consequently, criminal law based on Sharia, and the Persian language that British had translated the original

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<sup>14</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 217.

<sup>15</sup> Ibid., pp. 218, 196.

<sup>16</sup> Ibid., p. 218.

<sup>17</sup> Panigrahi, *Charles Metcalfe in India: Ideas & administration, 1806-1835*, pp. 122-23.

<sup>18</sup> Banerjee, *English Law in India*, pp. 30-31.

<sup>19</sup> Archibald Galloway, *Observations on the law, constitution and present government of India* (London: Parbury, Allen & Company, 1832), pp. 12-13.

Arabic of the *Fatava-i-Alamgiri* into was ‘wholly unknown throughout the hills.’<sup>20</sup> This absence of external intrusion had allowed the Pahari people to develop and persist with their local customs and practices around criminal law; practices that they had seen little need to commit to a textual form. In the absence of texts as a source of law, Traill turned to the everyday practices and customs of the Kumaoni people as the source of criminal law.

The earliest archival outline of the formal system of criminal justice that emerged in Kumaon under Company control appeared in two letters to Traill from John Adam, Secretary to Government in the Political Department in October 1816. Prompted by a murder and the ‘[e]mbarrassment, ... from the want of a suitable tribunal for the trial of prisoners charged with offences of a heinous nature,’ Adam made it clear that the Company-Government did not intend to introduce the criminal justice regulations that pertained in the rest of the Bengal Presidency ‘where the character habits and manners of the people and their comparative progress in civilization and the arts of life are widely different.’<sup>21</sup>

Adam outlined that he contemplated bestowing powers analogous to that of a *zilla* (district) magistrate on the Kumaon Commissioner including general charge of the police and the power of punishing minor offences through fine, imprisonment and corporal punishment. For serious offences—heinous crimes in the parlance of the day—the Kumaon Commissioner would have the power of apprehending, examining and committing offenders who would then be tried by a judge of circuit.

No hint of the confusion, uncertainty and anxiety that Jon E. Wilson asserts were central to understanding the way Company officers practised and administered the law in early-colonial Bengal is apparent in John Adam’s letters.<sup>22</sup> Emphasizing that the administration of criminal justice was seen by him as a simple, everyday, and

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<sup>20</sup> Charles Hamilton, *The Hedaya (The Guide): A Commentary on the Mussulman Laws* 2nd ed. (London: Allan & Co, 1870); Traill, G. W. to Registrar Nizamat Adualat Fort William, 26/6/1819, KDRLI, vol: 7.

<sup>21</sup> Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, 19/10/1816b, KDMLR, vol: 9; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon with an enclosure of a copy of a ‘Letter to Major General Sir David Ochterlony’, 19/10/1816a, KDMLR, vol: 9.

<sup>22</sup> Here I refer to Jon Wilson’s primary case study John Shore, 1<sup>st</sup> Baron Teignmouth, who I will name as John Shore Snr. to differentiate him from his son also John Shore who I will refer to as John Shore Jnr. John Shore Jnr. is soon to appear in this thesis in Garwhal as Assistant Commissioner.

unproblematic practice, Adam noted that ‘[s]ome power of this sort are already of course exercised by the local officers...and no inconvenience either practical or theoretical is likely to be experienced in framing or executing the rules to guide those officers in the exercise which will partake of the magisterial character.’<sup>23</sup> Moreover, given the apparent absence of crime in the hills and the ease with which revenue was collected, determining the details of how the criminal law was to be administered in Kumaon did not require urgent action. Rather, Adam believed that there was time to seek information on ‘local usages and habits as may be useful in framing the projected system...’ especially information on ‘the system of criminal law which hitherto [pertained] in the territory.’<sup>24</sup>

Traill’s reply to Adam began by outlining that murder was almost unknown in Kumaon and that all crimes that would come under the purview of a Court of Circuit on the plains were both rare and largely committed by natives of the plains associated with the occupying army.<sup>25</sup> With only seven people in the newly established jail in November 1816, four of whom were natives of the plains, Traill believed that the number of criminal trials was unlikely to rise in the foreseeable future to a level that would justify the presence and expense of a resident circuit judge in Kumaon.

To deal with the small number of minor crimes that were committed, Traill proposed that the Kumaon Commissioner be invested with the power to decide cases of up to three years imprisonment. Only cases of ‘murder[,] of aggravated assault with accompanied wounding or maiming[,] of robbery with open violence[,] of dacoity and of burglary...’ needed to be referred to a circuit judge.<sup>26</sup> Moreover, in a move that even further distanced the administration of justice in Kumaon from plains influence, Traill also suggested that the circuit judge visit Kumaon from time to time rather than getting witnesses and prosecutors to attend a court on the plains. He argued that most Kumaonis had a not unreasonable dread of descending to the plains, particularly in the

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<sup>23</sup> Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon with an enclosure of a copy of a ‘Letter to Major General Sir David Ochterlony’, 19/10/1816a, KDMLR, vol: 9.

<sup>24</sup> Ibid.; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, 5/10/1816, KDMLR, vol: 9.

<sup>25</sup> Traill, G. W. to Adam, J. – Secretary to the Political Department Fort William, 15/11/1816, KDRLI, vol: 4.

<sup>26</sup> Note that the use of commas is very rare in the Pre-Mutiny records and that the punctuation used is often at odds with current conventions. In most cases the extracts are reproduced as close to the original as intelligibility to modern readers will allow.

hot and monsoon seasons, and that both prosecutors and witnesses were unlikely to attend voluntarily at a circuit court located on the plains.

Traill also went on to support Adam's suggestion that the regulations of the plains should not apply in Kumaon. He felt that the introduction of any code would be premature, even counter-productive, as 'the nature of the country and the manners of the inhabitants would for the present render any code which might be introduced nugatory.'<sup>27</sup> Traill further developed this view in later correspondence with George Swinton, Secretary to Government in the Political Department. Here, Traill argued that the introduction of a criminal code, would not only be trivial and worthless but actively criminogenic and 'in all probability tend only to create the offence for the prevention of which they might be intended.'<sup>28</sup>

The discussions between Almora and Calcutta during late 1816 and early 1817 resulted in the promulgation of Regulation X of 1817 on 22 July (see Appendix 5.1). This four-page regulation puts forth the basis of the administration of criminal law in Kumaon that would remain unchanged during Traill's tenure as Commissioner. A distinctive feature of the remarkably brief Regulation X of 1817 is that, other than the 'heinous' crimes nominated under Sec. II which were to be the purview of a visiting judge of circuit, the Regulation made no mention of what was to be considered a crime. The Regulation defined the limits of geographic space in which it was to operate. It limited its operation to offences that occurred after Company occupation. It also limited punishments to being no greater than those prescribed by the regulations of the plains. Finally, it set out the simple procedures the Kumaon Commissioner must follow to refer cases of heinous crime to a visiting judge of circuit. However, Regulation X is silent on what most offences were, the form policing should take, how trials were to be conducted and what punishments were to be given. These matters were left almost entirely up to Traill's discretion.

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<sup>27</sup> Traill, G. W. to Adam, J. – Secretary to the Political Department Fort William, 15/11/1816, KDRLI, vol: 4.

<sup>28</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department,, 16/5/1821, KDRLI, vol: 7., para 6.

### *Making the courts state-centred*

On the plains, the Company had only slowly taken control of the existing judicial infrastructure, with direct control of native courts not implemented until the Cornwallis reforms of 1793. In contrast, and in a move that ensured the justice system of Kumaon quickly became state centred, Traill immediately took sole and almost absolute control of the courts. For more than a decade, he was the region's only judicial officer apart from the occasional visit of a judge of circuit.<sup>29</sup> It was in Traill's everyday judicial practices then, informed as they were by the 'will of the whole community,' in which 'evidence' of the criminal law of early-colonial Kumaon is to be found.

In the 'Statistical Sketch,' Traill outlined that many of Kumaon's earlier custom and practice centred on crime had been substantially transformed by the Gurkhas. Under their rule, the justice system had largely become an instrument of public finance with little relation to local sentiment or sense of justice.<sup>30</sup> Before the arrival of the Gurkhas, petty criminal matters and the policing in the 'interior' were dealt with by local foudjars (governors), while serious crimes and those arising in and around Almora or Srinagar had been dealt with by the Diwan of the Chand Raja's court. While this system was not without arbitrary and despotic aspects, it did operate within the conventions of local custom and practice.<sup>31</sup>

However, as discussed earlier, under the Gurkhas, the revenue of each pargana had been assigned directly to individual Gurkha commanders to enable them to pay their troops. With this, came the judicial powers to enforce payment and punish crime. Under this model, maximizing revenue collection and not justice was the primary focus of the criminal justice system, and a swath of novel finable offences were introduced simply to raise revenue. The most notorious of these was a prohibition in Garhwal on women being on rooftops where firewood, crops and clothes were stored and dried. As access to

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<sup>29</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 30. Note that B. H. Hodgson was assistant to Traill September 1819 to April 1820 but there is no evidence he took up judicial duties during his brief tenure.

<sup>30</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 171-72.

<sup>31</sup> *Ibid.*, p. 170.



this space was essential to the domestic economy of the region, there was little alternative for most Paharis other than to pay this fine/tax as a cost of living.<sup>32</sup>

With the much of the custom and practice around crime transformed and corrupted to meet the needs of the Gurkhas, and the institutions of the system in the hands of farmers, Traill chose to dominate the system himself and take all judicial matters under his own cognizance. His clear ambition in this action was to restore confidence in the justice system and return as many of its practices as he felt comfortable with to those of the pre-Gurkha period.<sup>33</sup>

### *Hybrid court practices*

Traill argued that, while the specifics of the custom and practice centred on crime and the personnel who had administered the system had been transformed and corrupted under Gurkha rule, the forms of investigation and decision in criminal matters had changed little, and he continued with the practices he found in place.<sup>34</sup> Trials conducted by Traill were unstructured summary processes, and examination of the parties concerned was by simple, direct *viva-voce* questioning. Traill found that this was usually sufficient to make the merits of a case clear, particularly as all witnesses usually agreed on what had occurred and that ‘the evidence of any witness is seldom required as the parties commonly agree wholly in their statements and admissions.’<sup>35</sup> If doubts or contradictions existed an oath was occasionally administered in a ceremony where a copy of the *Harbans* (a section of the *Mahabharata*) was laid on the head of the witness. However, Traill believed that ‘[t]heir simplicity of character [Pahari people] and common adherence to truth is however such as to render it extremely easy to elicit the whole truth without recourse to the ceremony, and indiscriminate application to it in all occasions is therefore uncalled for and would only tend to weaken its force.’<sup>36</sup>

Prior to Company occupation, and in practices common across the hills, the criminal justice system had often resorted to divination and ordeal to decide cases where

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<sup>32</sup> Ibid., pp. 172, 89.

<sup>33</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 30.

<sup>34</sup> Raper, ‘The Sources of the Ganges.’ See page 499 for the only known available contemporary report of criminal trials in Kumaon under Gurkha rule.

<sup>35</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 16/5/1821, KDRLI, vol: 7.

<sup>36</sup> Ibid.

no eyewitness accounts were available.<sup>37</sup> The divination often took the form of the names of the parties being written on separate slips of paper which were then rolled up and placed before an idol in a temple. A priest of the temple would then choose one of the slips of paper, and the person thereon named won the case. Alternatively, with the *tarazu ka dip*, the witness was weighed and, after resting overnight and engaging in a variety of ceremonies, reweighed. The oath was proven if the witness weighed more in the morning than they had the previous evening.<sup>38</sup>

Noting that the oath of ordeal of taking poison had disappeared from Kumaoni justice practices in earlier times, Traill believed that several forms of the oath of ordeal had persisted right up to Company occupation. One was the *gola dip* in which a red hot iron bar was placed in the hands of the defendant and carried a certain distance. Another was the *karai dip* in which the defendant's hands were plunged in boiling oil. The truth of the oaths was attested by the absence of burn marks on the hand of the oath taker. Alternatively, with the *tirka dip*, the witness placed his head in a barrel of water while a companion ran and fetched an arrow that had been shot away, with the oath being proved by the witness's head remaining submerged in the barrel until the companion returned.<sup>39</sup>

Traill was silent in his official correspondence regarding the fate of the various oaths of ordeal in his courts, and any reader of the 'Statistical Sketch' would most likely come away with the impression that the oaths of ordeal were practices of the pre-colonial past. But it is clear from later correspondence that Traill quietly retained at least the *gola dip* as valid evidence in cases involving religious and caste prohibitions. This only came to light after Traill's departure when a somewhat disbelieving and newly appointed Assistant Commissioner John Hallet Batten wrote to George Gowan in 1837 seeking direction on such practices. Batten outlined that the moonsiff (minor judicial officer) had approached him on several occasions to authorize a *gola dip* ceremony for cases involving loss of caste and similar issues. Batten had refused these requests but wanted to know if

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<sup>37</sup> Brian Houghton Hodgson, 'Some Account of the Systems of Law and Police as recognised in the State of Nepal,' *Journal of the Royal Asiatic Society of Great Britain & Ireland* 1, no. 02 (1834).

<sup>38</sup> Traill, 'Statistical Sketch of the Kumaon,' pp.170-73.

<sup>39</sup> *Ibid.*, pp. 172–73.

the *gola dip* was the normal practice of courts in Kumaon and if its use had been approved by a higher authority.<sup>40</sup>

Gowan responded to Batten's alarm about using the oath of ordeal by assuring him that the *gola dip* indeed continued to be practised by courts in Kumaon. He outlined that its use was a power vested solely in the sanction of the Commissioner and the ceremony was superintended by the court pundit. Gowan allowed that the practice was 'a remnant of ignorance and barbarianism...sanctioned by immemorial usage...' but, as the *gola dip* was easily rigged to give the desired result 'if a poor creature can be restored to the pale of society by having recourse to so harmless a procedure, I cannot see any great objection to its continuance.'<sup>41</sup>

### ***Persistence and change in what constituted a crime***

Traill's use of the oath of ordeal for caste matters that came before him demonstrates his respect for and inclination to persist with the Kumaoni people's customary practices and understanding of law and again highlights the hybrid nature of the Extra-Regulation Order. Superintendence of local religious matters by a colonial British court was not unprecedented, but, by the early nineteenth century, was well beyond the remit of most administrators. However, Traill, responding to Kumaon's distant and distinct conditions, continued to receive such cases as part of his role as a *de facto* sovereign

The role of Pahari courts in religious questions, particularly caste matters, is brought to light in Brian Hodgson's account of the justice system in Kathmandu from 1834.<sup>42</sup> Hodgson, considered by many to be the founder of Himalayan studies, was briefly Assistant Commissioner to Traill in 1819–1820, before he moved on to postings in Nepal where he eventually became the British Resident.<sup>43</sup> His many scholarly articles, some focused on the legal practices of Nepal, give some level of insight into the practices, or at least the mindset at play, in the judicial practices of Kumaon before the

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<sup>40</sup> Batten, J. H. to Gowan, G.E., 28/6/1837 KDMLR, vol: 54; Gowan, G. E. to Batten, J. H. – Assistant Commissioner in Gurhwal, 12/7/1837, KDJLI, vol: 33.

<sup>41</sup> Rollin M. Perkins, 'Absurdities in Criminal Procedure: Trial by Ordeal,' *Iowa Law Review* 11(1925): p. 298; Gowan, G. E. to Batten, J. H. – Assistant Commissioner in Gurhwal, 12/7/1837, KDJLI, vol: 33.

<sup>42</sup> Brian Houghton Hodgson, 'On the Law and Legal Practice of Nepal, as regards Familiar Intercourse between a Hindú and an Outcast,' *Journal of the Royal Asiatic Society of Great Britain & Ireland* 1, no. 01 (1834): pp. 47-48.

<sup>43</sup> David Waterhouse, *The Origins of Himalayan Studies: Brian Houghton Hodgson in Nepal and Darjeeling* (New York, Routledge, 2004).

Company's conquest. His report highlights the prominence of religious, spiritual and communal matters in Pahari courts, that to the British judicial mind of the period commonly seemed far from the natural provenance of the judicature.<sup>44</sup>

It is in Nepal alone, ...two-thirds of the time of the judges is employed in the discussion of cases better fitted for the confessional, or the tribunal of public opinion, or some domestic court, such as the *Panchayat* of brethren or fellow-craftsmen, than for a King's Court of Justice...to the British magistrate they are and have been a dead letter: let him look to the variety of dreadful inflictions assigned to violations of the law of caste, and remember, that whilst their literal fulfilment is the Hindu magistrate's most sacred obligation, British magistrates shrink with horror and disgust at the very thought of them; and he will be better prepared to appreciate and make allowance for the sentiments of Hindu sovereigns and Hindu magistrates.<sup>45</sup>

However, Traill, operating in the many novel contingencies of Kumaon did not feel that such matters were 'a dead letter.'<sup>46</sup> Complaints against individuals for witchcraft and sorcery were common, as were applications centred on loss of caste. Unless these were managed effectively, tensions around such issues could quickly escalate to violence, revenge and murder.<sup>47</sup>

As Traill put it:

These references are, no doubt, a consequence of the practice established under the former governments, by which the cognizance of cases...was confined to the Government Court. The public at large still appear to consider such reference as the only effectual means for obtaining restoration and absolution.<sup>48</sup>

This respect for and inclination to persist with the Kumaoni people's customary practices and understanding of the law was not limited to religious matters. Traill appears to have had a limited zeal for any broad scale reform on social and other matters with the exception of the practice of selling wives and widows. Despite the continuation of

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<sup>44</sup> Cassels reports that in the early eighteenth-century British Courts in Bombay had reversed caste expulsion orders by panchayats, but the practice appears to have largely disappeared by the early nineteenth century in most of Bengal. Cassels, *Social Legislation of the East India Company: Public Justice Versus Public Instruction*, p. 7.

<sup>45</sup> Hodgson, 'On the Law and Legal Practice of Nepal, as regards Familiar Intercourse between a Hindú and an Outcast,' pp. 47–48.

<sup>46</sup> Here 'dead letter' is used in its archaic sense of 'A writ, statute, ordinance, etc., which is or has become practically without force or inoperative, though not formally repealed or abolished.' OED

<sup>47</sup> Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7; Gowan, G. E. to Batten, J. H. – Assistant Commissioner in Gurhwal 12/7/1837, KDJLI, vol: 33.

<sup>48</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 198.

practices that, to the modern observer, were patently criminal, particularly practices regarding women, he gave priority to respect for custom and social stability over reform and change.<sup>49</sup> Traill may have been highly innovative and effective in melding local and Company practices into novel forms, but nearly all calls for change in the criminal law of Kumaon appear to have come from outside forces with only a very few originating from Traill himself.

The first change in the substance of the criminal law during Traill's tenure as Commissioner came in 1819. The Nizamat Adalat in Calcutta was concerned by arguments raised in a case referred to the Court of Circuit under Regulation X of 1817. The defendant Beerbhum had argued that his killing of Luchooa was lawful as, under Pahari law, a husband, after due notice to the sovereign, was permitted to take the life of an adulterer.<sup>50</sup> Alarmed about the apparent validity of this defence, the Register of the Nizamat Adalat ordered Traill to draft an order prohibiting the custom.<sup>51</sup> Traill promptly—perhaps even cheerfully—replied with a draft proclamation with two significant features.

Traill's draft prohibition begins by acknowledging the practice of killing an adulterer is compatible with Kumaoni law and custom, but that such a custom was incompatible with the general principles of British justice and Anglo-Indian law. Following this argument, the draft proclamation then declared the custom unlawful and punishable by death:

Whereas it appears that agreeable to the former usages and customs existing in Kumaon it was allowable to the husband of an adulteress (after due notice given to the Executive Government) to take the life of an adulterer; and whereas such practice is irreconcilable with justice and good government and moreover contrary to the laws and usages established and recognized by the British Government, within the territories under their dominion be it therefore made known that such practice is hereby declared unlawful and is prohibited accordingly: and is hereby ordained that any person who in opposition to the prohibition shall hereafter take the life of an adulterer he will, on conviction before a court of justice, be liable to suffer death.<sup>52</sup>

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<sup>49</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 34.

<sup>50</sup> It is unclear if the Court of Circuit or the Nizamat Adalat allowed Beerbhum's defence to succeed.

<sup>51</sup> Traill, G. W. to Registrar Nizamat Adalat Fort William, 26/6/1819, KDRLI, vol: 7.

<sup>52</sup> *Ibid.*

Traill's draft found word for word expression in a formal textually mediated proclamation of prohibition, 'Letter No. 1230, dated 6th August 1819' issued by the Company-Government in Calcutta. However, the letter then went on to add a significant additional clause that Traill had neither recommended nor apparently consulted on. This second clause formalized and codified the crime of adultery.

Be it known, however, that according to the laws of the British Government, a husband is entitled to redress against the adulterer on application to the Commissioner; such adulterer being liable to punishment for his offence on conviction before a court of justice.<sup>53</sup>

Traill reported that adultery was considered a crime in pre-colonial Kumaon, but essentially only amongst the sanskritized *thuljat*.<sup>54</sup> Complaints by Khasa and *dom* men regarding adultery were almost unknown unless the woman had moved in with her new partner or, in the parlance of the time, had been 'abducted.' The prohibition's generalization of the crime of adultery to the whole community and its interplay with the prohibition of selling wives and widows, introduced later in 1823–1824, was to have many unforeseen negative consequence, but these will be dealt with in chapter 7, Changes in property in persons.

Another change in local custom and practice around crime occurred as a result of the Suppression of Suttee Orders of 1829.<sup>55</sup> Like action on the practice of killing adulterers, action on this issue was prompted by external forces, not Traill himself. Sati (the burning or burial alive of a widow), like the adultery law was only practised in Kumaon by a few of the region's tiny community of sanskritized *thuljat*. Through the early 1820s, about 6–8 suttees occurred each year, but a cholera outbreak in 1828 and consequent spike in the number of newly widowed women, resulted in 17 satis for that year.<sup>56</sup> This occurred just as the long developing concern about sati by the Company-Government in Calcutta was coming to a peak. Traill's Police and Judicial Report of February 1829 included comment on the sharp rise in the number of satis seen for the

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<sup>53</sup> 'PROCLAMATION ISSUED TO THE INHABITANTS OF KUMAON, BY ORDER OF THE GOVERNOR-GENERAL IN COUNCIL Letter No. 1230', 6/8/1819, KDMLR, vol: 16.

<sup>54</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 171-72.

<sup>55</sup> The Suppression of Suttee Orders, Three lithographed documents, December 1829, KDMLR, vol: 40.

<sup>56</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29. see also, 'Kumaon Casualties 1825-1837' appendix 5.2.2

previous year and this drew both official attention and displeasure.<sup>57</sup> With his superior's eyes on him, Traill could not but implement the Bengal-wide Suttee [Sati] Suppression orders issued in December 1829.<sup>58</sup> However, and as was intended by the Company-Government, this resulted in no criminal prosecutions, and in Kumaon at least, was achieved entirely through persuasion and vigilance.<sup>59</sup> No satis are recorded as having occurred in Kumaon after 1829.

Highlighting his reticence to interfere in spiritual matters when not directed to though, Traill took no firm action to suppress the much larger practices of pilgrims self-immolating at Kedarnath. Most years, around 30 Gujarati pilgrims would walk on past the temple at Kedarnath dressed only in a single cloth until they became overwhelmed by the snows and the cold. Self-immolation deaths reached a high of 66 in 1832.<sup>60</sup> Traill had instructed the temple keepers to try to dissuade pilgrims from committing suicide in this manner but took no strong, legal or administrative action to stop the practice, and it continued well into the twentieth century.<sup>61</sup>

## Police reports

The first quantitative overview of the level and nature of crime in Kumaon emerged in early 1824 in a document headed, 'Report on the state of civil and criminal police in the province for the expired year 1823.'<sup>62</sup> This document, and the series that was to follow—the 'Police and Judicial Reports'—marked a significant, if brief, period of experimentation and innovation, in how crime was reported and described in Kumaon.

The principal innovation in the Police and Judicial Reports is the dominant role of statistical tables where crime was enumerated and categorised into columns and rows. These tables could only have been the product of an orderly and structured record keeping process that had been standardized across the Province.<sup>63</sup> Before this

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<sup>57</sup> Secretary to Government to Traill, G. W., 10/3/1829, KDMLR, vol: 39.

<sup>58</sup> Similar Orders were issued in the Madras and Bombay Presidencies six months later. Mason, *The men who ruled India*, p. 129.

<sup>59</sup> The Suppression of Suttee Orders, Three lithographed documents, December 1829, KDMLR, vol: 40.

<sup>60</sup> Traill, G. W. to Campbel, A. - Commissioner for Bareilly, 1/1/1833, KDJLI, vol: 32.

<sup>61</sup> Traill, G. W. to Bayley, W. B. - Secretary to the Judicial Department, 1/1/1824, KDJLI, vol: 26.

<sup>62</sup> Ibid.

<sup>63</sup> Very detailed 'Calendars of prisoners' and other similar document appear throughout the PMR and speak of a meticulous, orderly, and rigid, system for recoding crime in a format from which the Police and Judicial Reports

innovation, reporting on crime and judicial matters had been primarily expressed in prose descriptions focused on individual matters and individual cases. The limited quantitative data found within these early reports functioned largely as a haphazard addendum to the prose. This dominance of prose over quantitative data was reversed in the 'Police and Judicial Reports.' The statistical tables within the reports moved from being an addendum to being at the centre, while the prose description started to take on the quality of being a brief preface. Within this transposition, the subject of the reports is transformed from individuals to the population, a hallmark feature of modern governmental practices. Prose descriptions continued to be an important element of judicial reporting, but their use was limited to rare and exceptional matters or matters of particular topical concern.

The reports also mark the point of phase change from reporting being a haphazard and irregular administrative activity prompted by particular requests or Traill's current ambitions to being a regular annual and then biannual administrative activity that followed the calendar—again, a hallmark feature of modern governmental practices. Importantly, this innovative and sophisticated form of crime reporting was not drawn from any practices found within the regulations where this modern style of crime reporting did not appear until much later in the nineteenth century.<sup>64</sup> Rather, the Police and Judicial Report series emerged through a process of independent experimentation, iteration, and innovation in which both Traill and various secretaries to the Judicial Department took part during the period 1823 to 1829.<sup>65</sup> Disappointingly, the Police and Judicial Reports series was discontinued in 1838, obliterated by the dead hand behind the New Era. In this retrograde step, the primary purpose of crime reporting reverted from understanding the behaviour of the population to "the supervision and correction of irregularities and misconduct on the part of the police and others."<sup>66</sup> Nevertheless, from 1825 to 1837, the 'Police and Judicial Report' series' acquired a, more or less, standard format. This standardization allows, with some compromise, for the compilation of the

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could be drawn. E.g., Calendar of prisoners committed by the Commissioner under Regulation X of 1817, Undated 1835, KDJLI, vol: 30.

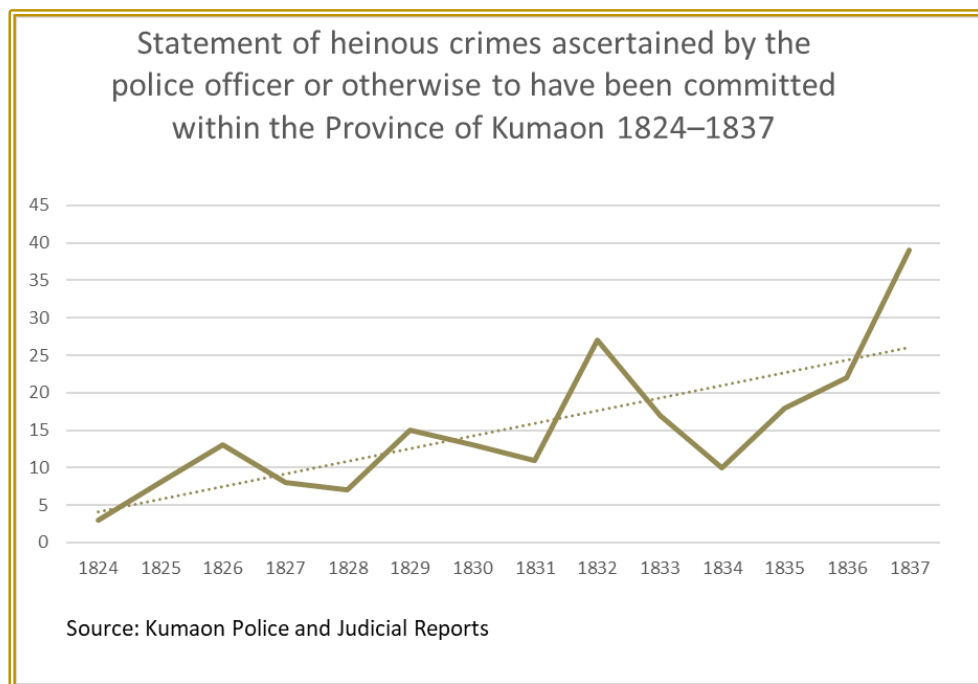
<sup>64</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 33.

<sup>65</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 14/2/1826, KDJLI, vol: 28.

<sup>66</sup> Lushington, G. T. to Register Suddar Dawani and Nizamut Adalat N.W.P.- Allahabad, 8/5/1839, KDRLI, vol: 13.



time series of serious crime that is a delight to all modern criminologist, even if the absence of population data precludes the calculation of crime rates.<sup>67</sup>



**Figure 5.1. Heinous crimes reported in Kumaon Province 1824–1837.**

Figure 5.1 shows that, as Traill had anticipated, serious crime did slowly increase in Kumaon after occupation, but only from a trivial to an insignificant level. What cannot be seen from figure 5.1 is that much of the increase in serious crime took place in the Bhabar and Terai. Highlighting the continuing value of prose comments to add nuance to the reports, the reports make clear that nearly all the crimes committed in this liminal space were perpetrated by criminal gangs from the plains who arrived each winter to prey on the rush of trade and the herds of animal brought down from the hills for seasonal pasturage. With the nearby princely states of Rampur and Saharanpur offering protection from Company authority and a ready market for stolen goods and cattle, Traill was never able to develop a fully effective policing model for this space and apprehension rates remained low.<sup>68</sup>

<sup>67</sup> Note that the author was formally the Acting Force Statistician for Victoria Police, Australia. As a professional police statistician, I would comment that finding the Police and Judicial Reports in the Pre-Mutiny Records was like finding the formula  $E=mc^2$  in a paper published 50 years before Einstein’s paper on special relativity. Further note that the most significant compromise in compiling the time series for figure 5.1 was excluding ‘Thefts less than Rs50’ which were not reported between 1824 and 1829.

<sup>68</sup> Gowan, G. E. to Boulderson, J. M. - Commissioner of Revenue Circuit, Moradabad, 1/7/1836, KDJLI, vol: 30; Traill, G. W. to Campbel, A. - Commissioner for Bareilly, 1/1/1833, KDJLI, vol: 32.

Later versions of the ‘Police and Judicial Report’ were very much focused on serious crime. However, the initial ‘Report’ from 1823 also gives an insight into the small number of less serious offences that came before Traill such as minor thefts, assaults and local disputes.<sup>69</sup> This allows for insight into the most common interactions of the Kumaoni people with Traill’s new formal criminal practices, interactions where instruction, gentle correction and protection from a cruel and corrupting world were plainly to the fore.

<b>Report on the state of civil and criminal police in the province for the expired year 1823.</b>					
<b>Offence</b>	<b>Total Number</b>	<b>Convicted</b>	<b>Acquitted</b>	<b>Not Apprehended</b>	<b>Under examination</b>
1 Murder	3	2 Committed for trial	0	1	0
2 Dacoity	3	0	0	3	0
3 Arson	1	1	0	0	0
4 Thefts above Rs50	8	1	2	4	1
5 Thefts below Rs50	18	11	4	3	0
6 Selling slaves	4	3	1	0	0
7 Assaults violent	7	2	1	3	1
8 Adultery	7	7	0	0	0
9 Unnatural crimes	1	1	0	0	0
Totals	52	20	8	14	2

**Table 5.1.a. Heinous crime in Kumaon, 1823. Traill, G. W. to Bayley, W. B. - Secretary to the Judicial Department, 1/1/1824, KDJLI, vol: 26.**

<sup>69</sup> Traill, G. W. to Bayley, W. B. - Secretary to the Judicial Department, 1/1/1824, KDJLI, vol: 26.

Emphasizing that he saw serious and minor crimes as two separate realms of operation, Traill split his tabulation of crime in his 1823 ‘Report’ into two sections that were separately totalled. He commented that unlike serious crime, ‘cases of a trivial nature...are rather on the increase...as under mentioned’:

Offence	Total Number	Convicted	Acquitted	Not Apprehended	Under examination
10 Complaints regarding sale of females [wives and widows]	168	19	67	70	4
11 Defamation, petty assaults, trespass	115	28	49	34	4
12 Cases regarding caste	27	-	-	-	-
Totals	310	47	116	112	8

**Table 5.1.b. ‘Trivial’ crime in Kumaon 1823. Traill, G. W. to Bayley, W. B. - Secretary to the Judicial Department, 1/1/1824, KDJLI, vol: 26.**

Conflict around Traill’s new and little-understood law on the selling of wives and widows reported at row 10 dominates the trivial offences, but again this complex issue will be dealt with in more detail in chapter 7. Almost as common as the selling of wives and widows was a group of offences at row 11 that can be usefully described as neighbourhood disputes, of which, only around 25 per cent resulted in a conviction.

Commissioner Lushington, writing long after Traill’s departure in response to official concern about this low conviction rate argued that the low rate was a product of the system of policing and prosecution in Kumaon that could not be compared to the system of the plains.<sup>70</sup> Police officers had no authority to bring minor matters to the courts, but ‘every hill-man seems to consider he has an individual right to be heard, however trivial the subject matter of the complaint may be.’<sup>71</sup> These trivial offences were matters between the parties involved and were not taken as crimes against the sovereign.

<sup>70</sup> Lushington, G. T. to Hamilton – Secretary to Government N.W.P. Judicial Department, 11/7/1843, KDJLI, vol: 37.

<sup>71</sup> *Ibid.*, paras. 6 and 9.

Being matters between the parties, they were commonly resolved through local practices in which Traill and later Commissioners took little part other than as a distant source of authority and justice. Many of these offences were dismissed or classified as ‘acquitted’ because of nonattendance of the prosecutor who was often satisfied simply with complaining about the matter. Many other cases were dismissed because of lack of evidence. These were often cases with no independent witness where the facts of the matter were only known to the complainant and defendant. Still others were not proceeded with because a *razeenumab* (deed of compromise) had been tended by the parties involved. Overall, less than 20 per cent of cases for minor offences such as small thefts, petty assaults, defamations, and the like, resulted in a conviction in 1823: a trend that continued right through the Extra-Regulation Order.<sup>72</sup> No convictions for religious offences were ever recorded, while complaints of witchcraft or sorcery usually resulted in orders to keep the peace against surety of a bond. The latter were not treated or punished as criminal unless the matter had resulted in arson, assault or murder.<sup>73</sup>

In proven cases of minor crimes, many perpetrators were released with admonishment. Where fines were imposed, they were most commonly paid to the victim as an act of restorative justice and set with the capacity of the perpetrator to pay clearly in mind.<sup>74</sup> Corporal punishments do not appear in the available case records, and in 1837 the then Commissioner Gorge Gowan specifically stated that punishment in Kumaon was limited to fines and imprisonment.<sup>75</sup> However, a letter from the Register [sic] of the Nizamat Adalat in 1846 directed that Henry Ramsay, then Assistant Commissioner in Garhwal, should be admonished for inflicting an excessive number of ‘stripes’ on a child.<sup>76</sup> Ramsay had sentenced the child to 15 lashes whereas plains regulation limited lashes to a child to 12 and then only with a light rattan. This single recorded example of

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<sup>73</sup> Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7; Batten, J. H. to Gowan, G.E., 28/6/1837 KDMLR, vol: 54. Gowan, G. E. to Harrington, H. B. – Officiating Register Nizamat Adawlat N.W.P., 17/3/1837ab, KDJLI, vol: 33.

<sup>74</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p.40; Gowan, G. E. to Harrington, H. B. – Officiating Register Nizamat Adawlat N.W.P., 17/3/1837ab, KDJLI, vol: 33.

<sup>75</sup> Ibid.

<sup>76</sup> Edmonstone, G. J. – Registrar to Lushington, G. T., 3/3/1846, KDMLR, vol: 81.

the use of corporal punishments in the KDPMR suggests that corporal punishment may have occasionally been inflicted, but as an aberration, not as a norm.

## Policing

The total absence of theft, and the extreme morality of the people in this province, renders any provisions in regard to police unnecessary.<sup>77</sup>

G. W. Traill, March 1821

In the almost crime free hills, Gardner and Traill introduced only limited changes to customary policing practices during their tenures. They did establish a police thana at Almora staffed by a small number of irregular armed *burkundazes*, but the influence of this novel institution and its staff was almost entirely confined to the town and its environs.<sup>78</sup> In the interior, policing remained embedded in the practices of custom, and, while some elements of state-centred oversight occurred through the revenue tehsildars and the few new patwari distributed throughout the Province at that time, policing was largely left to the everyday practices and institutions of the population.<sup>79</sup> As Traill put it in 1819 ‘so great and universal is the detestation entertained by the inhabitants against theft or other more serious offences that in the event of their commission [,] every exertion is spontaneously used by [the local people] for the detection and apprehension of the perpetrators.’<sup>80</sup> Coordination of this spontaneous response to crime was a customary responsibility of the region’s *kamin*, *siana*, *pudban*, and talukdar who continued to be compensated for the responsibility through their established *nuzurana*.<sup>81</sup>

That the policing of crime in the hills remained embedded in the practices and structures of custom did not mean that policing more generally was not transformed in its meeting with the Company’s formal governmental practices. Crime in Kumaon may have been a trivial matter, but, under Traill, policing took on matters never previously the concern of the sovereign and, in doing so, it took it on novel forms and modes. This is

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<sup>77</sup> Traill, G. W. to Oldfield, H. L. – Secretary to the Board of Commissioners Furukabad, 14/3/1821b KDRLI, vol: 7.

<sup>78</sup> Gardner, E. to Morton, W. - Civil Auditor Fort William, 1/9/1815, KDRLI, vol: 1.

<sup>79</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 198.

<sup>80</sup> Traill, G. W. to Elliot, Charles - 4th Judge of the Court Circuit for the Division of Bareilly Commissioner under Regulation X of 1817, 16/4/1819, KDRLI, vol: 6.

<sup>81</sup> Traill, G. W. to Shore, J. - Assistant Commissioner at Dehra Dun, 14/12/1826, KDJLI, vol: 28.

highlighted by the prominent place of casualties and other data in the 'Police and Judicial Reports' (see Appendix 5.2.2).

Systematically recording and enumerating unexpected violent deaths from causes such as disease, suicide, accident, predation by wild animals, and religious practices, was not an established responsibility or capability of a Pahari sovereign in pre-colonial times. Nor was it a responsibility or capability of the region's *kamin, siana, pudhan*, and talukdar.<sup>82</sup> Individual cases may have been noted and responded to, but no systemic approach to such events is apparent. In contrast, Traill relatively quickly developed a system of monitoring and recording such deaths that, by 1825, was capable of supplying epidemiological time series data.<sup>83</sup>

With only limited development of his emergent hill patwari system by this time, the functioning of Traill's new incident recording and reporting system was almost entirely dependent on the region's existing *kamin, siana, pudhan* and talukdar. The development of their capacity to undertake such an abstract formal administrative practice represents another significant point of phase change in the transition of custom to the formal governmental practices of modernity. A violent or unnatural death was no longer understood just as a matter of concern to family and friends. It was now also a concern of government, and understood as a number able to be summed, averaged, and, eventually, calculated as a rate. These numerical abstractions were in turn used as a basis to guide and measure the results of intervention such as the suppression of tigers and sati.<sup>84</sup>

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<sup>82</sup> Traill, G. W. to Glyn, R. T. as Commissioner under Regulation X of 1817, 19/7/1822, KDJLI, vol: 25.

<sup>83</sup> Traill had been trained in political economy and demography by Thomas Malthus at Haileybury.

<sup>84</sup> It was not until 1854 that John Snow took the handle off the Broad Street pump, but his actions, while largely intuitive, were guided by epidemiological data.

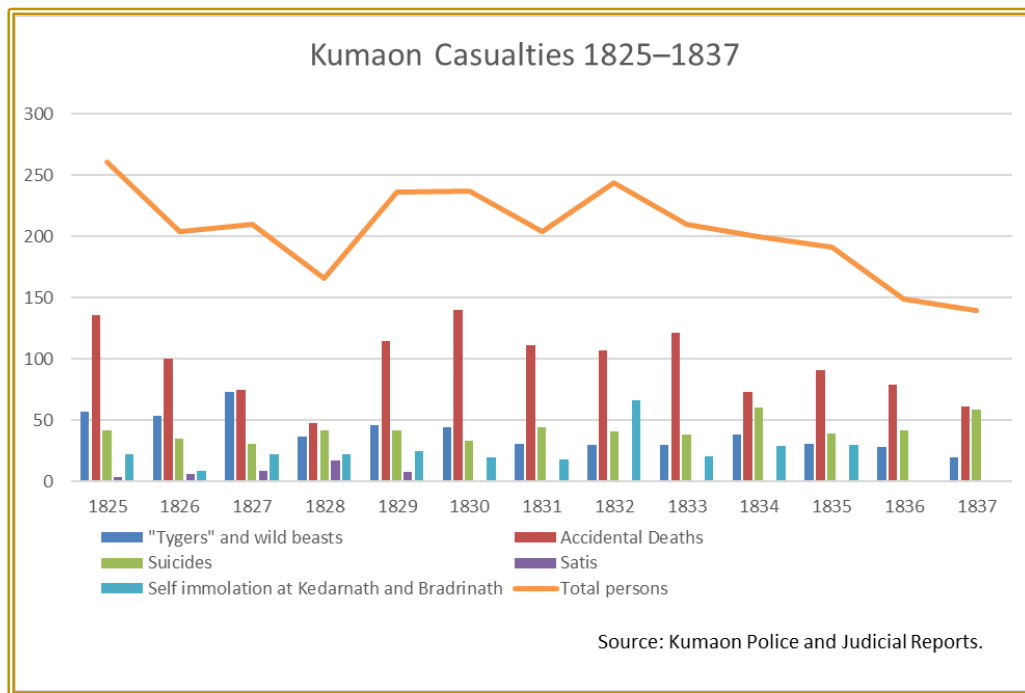


Figure 5.2. Kumaon casualties 1825–1837.

This development of the institutional capacity to understand events numerically can be seen most clearly in the recording and monitoring of cholera deaths. The ‘Police and Judicial Report’ for 1828, drawing from locally compiled reports, noted that there were 13,069 recorded cholera deaths that year (around 6.3 per cent of the population).<sup>85</sup> Further, detailed pargana based tabulations within the 1828 report, accompanied by population data, allowed Traill to understand when and where the epidemic had travelled and that it was at its most virulent in the northern Bhotiya districts where the death rate reached 30 in 100 persons. For Traill then, the epidemic was not just a series of unrelated tragedies, but an event able to be understood on a population-wide and spatial basis through statistical tools.

This a radical contrast to the policing system’s capacity during an earlier cholera outbreak in 1820. Because of the inchoate development of the incident recording and reporting function of the policing system at the time, Traill was only able to offer the prose description ‘the province was subjected to equal if not greater desolation from the

<sup>85</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

epidemic...’ and he lamented that ‘[f]rom the incomplete records for 1820, no comparison can be offered.’<sup>86</sup>

The change and development in the capacity of the policing system to record and report such data between 1820 and 1828 was considerable. Fortunately for Gowan, it was a capacity that he was able to bring to bear to assess and control an outbreak of plague in Garhwal during 1836.<sup>87</sup>

### ***Policing in the Bhabar and Terai***

In contrast to the systems developed in the almost crime free hills, the liminal space of the Bhabar and Terai presented Traill with a very different challenge in establishing an effective policing system. In the first few years of occupation, policing in this space was conducted on an existing chowkidari (petty officers of police/watchman) model that was essentially a protection racket.<sup>88</sup> In a model that Traill believed to be of ancient origins, an accord had been struck with leaders of the local criminal clans, Ayeen Khan and Numeekhan Mewattee. In consideration of the right to collect a supposedly fixed tax on all persons, merchandise and cattle passing through the Bhabar and Terai, these criminal clans agreed to suppress crime and, supposedly, even compensate persons if they were robbed or molested.<sup>89</sup> Traill commented that while these men believed that they are not ‘Bandette,’ they were nevertheless, quite formidable.<sup>90</sup>

In his correspondence of the time, December 1817, Traill expressed a very positive view of this chowkidari model, believing the rates they charged quite low and acceptable to the merchants.<sup>91</sup> Moreover, the Gurkhas had tried to overturn the system, but this had led to a significant increase in banditry, a circumstance that Traill believed was likely to reoccur if the Company likewise tried to overturn this customary policing model. However, only a few days after Traill’s report on the Terai chowkidari system, all internal customs duties were abandoned by the Company-Government in Calcutta as part

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<sup>86</sup> Ibid.

<sup>87</sup> Gowan, G. E. to Boulderson, J. M. - Commissioner of Revenue Circuit, Moradabad, 1/7/1836, KDJLI, vol: 30.

<sup>88</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furrucabad, 6/12/1817, KDRLI, vol: 5.

<sup>89</sup> Ibid.; Traill, ‘Statistical Sketch of the Kumaon,’ p. 199.

<sup>90</sup> Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furrucabad, 6/12/1817, KDRLI, vol: 5.

<sup>91</sup> Ibid.



of an India-wide push to promote trade.<sup>92</sup> The fees levied by the chowkidars fell under the head of ‘internal customs duties’ and so the whole system was replaced early in 1818.<sup>93</sup>

Forced to seek an alternative to the chowkidari model, the existing thana at Kotdwara, Dhikuli, Kota, Bhamouri and Timli on the passes leading to the plains were supplemented by forces from the Kumaon Provincial Battalion and a line of guards was established along the frontier. These guards were withdrawn during the unhealthy season from May to October to protect the health of the men.<sup>94</sup> While Traill outlined that this new policing model had some positive impact, the force proved to be only partially effective in preventing an annual invasion of bandits, cattle-lifters and dacoits from the plains who arrived to take advantage of the verdant thick cover that persisted in the Terai through the dry healthy season when trade and travel was at its peak.

This move from the pre-colonial chowkidari model to a more formal state-centred model was only the first of many changes to policing that Bhabar and Terai would see over the course of the Extra-Regulation Order. These changes would later include transfer of control of criminal justice matters in the region to plains-based authorities and the deployment of a regular police force formed under plains regulations. This conventional policing model, in turn, proved to be dysfunctional and was bitterly resented and opposed by those Paharis who moved each cool season to the Bhabar and Terai as part of their transhumant way of life. Pahari reaction to plains-style policing and how the matter was resolved will be more fully discussed in chapter 8.<sup>95</sup>

## **Punishment**

Traill reported that in pre-colonial times, the usual punishments for nearly every serious crime committed by caste Hindus was restitution, fine or confiscation of property

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<sup>92</sup> Traill, G. W. to Newnham, H. - Secretary to the Board of Commissioners at Furrucabad, 14/12/1817, KDRLI, vol: 5.

<sup>93</sup> Note that in the ‘Statistical Sketch of the Kumaon’, Traill paints a negative view of the Terai Chowkidari system and reports that it was very inefficient, and that the Chowkidars were complicit, perhaps principles in the region’s many serious crimes. One reading of this apparent contradiction with the earlier correspondence might be that Traill wished to gloss over his initial advice on the matter. Traill was a reliable a reporter, but his work was always the dynamic product of memory, experience and ambition. p. 199.

<sup>94</sup> Traill, ‘Statistical Sketch of the Kumaon,’ pp. 198-99.

<sup>95</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35.

that often included the offender's family members.<sup>96</sup> Even murder by caste Hindus was rarely a capital offence with Rajputs usually heavily fined and Brahmins subject to banishment. Alternatively, and only occasionally, caste Hindus would be sentenced to labour as hereditary slaves on the Raja's land. In contrast, *dom* were subject to a range of penalties including loss of a hand or nose for thefts and execution for a range of offences, such as knowingly using an implement like a smoking pipe or other utensil used by a caste Hindu, willful destruction of a cow, as well as rape and murder. Executions, when they did occur, were by hanging or beheading, although the Gurkhas had reportedly introduced death by impalement and torture.<sup>97</sup>

The Company introduced major changes in Kumaon's customary practices around punishment for serious offences, most obviously in the introduction of jail and transportation across seas, but little appeared to change for minor everyday offences.

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<sup>96</sup> Traill, 'Statistical Sketch of the Kumaon,' pp. 170-73.

<sup>97</sup> *Ibid.*, p. 171.

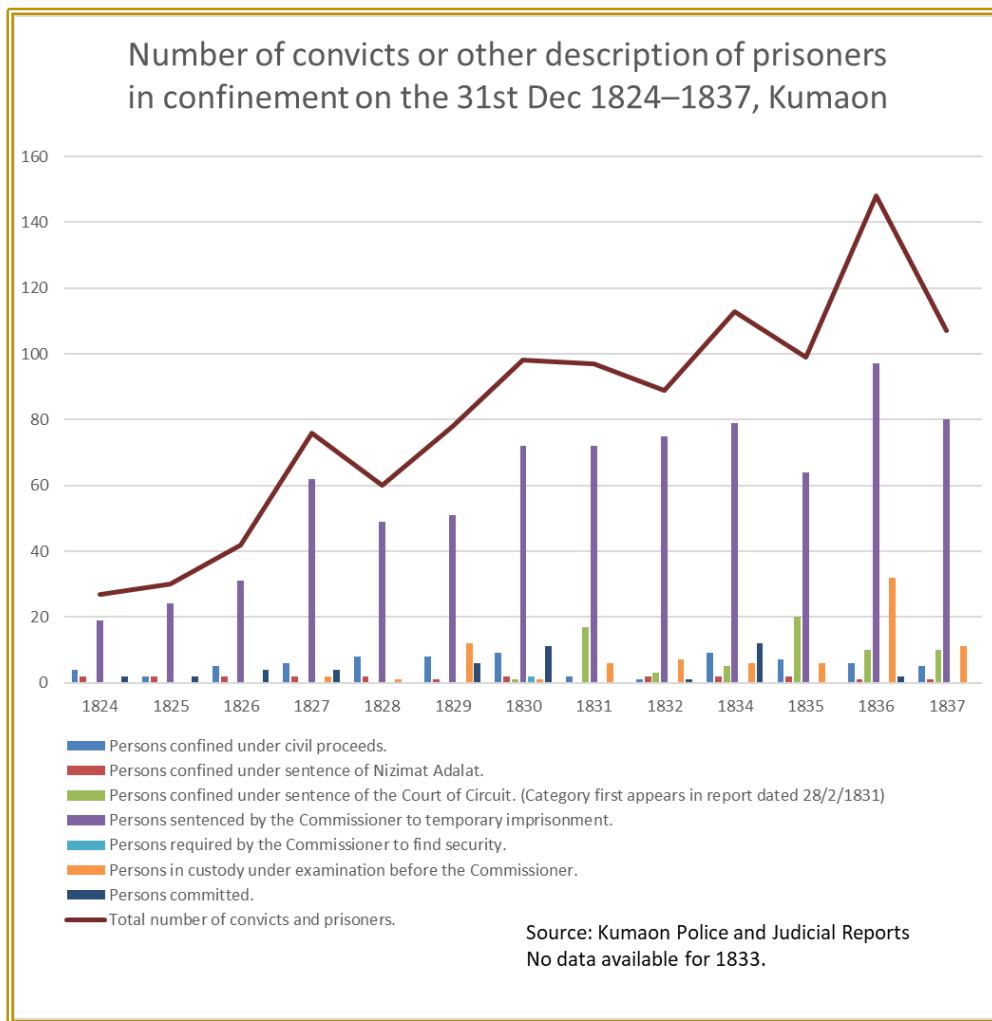


Figure 5.3. Number of prisoners confined to jail 1824–1837.

Nothing like a prison appears to have existed in Kumaon during pre-colonial times. The Chand Rajas and others are likely to have had some way of holding prisoners in the short term, but confinement as a punishment and any structure to perform such a task seem to have been entirely unknown. Yet from early 1816, Traill began looking at the issue of establishing a jail to contain the small numbers of prisoners sentenced to imprisonment or held for committal by his court, with the project progressing to plans and estimates by mid-year.<sup>98</sup> In its first year of operation, the jail never held more than 12 prisoners, but such a structure and the practice of confinement as punishment was an integral feature of Traill’s criminal justice system almost from the first instant.<sup>99</sup>

<sup>98</sup> Gardner, E. to Adam, J. - Secretary to Government in the Political Department, 28/1/1816, KDRLI, vol: 1; Traill, G. W. to Adam, J. - Secretary to Gov’t in the Political Department, 6/6/1816b, KDRLI, vol: 3.

<sup>99</sup> Traill, G. W. to Adam, J. – Secretary to the Political Department Fort William, 15/11/1816, KDRLI, vol: 4.

However, as early as 1816, Traill began to express concern about the usefulness of imprisonment as a deterrent to serious crime or to act as an incentive to achieve compliance with his orders for service as *kebuseea*. He believed that jail held little or no terror for most Kumaonis.<sup>100</sup> By 1822, Traill's concern had developed to the point where he feared that indifference to jail as a punishment had led to an increase in the number of murders.<sup>101</sup> Traill felt that for the less privileged classes—the classes that committed most of the few murders that did occur—imprisonment was not a burden as it offered them a better life than being free in the community. Being jailed itself had no impact on caste status—the foremost concern for many Kumaonis—and great care was taken that no practices within the jail in Almora infringed caste practices around commensality or who prepared food for whom.<sup>102</sup> With food and clothing supplied and little labour demanded, many poor Paharis simply did not mind being jailed.

The established precedent in Traill's court was that murder was only punished by execution in cases involving plunder (in later cases called 'aggravated murder'). Murders of passion or revenge not involving robbery were only punished with life imprisonment with or without banishment, or transportation across the sea. Traill outlined that although Kumaon only saw around three murders a year, this was probably an increase from earlier times.<sup>103</sup> He believed that under the Chand Rajas, cases of murder had usually been punished with a fine corresponding to the offender's entire wealth. Such a fine was generally unpayable and, in consequence, all the offender's property was sold to realize the fine. This property would have included the offender and his family. Most Kumaonis saw a life of slavery that extended to both their current and future family as a much greater penalty than life imprisonment for the offender alone.

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<sup>100</sup> Traill, G. W. to Bayley, W. B. – Chief Secretary to Government, 23/12/1819, KDRLI, vol: 7.

<sup>101</sup> Traill, G. W. to Princep, H. J. - Secretary to Government, 17/11/1822, KDJLI, vol: 25.

<sup>102</sup> Batten, J. H. to Lushington, G. T., 11/2/1840, KDJLI, vol: 35; Ramsay, H. to Batten, J. H., 2/11/1840, KDJLI, vol: 35.

<sup>103</sup> Traill, G. W. to Princep, H. J. - Secretary to Government, 17/11/1822, KDJLI, vol: 25.

Traill most clearly articulated this indifferent reaction of many Kumaoni to the novel institution of being jailed in a report of 1829 where he outlined that:

For the lower classes in this country, imprisonment carries with it no terrors, being commonly speaking, an improvement in their condition, the food and clothing are better than what they have hitherto procured with much greater labour than exacted from them in the jail, while the confinement is little felt. The fear of such punishment, under any system of management, can have little effect in deterring individuals of this description from commissioning crimes.<sup>104</sup>

Shortly after this report, the diet allowance for prisoners was reduced from one anna per day to three-quarters of an anna and then later, work on road gangs was introduced to the standard prison regime as a measure to decrease the attractiveness of imprisonment. However, even with this increased burden, imprisonment appeared to be of little concern to many Kumaonis.<sup>105</sup> Indeed, there are with several examples of Kumaoni prisoners remaining in jail when plainsmen had fled despite an easy opportunity to escape.<sup>106</sup>

This indifference to punishment by imprisonment for life is not likely to have extended to the equally new punishments of life imprisonment with transportation beyond seas. Transportation beyond seas included the application of a *godna* (branding the offender's forehead to mark them for life as a transportee).<sup>107</sup> Both acts removed a caste Hindu's caste and, perhaps influenced by this knowledge, appear have been only inflicted on caste Hindu's.<sup>108</sup>

Harsh punishments like transportation beyond seas and the crimes that led to their infliction do not typify the meeting of Kumaoni customs around crime, policing and punishment with the emergent formal governmental practices of the Company, however. These were rare exceptions that outraged both communities. Rather, the meeting of custom and formal practices in Kumaon around these issues were centred on Traill and others' assessment that Paharis were amongst the most honest and crime-free people on

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<sup>104</sup> Traill, G. W. to Dick, N. F. - Commissioner of Circuit 5th Division Bareilly, 15/9/1829, KDJLI, vol: 27.

<sup>105</sup> Traill, G. W. to Civil Auditor - Fort William, 14/11/1829, KDJLI, vol: 27; Ramsay, H. to Batten, J. H., 2/11/1840, KDJLI, vol: 35.

<sup>106</sup> Phillips, Capt. to Lushington, G. T., 1/12/1839, KDJLI, vol: 35.

<sup>107</sup> Wilson, *A Glossary of Judicial and Revenue Terms*, p. 180.

<sup>108</sup> Statement of convicts sentenced by the Nizamut Adawlat for life beyond sea 2/8/1839, KDJLI, vol: 34; Batten, J. H. to Lushington, G. T., 11/2/1840, KDJLI, vol: 35.

earth. As Nature's children, the Paharis needed instruction, gentle correction and protection from a cruel and corrupting world far more than they needed harsh punishment. Innovation and change did arise within the meeting, most prominently in administrative recording of crime and casualties, but this was an abstract and esoteric event far from most Paharis everyday experience and had little obvious impact on their ordinary lived experience. The same cannot be said for the meeting of Kumaoni customs and Company practices around civil justice which soon emerged as a major site of interaction between the two sets of practices.

## Chapter 6, Civil justice

They turned out bodily to see their master [Assistant Commissioner Batten] who seems to be personally and intimately acquainted with every one of them, as well as their lands, cultivation and feuds. This gives him a great advantage in settling and preventing the endless litigation, to which the hill men bear such an attachment, that it seems to form one of their chief luxuries. Many hundreds of the puharees would sell all they have and beggar themselves to be able to indulge in litigation with an obnoxious neighbour.<sup>1</sup>

‘Pilgrim’ Barron, *Notes of Wanderings in the Himmala*, 1844

This chapter will focus on the meeting of Kumaoni customs around civil justice with the emergent formal, state-centred, textually mediated, legal, revenue and administrative practices of the East India Company during the early Extra-Regulation Order. In contrast to the meeting around crime, policing and punishment, which to most Kumaonis was an insignificant site of interaction, civil justice was a major site of interaction with the new formal practices Traill and the Company introduced. Indeed, the Pahari people took to Traill’s civil court and its practices as a tool to prosecute disputes, both among themselves and with others, with such alacrity that it became an important motif in Kumaoni social intercourse.

### Formal basis for civil law

Civil justice in early colonial Kumaon emerged from small and informal beginnings that, unlike criminal justice, had no explicit legislative basis.<sup>2</sup> The Company’s ability to enforce revenue demands through court-based legal action was so a central a practice of the imperial enterprise that setting up a civil justice system was implicit in the proclamation of October 1816 that brought Traill as Commissioner under the general superintendence of the Board of Commissioners.<sup>3</sup> Creating such a system was simply a natural outcome of the directive that Traill’s duties were defined ‘by the general principles

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<sup>1</sup> Barron, *Notes of Wanderings in the Himmala*, p. 165.

<sup>2</sup> The Commissioners powers to make orders for revenue demands are implicit in Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon, 19/10/1816b, KDMLR, vol: 9. However, nothing in this proclamation explicitly states this fact.

<sup>3</sup> Ramsbotham, ‘Chapter XXV The Revenue Administration of Bengal,’ p. 415; Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon with enclosure of ‘Extract from the proceedings of His Excellency the Right Honorable the Governor-General in Council in the Secret Department’, 19/10/1816e, KDRLI, vol: 3.

established throughout the provinces.<sup>4</sup> Deeply embedded in those ‘general principles,’ was a set of emergent formal judicial practices that included avoidance of apparent conflicts of interest, rigid case recording practices, rigorous procedural fairness practices, the practice of determining a case on the merits of the evidence before the court and enforcing the orders of the court through a documented and prescribed process.<sup>5</sup> This set of concepts, practices and competencies were new to justice in Kumaon, but not to Traill. His four years as Assistant Magistrate at Farrukhabad had given him an extended period of training and experience in the Company’s judicial practices, including training and experience with the special powers required to hear summary suits under Regulation XXIV of 1814.<sup>6</sup> Familiar with the ‘general principles’ of these courts practices then, he did not need to carry their codified form with him into the hills, merely his memory of them.

Freed from the strictures of the regulations, Traill took the opportunity to develop an innovative institutional form for civil justice in Kumaon that embodied the ‘general principles’ but he adapted them to meet the contingencies of the political, economic and cultural conditions of the Pahar. Traill was certainly the pivot and catalyst through which this system emerged, however, a significant share of the authorship of the system’s practices should be attributed to the local people. The scale of their participation eventually grew to an enormous level, while many of the novel practices that emerged were unexpected and had no obvious basis in the pre-existing practices of the Company’s courts. Moreover, many of these new and unexpected practices operated well outside the walls of Traill’s cutcherry (courthouse/administrative office) and independently of his direction.

Initially, Traill’s was the only civil court in Kumaon, although it did not operate in isolation from existing customary judicial institutions.<sup>7</sup> This hybridity included an active

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<sup>4</sup> Ibid.

<sup>5</sup> These formal practices were also introduced into the Extra-Regulation Order’s criminal-justice system but are dealt with most fully here in the consideration of the civil-justice system because they were codified in the ‘Rules for the Guidance of Moonsiffs’.

<sup>6</sup> Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, p. 390.

<sup>7</sup> From 1825 to 1829 there was a second court presided over by John Shore, Assistant-Commissioner Dehradun. Established essentially as a sinecure for the son of Governor-General Baron Teignmouth, (previously aka John Shore) the post was dissolved when Shore took up other duties. See Penner and Maclean, *The Rebel Bureaucrat: Fredrick John Shore (1799-1837) as Critic of William Bentinck's India*.



relationship and interchange with trade and caste panchayats, heavy use of local arbitrators, and incorporation of the services of a court pundit knowledgeable in Indian philosophy, religion, and law. However, by the late 1820s, demand for civil justice services had grown to the point where they could not be delivered by one man and a new model was needed. This new model had two key elements. The first was the appointment of Mosley Smith as Assistant Commissioner Kumaon on 1 September 1829.<sup>8</sup> Smith was a young covenanted Company officer who had only been in India since May of that year. Over time, and as his experience and language skills increased, he would take on a prominent role in hearing original suits that came before the civil courts of the Commissioners. However, from about the same time that Mosley Smith arrived in Kumaon, Traill and Smith began to hear a decreasing proportion of civil plaints. In the second element of the new model, the bulk of the ever-increasing workload was taken up by a new kind of judicial officer, moonsiffs.

From 1829 until 1838, the existing *canoongoe* were recycled and remodelled as moonsiffs or junior Native Commissioners, with an active judicial role in civil but not criminal justice. In parallel, the court pundit was recycled into the role of *suddar ameen* or senior Native Commissioner, who had a higher civil-case value limit than the moonsiffs and some powers in criminal matters, particularly infractions against caste rules. It was within this new institution of the Native Commissioner's courts that the Pahari people first met a new, more sophisticated form of the formal, textually mediated, legal, revenue and administrative practices the Company introduced.

At the centre of this meeting was a regulation-like code developed by Traill to empower and guide the functioning of the new Native Commissioners—'Rules for the Guidance of Moonsiffs.'<sup>9</sup> Unlike earlier legislation in Kumaon, the Rules drew heavily from the regulation that empowered and ordered the practices of moonsiffs who dealt with minor civil suits on the plains, Regulation XXIII of 1814.<sup>10</sup> Intended to create a new category of public servant inculcated with formal practices based on the 'general

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<sup>8</sup> Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, p. 535; Note that Smith joined his establishment at Almora on 16 March 1830. See Smith, Mosley to Young, W. H. – Civil Auditor Forth William 9/8/1830, KDRLI, vol: 10.

<sup>9</sup> See Appendix 6.1. Note that Traill actually calls the 'Rules' a Regulation at two points in the document but they had no official status as a Regulation

<sup>10</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 25/5/1829, KDJLI, vol: 27.

principles,' the Rules had a very different form and style to all legislation seen earlier in the Extra-Regulation Order. To a degree, the informality and simplicity of earlier legislation was still apparent in the Rules, but, given the novel degree of instructive detail and formal legalism through which they were expressed, the Rules represent a point of phase change in the style of legislation developed for use in Kumaon.

Importantly though, while the Rules codified the process that was to be followed by the new Native Commissioners, the civil law itself remained uncoded. The Rules make no mention of what the civil law of Kumaon was or was not. Directed at the Native Commissioners as Company servants, not the Kumaoni people themselves, the Rules gave very detailed instructions on the practices to be followed when trying a lawsuit, but actively grounded the eventual determination of the case in existing custom by instructing:

When the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the moonsiffs shall give judgement according to *practice and right*.<sup>11</sup>

Like criminal law, then, civil law in Kumaon only underwent limited intrusions from codified practices during the early Extra-Regulation Order. As such, the law itself was to be primarily found in the everyday practices of both Traill's and the moonsiffs' courts rather than in a codex, while the only 'evidence' of this law was to be found in the detailed recording practices prescribed by the Rules.

### ***Civil justice practices on the plains***

Developments in the institutions and practice of criminal and civil justice in India and their relationship to the Company went through many parallel changes through the eighteenth century. However, the basis of these two arms of the law diverged almost immediately on the Company's decision to 'stand forth as Diwan' in Bengal and openly rule Bengal.<sup>12</sup> As discussed earlier, criminal law in the Company's courts was initially based almost exclusively on Indo-Islamic criminal law. In contrast, civil law was based

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<sup>11</sup> Ibid., para.29. Emphasis added.

<sup>12</sup> G. S. Chhabra, *Advanced Study in the History of Modern India (Volume-1: 1707-1803)*, vol. 1 (Darya Ganj: Lotus Press, 2005), p. 200.

on the customs of each religious community—Sikh, Hindu, Christian or Muslim—and then further bifurcated by local traditions and practice.

This division of the basis of civil law on community lines was most famously expressed in Rule 23 of Warren Hastings' 1772 'Plan for the Administration of Justice' which outlined:

That in all suits regarding inheritance, marriage, [succession] and caste and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos [Hindus] shall be invariably adhered to.<sup>13</sup>

Importantly, Hastings' maxim was extended in 1797 to include 'rents and goods and all matters of contract and dealings between party and party' by Sec. XIII of Geo. III Cap. CXLII.<sup>14</sup> This legislative move explicitly brought much of what the modern reader from the Anglophonic legal tradition understands as civil and administrative justice under Hastings' principle. Application of Hastings' principle in Kumaon however, required very different solutions to those that played out on the plains.

First, neither Islamic custom and practice nor the complex interaction of the civil law of the respective religious communities played a major role in the process of discovery, innovation and adaption of existing custom and practice necessary to the functioning of Traill's civil court. There were only a few hundred Muslims resident in the hills at the time, mostly traders not landholders, and nearly all of these were confined to Almora and Srinagar.<sup>15</sup> Most legal disputes within this community appear to have been resolved within their own or traders' panchayats, and the few cases that found their way into Traill's court appear to have been covered by the spirit of the dictum of Sec. III, Regulation VIII of 1795 that 'in cases in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting where Europeans or other persons not being Mahomadans or Hindoos shall be defendants, in which case the law of the plaintiff is to

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<sup>13</sup> In 1781 Chief Justice Impey added the word 'succession' to Hastings original list with the enactment of Regulation VI of 1781.

<sup>14</sup> Great Britain Parliament, *A Collection of Charters and Statutes Relating to the East India Company* (London: George Eyre and Andrew Stahan, 1817), p. 384.

<sup>15</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 152.

be the rule of decision.<sup>16</sup> From the limited case records available—indeed so limited that any conclusion drawn from it must be treated with real caution—it appears that the few matters that did arise involving Indo-Islamic civil law, were largely matters arising between plains Muslims associated with the army.

Second, while the near irrelevance of Islamic civil law in Kumaon to some extent reduced the complexity of civil law practices that emerged in the hills, application of orthodox Hindu jurisprudence was almost equally irrelevant in the Pahar, and its application in Traill's civil court required significant innovation. At this time on the plains, Company officers largely worked from the premise that the principles of Hindu law were to be found in ancient texts such as the *Mānavadharmaśāstra* or the 'Shaster' in Rule 23 of Hastings' 'Plan for the Administration of Justice' quoted above. In turn, the practical expression of these principles was to be found in a number of localized interpretive traditions such as *gandiya* and *mithila* that incorporated *lex loci* practices.<sup>17</sup> Now considered by some to be an 'Orientalist' inspired misperception of the reality on the ground, in the early nineteenth century, the belief that the law was to be found within these texts was grounded in the assessment that 'Mohomedans as well as Hindoos, were in possession of their respective written laws...which from their religious tenets and prejudices, they had been educated and habituated to regard and venerate as sacred.'<sup>18</sup>

Whatever the validity of the premise that ancient texts formed the authoritative basis of law on the plains, these texts held little or no relevance in Kumaon. As outlined in the introduction, most Kumaoni people identified as Hindus, but unorthodox Hindus. Many Pahari cultural practices that played into property rights and inheritance law—polyandry, divorce, sale of wives and widow remarriage—were an abomination to orthodox Hindu jurisprudence. As such, standard texts of the plains like the 'Shaster' had little to say about law in Kumaon's distant and distinct cultural conditions. Moreover, given Kumaon's largely oral traditions, written alternative texts had not emerged in the hills, and yet, as Blackstone tells us, the Company was obliged to allow for

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<sup>16</sup> John Clark Marshman, *Guide to the Civil Law of the Presidency of Fort William* (Calcutta: Serampore Press, 1842), p. 329.

<sup>17</sup> Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*, pp. 77–103.

<sup>18</sup> J. H. Harington, *An Elementary Analysis of the Laws and Regulations enacted by the Governor-General in Council, at Fort William in Bengal*. vol. I (Calcutta: The Honorable Company's Press, 1805), p. 11.

the customs of the land to continue until they were specifically changed by the sovereign.<sup>19</sup> As with criminal law in Kumaon, then, Traill began his process of discovery of the civil law of Kumaon not through examination of ancient texts, but through reflexive engagement with the people of Kumaon in the everyday practices of his courts and the wider community. In these circumstances, it is to Traill's documentation of his everyday judicial practices, informed as they were by the 'will of the whole community,' that we must turn to for 'evidence' of civil law in early-colonial Kumaon.

## Civil justice in early-colonial Kumaon

### *First sightings*

Revenue and *begar* were the Company's initial priority in the hills, not civil law. As such, the first mention of civil-law practices under the Extra-Regulation Order does not appear in the Pre-Mutiny Records until 1820, just over five years after occupation.<sup>20</sup> Here, in a report to Charles T. Metcalfe discussed earlier and by then Secretary to Government in the Political Department in Calcutta, Traill outlines that, in contrast to crime, the number of civil cases coming before him had increased enormously. Notwithstanding this increased workload, as with criminal matters, he continued to hear all cases alone. In this initial report, Traill attributed his sitting as the sole judge in the region to the practical contingency of the absence of a *suddar ameen* to hear minor matters. However, in correspondence from nearly a decade later that illustrates the transformative influence of memory, experience and ambition, he ascribed sitting alone to the poor standing in which the local pre-colonial judiciary were held, and to the need for him to set an example of how a judge should act.<sup>21</sup>

Whatever Traill's motivations for initially sitting alone were, by taking both criminal and civil justice directly into own his hands and dispensing it personally, he also

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<sup>19</sup> Blackstone and Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia* (2nd ed.), p. 108.

<sup>20</sup> Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7.

<sup>21</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

assumed aspects of the mytho-spiritual role of a ‘just ruler’ that remains central to Pahari spiritual practices.

In Kumaon, and Almora in particular, these practices are centred on the Chitai Temple on the ridge above Almora.<sup>22</sup> Here, worship is focused on Kumaon’s most powerful and defining deity Golu Dev, the God of Justice or *nyay ka devta*.<sup>23</sup> Beginning life as a mortal like many Kumaoni deities, on ascending the throne, Golu Dev constantly toured the country hearing all petitions, particularly the causes of the lower classes, and dispensing justice to all.<sup>24</sup> In the course of his judicial tours he established courts, which marked out and defined the territory of Kumaon.<sup>25</sup> Golu Dev was so loved by his people that even after a long and happy reign they would not accept his passing. Responding to their pleas not to move on, he promised to return whenever they were threatened with injustice, especially in matters of legal redress. In doing so, he passed from mortal to deity and became the focus of the adoration and entreaties of thousands of supplicants—practices that continue to the present day.

Traill certainly made no claims of deification or direct parallels with Golu Dev. Nevertheless, today, worship of Golu Dev and aspects of Traill’s court procedures have become intertwined. This entanglement is most clearly seen in the practice where many pleas for justice and boons to Golu Dev are now written on the official stamp paper that Traill introduced and required if someone approached him for justice (see figure 6.1). This hybridization of British and Pahari customs was not uncommon. Today, the other most visibly conspicuous aspect of Golu Dev worship is the offering of brass bells as a token of appreciation for favours received. Initiation of the practice is attributed to the British General, Hugh Wheeler. Wishing to visibly represent his acceptance of Golu Dev’s power and authority, Wheeler presented the first bell at the Golu Dev temple at

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<sup>22</sup> Other major centres of worship of Goludev are at Ghoda Khal near Bhowali and Gwarrail Chaur near Champawat.

<sup>23</sup> Malik, *Tales of Justice and Rituals of Divine Embodiment: Oral Narratives from the Central Himalaya*, p. 2. Kusum Budhwar, *Where Gods Dwell: Central Himalayan Folktales and Legends*, see ‘Goludev the Just’ pp. 37-54

<sup>24</sup> *Ibid.*, pp. 37-38.

<sup>25</sup> *Ibid.*, p. 40.

Gohda Khal.<sup>26</sup> This bell can still be seen and has become part of the tree on which it was originally hung.<sup>27</sup>



**Figure 6.1. Pleas for justice and boons at the Chitai Temple above Almora are often written on official stamp paper and hung with a bell. Both practices have British origins.**

More broadly though and as outlined earlier, both Gardner and Traill took positive steps that brought them into the mytho-spiritual role and status of a Pahari sovereign. These steps included making grants to religious institutions such as the tirtha at Badrinath and the Nanda Devi temple at Almora soon after occupation, as well as constructing pilgrim roads to Badrinath and Kedarnath.<sup>28</sup> Traill was later to protest that his sole purpose in building these roads was to increase the pilgrim trade and thus to increase the cash value of grain along their route.<sup>29</sup> However, both Gardner and Traill were explicit that the grants to the Badrinath and Nanda Devi temples were made to fulfil local expectations of the role of the sovereign and Traill could only have been fully aware that his restoration of a specific lapsed annual grant to the Nanda Devi temple at Almora

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<sup>26</sup> Ibid., pp. 67-70.

<sup>27</sup> The author has sighted the bell.

<sup>28</sup> Rubakari of Traill's Court, 19/7/1829, KDMLR, vol: 40; Barron, *Notes of Wanderings in the Himmala*, pp. 60-64.

<sup>29</sup> Gardner, E. To Morton, W. -Auditor of Commercial Accounts, 1/4/15, KDRLI, Vol: 1; Traill, G. W. to Campbell, A. – Commissioner of Kumaon Circuit 5th Division, 25/4/1834, KDRLI, vol: 11.

in 1829 earned him spiritual merit with the local people. Indeed, the local people universally attributed his recovery from snow blindness acquired when undertaking the first crossing of a high pass to his restoration of the grant.<sup>30</sup>

In his initial report to Metcalfe in 1820, Traill outlined that he had taken a number of practical steps to facilitate easy lodgement of written lawsuits. In Almora, this included placing a box with a slot in the top of it outside his cutcherry where written petitions could be lodged.<sup>31</sup> He had also established the practice of hearing suits as he toured through the region on revenue and other matters.<sup>32</sup> Further, he established a cutcherry at Bageshwar in the north of the province in the distant Bhotiya districts. Here he would hold court sittings timed to coincide with the annual midwinter fair, the only place and time where most of Bhotiya traders came together in their transhumant lifeway.<sup>33</sup>

These innovations, a hybrid between the practices of the past where justice was always sort through a personal approach to the sovereign and the formal textually mediated practices of modernity, were readily adopted by the local people. Indeed, Traill reported that initially up to 200–300 civil suits were being lodged each day.<sup>34</sup> Even with some allowance for Traill's flair for the dramatic, these figures suggest that, almost from the start, an enormous number of suits were lodged each year. Perhaps unsurprisingly then, Traill reported that '[o]n perusal nine-tenths of [the suits] are invariably found to be of a frivolous and ridiculous nature.'<sup>35</sup>

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<sup>30</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 28. Note the high pass between the Pindari and Johar valleys where Traill's injury occurred is now known as Traill's Pass.

<sup>31</sup> Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7.

<sup>32</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 200.

<sup>33</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 32; Ramsay, H. to Lushington, G. T., 19/1/1841, KDJLI, vol: 35. Ramsay, H. to Lushington, G. T., 1/2/1841, KDJLI, vol: 35.

<sup>34</sup> Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7.

<sup>35</sup> *Ibid.*



Barron, writing a generation later, gives us some insight as to the nature of these ‘frivolous’ suits when he writes that:

...[t]hey rush into court, petition in hand, with such frantic gestures and furious eloquence, that person unacquainted with their habits would be led to suppose that they must have been robbed and plundered...when the cream of the whole affair perhaps turns out to be that some neighbour either looked or spoke angrily at him, or laughed at him.<sup>36</sup>

Barron saw the litigiousness of the Paharis as a childish response to a new institution by a naïve people. Today, however, it is more useful to see this unrestrained level of litigation as a process of experimentation and contestation through which a partially shared understanding and agreement of the purpose and normal functioning of civil justice practices would eventually emerge. At their initial meeting, neither Company officers nor the Kumaonis had any real understanding of the potential of this new institution and its practices in the distant and distinct space of Kumaon. Given the quite divergent world views and customs on each side, it was to take many years for a broadly shared and agreed understanding of the proper role of this new institution and practices to emerge.<sup>37</sup>

Traill, with the final say on which of these petitions proceeded and which did not, was quite happy for the process of experimentation and contestation to continue. However, he was confronted by the urgent practical need to restrain this maelstrom of suits. To achieve this, he introduced a price signal and late in 1820 instituted a requirement that all suits had to be written on 8 anna official stamp paper.<sup>38</sup> The effect of this measure was dramatic and immediate. By the calendar year 1822, the number of suits had reduced to the still not insignificant number of 1,462.<sup>39</sup>

Prompted by the caseload even this reduced number imposed on his civil court, Traill found it appropriate to provide Metcalfe’s successor, George Swinton, with a detailed account of his court practices in May 1821.<sup>40</sup> In that report, Traill outlined that it

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<sup>36</sup> Barron, *Notes of Wanderings in the Himmala*, pp. 165-66.

<sup>37</sup> What is and what is not an actionable matter in civil judicature is never fully agreed in any community and actions seeking to extend this understanding—often attracting controversy and mirth—are common feature in most jurisdictions.

<sup>38</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 16/5/1821, KDRLI, vol: 7.

<sup>39</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p.200.

<sup>40</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 16/5/1821, KDRLI, vol: 7.

was his practice to receive all cases lodged on the appropriate 8 anna stamp paper. He qualified this by saying he used some discretion to reject cases that, by a defect of limitations of time or jurisdiction, would inevitably fail and recorded the reason for this rejection on the face of the plaint. Where the plaint was accepted, Traill would then issue a written *italaa nama*. An *italaa nama* was a written instrument of plains origin that H. H. Wilson defined as '[a] notice, a summons, a citation, a notice served on cultivators when they fall in arrears, threatening them with an attachment if not paid by a given time.'<sup>41</sup> In Kumaon, however, as with many terms, concepts and practices imported from the plains, *italaa nama* took on their own particular meaning and function.<sup>42</sup>

In Kumaon, the *italaa nama* was intended to be served by the plaintiff on the defendant as notice that an action had begun and was not a summons.<sup>43</sup> In 1822, Traill reported that only 30 per cent of cases where an *italaa nama* was issued ever returned to his court for further action.<sup>44</sup> Of those cases that did return, 30 per cent were returned only to be withdrawn on notice of a *razceenumah* or private written agreement that the plaintiff was satisfied by the outcome. This meant that overall only around 21 per cent of all cases returned to the court to be adjudicated by Traill himself. If this statistic is reversed it shows that around 80 per cent of all cases found their determination well beyond Traill's cutcherry walls and out in the web of Kumaoni custom and practice. These locally defined determinations would often take on a form and function quite different to what Traill was familiar with.

In his report to George Swinton of 1821, Traill expressed the view that in the cases where the matter did not return to court, the *italaa nama* had been used to induce an informal private settlement between the parties. However, the later Kumaon Commissioner George Lushington reported that the *italaa nama* was also used in other ways as well. Many plaintiffs were satisfied merely with the issuance of the *italaa nama* itself and took no further action; some used the *italaa nama* as a fetish in divination, cursing, and other shamanistic practices. While more than a few used the *italaa nama*

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<sup>41</sup> Wilson, *A Glossary of Judicial and Revenue Terms*, p. 222.

<sup>42</sup> For a detailed discussion see Glossary in Batten, *Official Reports on the Province of Kumaon*, pp. 463-67. Also expressly noted in many places in Wilson, *A Glossary of Judicial and Revenue Terms*. Search for 'Kumaon' to find these.

<sup>43</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 16/5/1821, KDRLI, vol: 7.

<sup>44</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 200.

simply to ‘annoy parties with whom they are @ [sic] some enmity.’<sup>45</sup> This use of the new *italaa nama* in non-standard ways, ways that Traill could not have foreseen, highlights the degree of agency and innovation the Kumaonis had in the development of the civil justice practices that emerged under the Extra-Regulation Order.

However, the Kumaoni people were not the sole determiners of the form and function civil justice practices took. If the plaintiff was not satisfied with the outcome that issuing an *italaa nama* engendered, they could then return the matter to the court where Traill was at the centre of the justice process. If a matter could not be referred to arbitrators—Traill’s favoured option for settlement of accounts and division of property—a summons would be issued for the attendance of the defendant and then all involved were subject to a *viva-voce* examination directly by Traill. No intermediaries came between Traill and the parties in the case. Unlike on the plains, the use of licenced vakeel (native pleaders or lawyers) was prohibited in Kumaon although personal representatives were allowed in the rare cases where the parties concerned were unable to attend.<sup>46</sup> As with criminal matters, formal oaths were not normally administered to witnesses who attended the summons as Traill believed that, in most cases, an oath was unnecessary for eliciting the truth.<sup>47</sup> Indeed, Traill reports that witnesses were rarely called as all parties nearly always wholly agreed to the facts of the case.<sup>48</sup>

Traill believed that the simple procedures of his court and the absence of technical pleading by vakeels meant that justice was comparatively swift in Kumaon compared to trials on the plains. He reported that most cases only took 12 days or less from the date the summons was issued to the date the decree of the decision was issued.<sup>49</sup> Moreover, the cost of cases was comparatively low, with the only fees being 8 anna for the *italaa nama*, 8 anna for the copy of the decree and possibly a few further anna for the expenses of the *muzkoooree chaprassees* who served the summons and decree.

Traill also rather gleefully reported that enforcement of the decree seldom required imprisonment of the debtor. He relates that generally; the original debts were

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<sup>45</sup> Lushington, G. T. to Register Suddar Nizamat Adualat N.W.P., 25/3/1844, KDJLI, vol: 38.

<sup>46</sup> Traill, G. W. to Swinton, George – Secretary to Government Political Department, 16/5/1821, KDRLI, vol: 7.

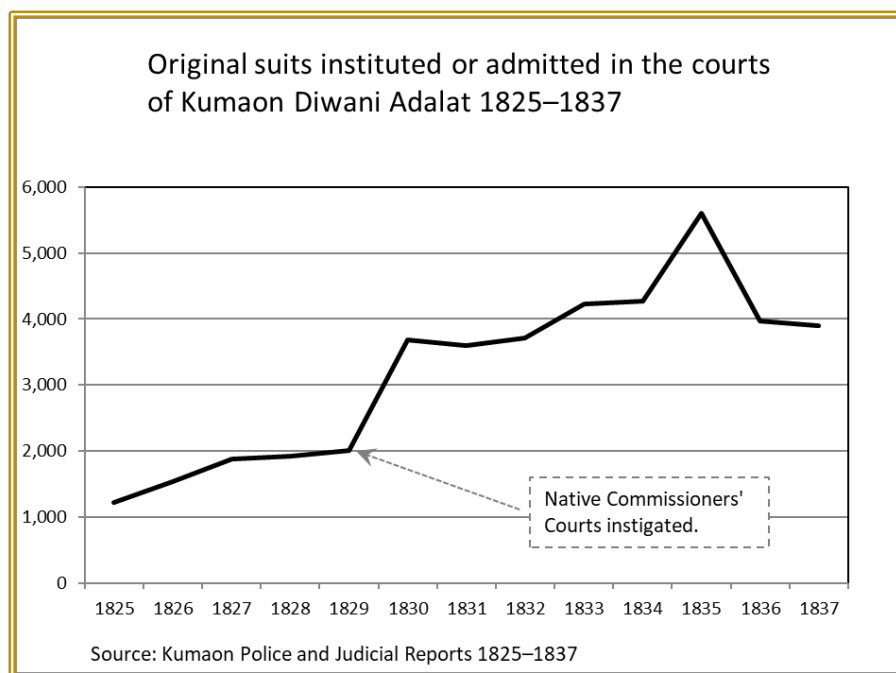
<sup>47</sup> *Ibid.*, para. 17.

<sup>48</sup> *Ibid.*, para. 19.

<sup>49</sup> *Ibid.*, para. 21.

not seen by most Paharis as arising from profligate or unprincipled behaviour. Rather, they were generally understood as a consequence of unfortunate, unforeseen circumstances. Given this generous perception of the cause of the debt, most debts were realized through small instalments, and Traill reports that in 1821 there were only two prisoners in jail for debts, both arising in the context of a degree of criminal behaviour. Moreover, the need to forcibly sell the debtor's property to realize the debt was very rare. Traill could only recall one occasion where this had happened, and this was in the case of a deceased bankrupt.<sup>50</sup> This ease of debt recovery was not peculiar to 1821 and in his 'Statistical Sketch,' based on the conditions outcomes between 1815 and 1823, Traill observed that theretofore, only eight persons had ever been jailed for debt, six at the suits of individuals and two on public demands by the commercial and commissariat departments.<sup>51</sup>

### *Growth in civil actions*



**Figure 6.2. Growth in civil proceedings in Kumaon, 1825-1837**

As figure 6.2 shows, the number of Kumaonis lodging civil suits rose steadily through much of the 1820s reaching a total of 1,921 cases in 1828. Traill attributed this

<sup>50</sup> Ibid., para. 24-26.

<sup>51</sup> Traill, 'Statistical Sketch of the Kumaon,' p. 200.

growth to a parallel increase in wealth and the value of land seen in the region. However, I argue that it also marked a steady increase in awareness, familiarity, and confidence of the Kumaoni people in Traill's civil justice system. If the Kumaoni people had found Traill's civil courts alien, prohibitively expensive or unhelpful, they would have simply not participated.<sup>52</sup>

By 1829, the number of cases coming before Traill as the sole judge in Kumaon proper had increased to the level where he felt that the provision of a local small claims tribunal was 'indispensable' in meeting this growing demand. In his Police and Judicial Report to Secretary Henry Shakespear [sic] of February 1829, Traill explained that the use of Native judges was considered 'inexpedient' early in the Company occupation because of the low esteem that the justice system had fallen to in earlier times where 'the administration of justice was an avowed item of public revenue, and the office of judge sold or farmed to the highest bidder.'<sup>53</sup> However, he now believed, that '[a]fter 14 years' experience of a better system, it may be presumed that tribunals of this kind would be exempt from former abuses and useful to the community.'<sup>54</sup> This somewhat romantic belief about the power of example to transform customary practices did not entirely play out as he imagined.

As Bernard Cohn has noted, the formal legal, revenue and administrative practices the Company introduced in North India opened up many opportunities for minor court and administrative officers to find advantages that could be used to enrich themselves and their clan more generally.<sup>55</sup> At least in Kumaon, many of these enrichment practices had been well within the bounds of custom in pre-colonial times, and yet, the new formal practices Traill introduced recast many of these as corruption. As will be discussed later in the subsection 'Oath of office,' many of the Kumaoni people appointed to the 'local tribunal' that emerged from Traill's discussion struggled to accept this recasting and persisted with pre-colonial modes and practice despite the example he had set.

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<sup>52</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

<sup>53</sup> Ibid., para. 11.

<sup>54</sup> Ibid., para. 12.

<sup>55</sup> Cohn, 'The initial British impact on India: A Case Study of the Benares Region,' pp. 429-30.

Traill proposed to create a total of five new positions of Native Commissioner in Kumaon proper to adjudicate at the new local tribunals. One was to be attached to his court in Almora as a *suddar ameen* with four others as moonsiffs attached to each of the tahsildar or revenue offices located out in their respective parganas.<sup>56</sup> Mindful of the cost of these new positions in an unprofitable province, Traill proposed appointing the existing *canoongoe* as the new moonsiffs as well as appointing the existing court pundit as the *suddar ameen*.<sup>57</sup> The court pundit and *canoongoe* already received a salary, but most of the work they had originally undertaken was, by 1829, being performed by the hill patwari. Traill commented that at least the *canoongoe* ‘at present have scarcely any duties to perform.’<sup>58</sup> Moreover, appointing the existing *canoongoe* would strengthen the Company’s political position as they were ‘men of talent and respectability with a character in the country to support.’<sup>59</sup>

### **‘Rules for the Guidance of Moonsiffs’**

Traill believed that while the example he had set was of real value, it was not sufficient in itself to acquaint the moonsiffs with the ‘general principles’ of the administration of justice that he wanted the moonsiffs to follow. To achieve this more ambitious objective he turned to codification of the practices he wanted the Native Commissioners to follow and developed a set of formal, textually mediated rules that would govern and guide their operation—‘Rules for the Guidance of Moonsiffs.’<sup>60</sup> The Rules had a quite different nature to the legislation he had previously introduced in Kumaon and represent a qualitative point of phase change in how formal, textually mediated laws were conceived, developed, and implemented in colonial Kumaon.<sup>61</sup>

Early in the Traill era, laws in Kumaon had taken the form of short proclamations with much of the everyday working of the law left to Traill’s practices. These practices had been developed through an extended process that began at the Company College in

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<sup>56</sup> Two other moonsiff positions were created in Garhwal but details of this do not appear in the KDPMR so far examined.

<sup>57</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 30.

<sup>58</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department 11/2/1829, KDJLI, vol: 29, para. 13.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> See Appendix 6.1 ‘Rules for the Guidance of Moonsiffs’. Hereafter the Rules.

Hertfordshire, were carried further at the Company College at Fort William and then practised under supervision in the courts at Farrukhabad. As there was no possibility of the Native Commissioners participating in a similar process, the Rules were intended to reduce those practices to a textual-mediated form that would guide the moonsiffs and *suddar ameen* as they went about their work.

Rather than develop this complex and necessarily long-form legislation from scratch as he had for so much of his early legislation, Traill drew heavily from the existing regulation that empowered, guided and governed the moonsiffs of the plains— Regulation XXIII of 1814.<sup>62</sup> The resulting ‘Rules for the Guidance of Moonsiffs’ however, do not represent a crude shoe-horning of a legal instrument of the plains into Kumaon’s very different political, economic and cultural environment. While the Rules drew heavily from the concepts and language of the Regulation, borrowing particularly heavily from the prescribed recording practices, practices to ensure formal procedural fairness, as well as practices to ensure oversight and accountability, the Rules also show many considered departures intended to make the package work effectively in Kumaon.

To illuminate what was borrowed and what was new in the Rules and highlight their distance and distinction from the Regulation, the following sub-sections compare and contrast the two pieces of legislation. Some readers may find the details of this comparison tedious. Nevertheless, such a comparison brings to light what Traill believed was needed for a regulation of the plains to function effectively in the hills, as well highlighting the formal practices of the plains that he wanted to introduce to the operations of the *canoongoe*. It also highlights the mechanisms Traill used to insulate Kumaoni law from the flow of both English common law and the Anglo-Indian law of the plains.

### ***The nature of the documents***

The differences between the Regulation and the Rules begin with the media that carried the two documents. The Regulation was a *printed* document of 10,255 words intended to instruct moonsiffs across most of the Bengal Presidency in their duties and

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<sup>62</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department 25/5/1829, KDJLI, vol: 27. See Appendix 6.2 *Regulation XXIII of 1814*. Hereafter the Regulation.

practices.<sup>63</sup> It is headed by both formal short and long titles, devotes several paragraphs to rescinding existing legislation, uses Roman numerals to denote sections. The Regulation was presented to the plains moonsiffs written in Persian script using an elaborate form of Urdu heavily influenced by both Persian and Arabic legal vocabulary familiar to a very few working in the legal system.<sup>64</sup>

In contrast, the Rules are a handwritten document of only 3,082 words intended for use by perhaps only five people in the first instance.<sup>65</sup> They had a simple, straightforward title and they neither referenced nor rescinded other legislation as there was simply no other relevant legislation to be referenced or rescinded. They used Arabic numbers that translated easily into the Indian numbering system, and they were written in straightforward easily understood language. Importantly, the Rules were presented to the moonsiffs written in the Nagari script using the local dialect of Hindi and consciously strove to be free from all words of Persian and Arabic origin other than readily grasped neologisms such as the word moonsiff.<sup>66</sup>

### ***Who can be a moonsiff***

The Regulation states that persons appointed as moonsiffs need not be limited to any particular class of person provided they are either a Hindu or a Muslim (thus excluding Christians and Sikhs but these communities were only in small numbers in the Company's North Indian territories at the time), but goes on to state that preference should be given to existing *cauzies* or court officers that appear qualified for the trust.<sup>67</sup> In contrast, the Rules are silent as to who is to be appointed a moonsiff or Native Commissioner. Traill simply appointed the existing *canoongoe* and court pundit to the newly established roles.

On one level this represents a recognition of the continuing and evolving role of the *canoongoe* and their families within the customary political economy of the region, but

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<sup>63</sup> This figure of 10,225 words is derived if the Sections LVI to LXXVII, the special rules for Juggunauthpooree and Chittagong, are excluded from a word count of Regulation XXII of 1814.

<sup>64</sup> The transcriptions of the 'Rules for the Guidance of Moonsiffs' and Regulation XXIII, 1814 found at Appendix 6.1 and 6.2 are in English for the readers' convenience.

<sup>65</sup> The first printing press in Kumaon did not appear until 1858.

<sup>66</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 25/5/1829, KDJLI, vol: 27.

<sup>67</sup> See Sec. VIII of Reg. XXIII, 1814



it also represents the second step in Traill's ambition to transform the office of *canoongoe* into modern public servants within the Extra-Regulation Order. As outlined in chapter 4, the first step in this transformation occurred in early 1819 when the existing Kumaoni *daftarees*, with their loosely defined and overlapping responsibilities and incomes based on *nankar* lands, became *canoongoe* with specific responsibility for a defined geographic space with incomes based on salaries. In this second transformation, their relationship with Traill as Commissioner moved from being grounded solely in a direct and personal relationship of the ancien régime, to a relationship that was, to a degree, at arm's length, defined and mediated by the formal, textually mediated law of the Rules.

This second transformation was far from total, however. The Rules may have given powers to the moonsiffs that were not grounded in their relationship to Traill, but they were not solely servants of the Rules. Sec. 41 of the Rules gave Traill the power to call up any case he chose, while Sec. 35 and 36 detailed elaborate reporting provisions that ensured Traill maintained close supervision of their work. Moreover, despite Sec. 5 insisting that the investigation and determination of cases was the sole responsibility of the appointed *canoongoe*, the customary practice of the office of *canoongoe* functioning as a collective held by the family of the *canoongoe* persisted, and some aspects the work of the office was informally distributed across the family.<sup>68</sup>

### ***Limits of jurisdiction***

Comparison of the Rules and the Regulation reveal both similarities and significant differences in the powers and limits of the jurisdiction of Kumaoni and plains moonsiffs. Reflecting the racialized fundamentals of all Company legal practice, both Sec. 1 of the Rules and Sec. XIII of the Regulation authorized the moonsiffs 'to receive, try, and determine all suits preferred to them against any *native* [emphasis added] inhabitant of their respective jurisdictions for money or other personal property.'<sup>69</sup> Under these sections, neither the hill nor plains moonsiffs were to have a competency to hear claims

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<sup>68</sup> Gowan, G. E. to Boulderson, J. M. - Commissioner of Revenue Circuit, Moradabad, 15/9/1836a, KDRLI, vol: 12; Gowan, G. E. to Scott - Assistant Commissioner Moradabad, 25/2/1837, KDRLI, vol: 12.

<sup>69</sup> Note that the effect of this legislation was confined to the middle hills of Kumaon and a *canoongoe's* respective pargana. No *canoongoe*/moonsiff had authority over residents of the Terai and Traill held jurisdiction over the Bhotiya districts himself. Both were very different cultural and economic landscape to the Khas dominated *ghagar* or middle Himalaya.

against Europeans or other persons not native to their respective pargana. However, in the Regulation, the exclusion of British subjects, other European foreigners or Americans was made explicit by Sec. XIII 2<sup>nd</sup>. In contrast, the Rules are silent on this issue, with the exclusion of Natives of the plains, British, Europeans or Americans from the remit of the hill moonsiffs merely implicit in that they were not natives of the moonsiff's respective pargana.

This similarity of hill and plains moonsiff's competency did not extend to limits on the value of cases heard. At least initially, plains moonsiffs had the much higher limit of claims not exceeding Rs. 62, while hill moonsiffs were limited to the much lower value amount of Rs. 25 unless the case was referred to them by the Commissioner.<sup>70</sup> However, hill moonsiffs had a broader range of operation than plains moonsiffs and, reflecting the most common forms of dispute and differing nature of the revenue model in Kumaon, hill moonsiffs were specifically authorized to hear claims for current year rent arrears as well as damages to crops by cattle.<sup>71</sup>

### ***Procedural fairness***

In an attempt to introduce formal procedural fairness to the functioning of the moonsiffs, both the Rules and the Regulation found it important to instruct them about avoiding conflict of interest. To make it clear that bestowing favours on their familiars was improper, both prescribed that '[t]he moonsiffs are prohibited from hearing, trying, or determining any suits in which they themselves, or their relatives, or dependants, or the vakeels, or other persons employed in their cutcherries, may be parties.'<sup>72</sup> Moreover, to ensure an independent decision, both the Rules and the Regulation then go on to insist that moonsiffs investigate the case themselves in a public cutcherry and not allow any other person to interfere in the investigation.<sup>73</sup>

In addition to these general instructions, both the Rules and the Regulation insisted that the moonsiffs receive, try and determine the case in accordance with a set of

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<sup>70</sup> The limits on the value of claims before hill-moonsiffs was raised to Rs. 50 in 1830. The *sudder ameen* had an initial limit of Rs. 100.

<sup>71</sup> See Rules Sec. 2-3.

<sup>72</sup> See Rules Sec. 5 and Regulation Sec. XIII 2<sup>nd</sup>.

<sup>73</sup> See Rules Sec. 5 and Regulation Sec. XIV.

rules, procedures, and administrative practices set out in subsequent sections, Sec. 6–42 in the Rules and Sec. XIV–LIV in the Regulation. It was in these rules for procedure, framed as they were to match the divergent institutional and legislative environments of the hills and the plains, that the Rules and the Regulation begin to diverge on matters of legal substance.

This is first seen in the instructions on how to proceed where the legislation does not provide specific instruction on how to receive, try and decide matters before the moonsiffs. The Regulation instructed the plains moonsiffs that where there was no specific instruction on a practice, they should follow the rules prescribed in the regulations for the guidance of *zillab* and city judges. The Rules, in contrast, were silent on this issue as no regulations for the guidance of *zillab* and city judges were current in Kumaon. While Traill referenced the ‘spirit’ of these plains regulations in his practices, neither he nor the hill moonsiffs were rigidly bound by them.

Another aspect of the differing juridical environments of the hills and the plains that Traill had to manage was the role of vakeels (an agent or representative such as a barrister or solicitor).<sup>74</sup> Traill believed that vakeels were a source of abuse of the justice system and had never permitted them to appear in his court other than if a party to the case was reasonably unable to attend.<sup>75</sup> In consequence, there was no system of authorized vakeels in the hills. This is in contrast to the practices of the plains where vakeels were an established, if not well regarded, part of the justice system. To manage this divergence, both the Rules and the Regulation began by prescribing that ‘[n]o person shall be allowed to plead or act as a vakeel in the court of any moonsiff, unless he be a relative, servant, or dependent of the person for whom he may be appointed to act.’<sup>76</sup> However, and in doing so reflecting the acceptance of vakeels on the plains, the Regulation continued the section with ‘**or** unless he [the vakeel] shall have received a *sunnud* of appointment from the *zillab* or city judge.’<sup>77</sup> In contrast, the Rules continue the equivalent section with ‘for whom he may be appointed to act unless he produced a

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<sup>74</sup> Rules Sec. 6 and Regulation Sec. XV 1<sup>st</sup>.

<sup>75</sup> Traill, ‘Statistical Sketch of the Kumaon,’ p. 200.

<sup>76</sup> Rules Sec. 6 and Regulation Sec. XV 1<sup>st</sup>.

<sup>77</sup> Regulation Sec. XV. Bold emphasis added.

written *vekalut nama* [written power of attorney].<sup>78</sup> This wording reflected the reality that there were no authorized vakeels in the hills but accepted that the Rules would have to allow for some level of their presence in the moonsiffs cutcherries. The Rules thus took no steps to create an authorized cohort of vakeels, who were known for their elaborate practices of formal pleading, referencing of obscure legal precedents and endless adjournments. Participants in court could informally use an agent, but these agents were not to take on the guise of the authorized vakeels of the plains.<sup>79</sup>

### ***Institution fees***

Reflecting Traill's penchant for administrative simplicity and keeping the cost of justice to a minimum, the Rules impose a flat 8 anna institution fee on all suits.<sup>80</sup> This was to be collected by the moonsiff hearing the suit, who, as an act of transparency, was to issue a receipt for the fee that was logged in a register. In contrast, the Regulation had a graduated institution fee scale that began at twice the cost of the fee in Kumaon and then steadily escalated as the value of the case rose.<sup>81</sup> For claims of a value up to Rs. 16 the institution fee on the plains was Rs. 1. For claims from above Rs. 16 up to Rs. 32 the institution fee was Rs. 2. While for claims from above Rs. 32 to Rs. 64 the institution fee was Rs. 4. Moreover, reflecting the more sophisticated administrative capacity expected of the plains moonsiffs, this fee was to be collected via stamp paper whereas hill moonsiffs collected these fees in cash.

In both the hills and the plains, these institution fees were used to cover the moonsiff's costs of office such as stationary and to give him an incentive to pursue cases to a conclusion.<sup>82</sup> While the Rules use more simple language and a less complex administrative procedure to achieve this end, both the Rules and the Regulation outline that if the moonsiffs decided the case after the investigation of its merits or was adjusted

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<sup>78</sup> Rules Sec. 6.

<sup>79</sup> Gowan, G. E. to Harrington, H. B. – Officiating Register Nizamat Adawlat N.W.P., 17/3/1837ab, KDRLI, vol: 33.

<sup>80</sup> Rules Sec 7.

<sup>81</sup> Regulation Sec. XVI.

<sup>82</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol: 29.

by *razeenumah*, the moonsiff kept the fee as a perquisite.<sup>83</sup> If the matter did not proceed beyond the *italaa nama* or lapsed on default, the fee passed to the treasury.

### ***Oath of office***

One significant element of the Regulation that Traill chose not to translate into the Rules was its provision under Sec. X for both civil and criminal liability by the moonsiffs for corruption, extortion, oppression, or unwarranted act of authority. Moreover, the plains moonsiffs were required to swear an oath of office detailed in Appendix No. 2 of the Regulation that includes the affirmation that:

I will act according to the best of my abilities and judgment, without partiality, favour, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive any money, effect, or property, on account of any suit that may come before me for decision, or on account of public duty which I may have to execute.

In contrast, the Rules are silent on corruption, extortion, oppression or unwarranted act of authority and prescribe no oath of office.

It is possible to speculate that Traill naively felt that such provisions were unnecessary. Given the high level of honesty Traill believed pertained amongst the Kumaoni people and the power of the example he had set as a judge, he may have felt that explicitly instructing the moonsiffs about his expectations in writing was a waste of time and paper. The absence of an oath may also have been a recognition of the cultural aversion to taking an oath that the *thuljat* held. However, Traill was not noted for his naivety, and nearly all his actions should be seen as cautious and considered. More likely then, Traill did not want to limit an understanding of what was and what was not proper professional conduct for the moonsiffs entirely to an inflexible written code. Rather, he wished to continue with his established practices of determining such matters on their merits and dealing with them as he saw fit.

Traill certainly found no need to resort to a codified law when he moved against the moonsiffs and *canoongoe* of Shore and Pali districts for corruption in 1834.<sup>84</sup> The case

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<sup>83</sup> Rules Sec. 7, Regulation XLIV.

<sup>84</sup> Traill, G. W. to Payne, Capt. Commanding at Phitoragarh, 22/11/1834, KDJLI, vol: 30; Traill, G. W. to Campbell, A. – Commissioner of Kumaon Circuit 5th Division, 25/4/1834, KDRLI, vol: 11.

against Naraeen Chowdree of Shore first emerged in a series of over 30 civil claims by local zamindars against the *canoongoe*. The zamindars sought to recover payments Chowdree had taken against an undertaking to reduce their revenue demand by an amount equivalent to one year's rent over the five-year term of the 1833 settlement which Chowdree had not delivered. Highlighting the flexibility that resulted from not reducing the question of what was and was not official corruption to a code, none of these claims resulted in a criminal prosecution. Nevertheless, their success as civil claims allowed Traill to recommend removing Chowdree for 'malversation of office and corrupt practices.'<sup>85</sup>

In contrast, Traill was never able to gather enough concrete evidence against Ram Kishan Joshee of Pali to remove him from office.<sup>86</sup> Traill suspected that Joshee was complicit in his son setting up fake cases supported by forged documents and false witnesses. However, in the absence of conclusive evidence of corrupt conduct, Traill felt limited to calling up cases before Joshee whenever he suspected that not all was right with the conduct of the case.

### ***Formal recording procedures***

In contrast to the great divergence on how corruption was dealt with in the Rules and the Regulation, the two documents agree, often almost word for word, on the form and content of how a case should be recorded and processed from the original plaint to enforcement of the decree. Highlighting that Traill believed the essence of this administrative practice was a universal, the level of agreement in the wording even extended to using precisely the same dates and names in the examples used to illustrate the practices in both documents. Indeed, both the Rules and the Regulation have 'Ramchand Paul' simultaneously suing Punchoo Gope on the 2<sup>nd</sup> of February 1815 as Example No. 1, even if the amounts claimed by the plaintiff differ to reflect the case value limits of the hill and the plains moonsiffs.

While this detailed and rigidly prescribed recording process may have been new to the *canoongoe*, it was not new to Kumaon. Comparison of the case-records pro forma

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<sup>85</sup> Campbell, A. to Traill, G. W., 30/4/1834, KDMLR, vol: 49.

<sup>86</sup> Traill, G. W. to Payne, Capt. Commanding at Phitoragarh, 22/11/1834, KDJLI, vol: 30.

found in the Rules with Traill's own case records show an exact match. Traill had followed the model himself from the very beginning of the Extra-Regulation Order and was not using the Rules to impose novel practices of the plains on the *canoongoe*. Rather, he used the Rules to impose practices he believed to be universal to the state-centred, textually mediated, formal legal practices of the Company. Details such as the names of officers and the language used may have varied, but the core of the practices were to be found in every *cutcherry* across the Bengal Presidency.

However, if the essence of the formal recording and processing practice was a universal, the substance of the law was not, and many subtle but often significant differences between the Rules and the Regulation are apparent. One of the differences is the value accorded to registered deeds and the like in Kumaon vis-à-vis the plains. On the plains, it had been a longstanding practice to officially register obligations, legal instruments, bonds, deeds, and similar documents. This was always done using stamp paper as the medium of the registered document and the sale of the stamp paper constituted a significant part of the courts and registry offices income. To reinforce this state of affairs and to maximize income, the Regulation strictly prohibited moonsiffs from receiving documents as exhibits that had not executed on the appropriate value and denomination stamp paper.<sup>87</sup>

The sale of stamp paper in Kumaon, something unknown before Company occupation, had initially been limited to the 8 anna stamps needed to lodge a suit. Stamp paper had no other function and had not been extended to other uses, despite the incentive of the commission Traill received on the sale of stamps.<sup>88</sup> A facility for officially registering deeds and bonds based on a cash fee had been introduced by Traill from 1827 onwards, but it was an alien and disturbing practice to most Kumaonis, and few people participated.<sup>89</sup> Over time, registered document did come to have a value over unregistered documents, such as in the precedence of registered over unregistered debts in bankruptcy matters, but most legal documents in Kumaon were not registered on

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<sup>87</sup> Regulation Sec. XXXVIII 1<sup>st</sup>.

<sup>88</sup> Traill, G. W. to Udny, R. - Acting Civil Auditor, 6/8/1827, KDRLI, vol: 9; Traill, G. W. to Brodie – Superintendent of Stamps, 1/5/1826, 1/5/1826, KDRLI, vol: 9; Traill, G. W. to Udny, R. - Acting Civil Auditor, 6/8/1827, KDRLI, vol: 9.

<sup>89</sup> Traill, G. W. to Fraser, S. - Secretary Presidency of Records, 20/7/1826, KDRLI, vol: 9.

stamp paper or otherwise when the office of moonsiff was introduced in 1829.<sup>90</sup> In consequence, the Rules are silent on limiting receipt of unstamped documents, and unregistered documents continued to be entered as exhibits just like registered documents.<sup>91</sup>

### ***Basis for decision***

The most significant difference between the Rules and the Regulation, though, a difference through which Traill intended to assert Kumaoni custom over both plains and English common law, is a subtle difference in the wording of the section regarding the basis for decision.<sup>92</sup>

Both the Rules and the Regulation begin this section (Sec. 29 for the Rules and Sec. XXXIX for the Regulation) with the statement, '[w]hen the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the moonsiff shall give judgment according to.' At this point, however, the two sections diverge in their wording. The Regulation continues the section with phrase 'according to *justice and right*,' whereas the Rules continue with the phrase 'according to *practice and right*.'<sup>93</sup>

Here, Traill is making a deliberate decision to vary the wording of the Rules from that of the Regulation and in doing so, intentionally affirming custom over the technical construction of 'justice' that held sway in the courts of the plains. Within the discourses around Anglo-Indian law current at the time, 'justice' was a term whose meaning was deeply embedded in the Roman law concept of 'justice, equity, and good conscience' introduced to the codified law of Bengal by Chief Justice Elijah Impey in Sec. IX of Regulation XCII of 1781.<sup>94</sup> That Regulation read:

in all cases within the jurisdiction of the Mofussil Diwani Adalat, for which no specific directions are hereby given, the responsibility of judges thereof is to do according to justice, equity, and good conscience.

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<sup>90</sup> Gowan, G. E. to Templer, Capt.- Commanding at Pithoragarh, 10/8/1837, KDJLI, vol: 31.

<sup>91</sup> Rules Sec. 28.

<sup>92</sup> Rules Sec. 29, Regulation Sec. XXXIX.

<sup>93</sup> See Regulation Sec. XXXIX and Rules Sec. 29. Emphasis added.

<sup>94</sup> Cassels, *Social Legislation of the East India Company: Public Justice Versus Public Instruction*, p. 9-10.



In practice, this meant that if on a particular point of dispute before a plains court there was no explicit provision in Hindu or Indo-Islamic law, and there was no explicit provision in a regulation, the court was to decide the matter according to the principles and decisions of English judges and the Privy Council.<sup>95</sup> Over time, this had supplemented and superseded many tenets and practices of Indian law with tenets and practices drawn of English common law.<sup>96</sup>

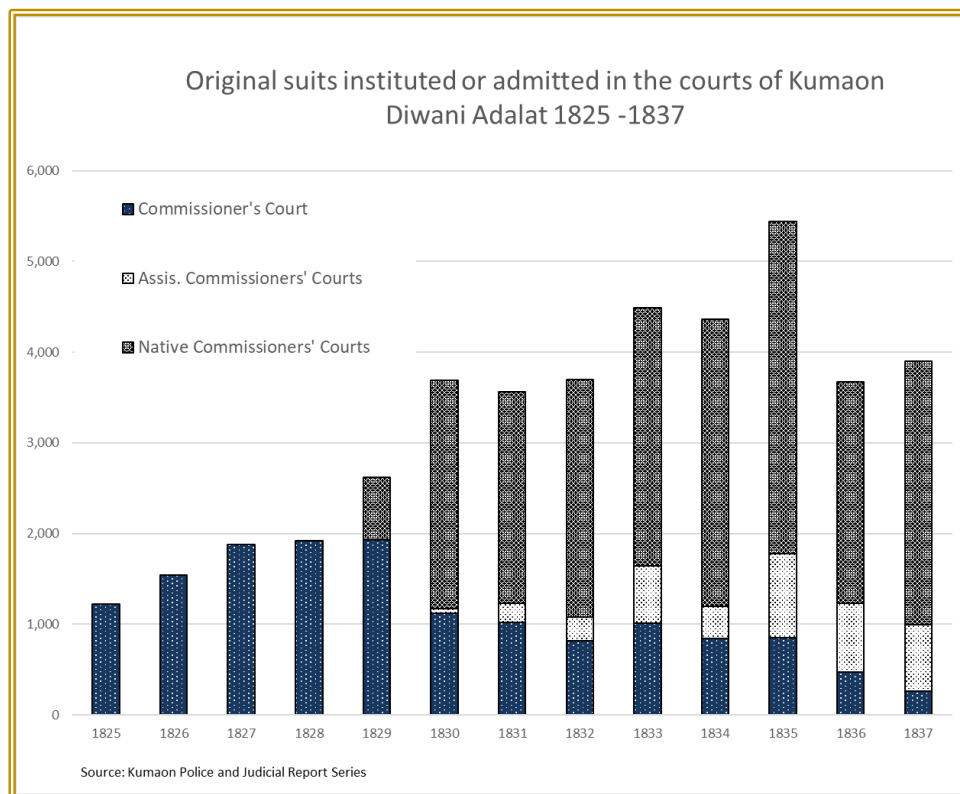
As outlined earlier, much the law of Kumaon was not explicitly provided for in either written Hindu or Indo-Islamic law or the regulations. As such, the doctrine of ‘equity, justice and good conscience’ would, at least technically, have applied in all cases where a clear precedent or established principle was not available from Kumaoni law. Given these circumstances, nearly all novel issues that came before the Native Commissioners’ courts would have been determined on the basis of English common law or the law of the plains. As such, much of Kumaon’s customary practice would have been incrementally obliterated. To preclude even the possibility of such an event, Traill substituted *practice* for *justice* in the text of the Rules to ensure that English Common Law and the precedents of Anglo-Indian law did not flow into Kumaon unmediated by his discretion and judgement.

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<sup>95</sup> J. D. M. Derret, ‘Justice, Equity and Good Conscience’ in *Changing Law in Developing Countries*, ed. J. N. D. Anderson (London: George Allen & Unwin Ltd, 1963).

<sup>96</sup> M. C. Setalvad - Attorney-General of India, *The Common Law in India* (London: Stevens & Sons Limited, 1960), pp. 9-10.

## Impact of the 1829 civil justice innovations



**Figure 6.3. Original civil suits instituted or admitted in Kumaon, 1825 -1837.**

The civil justice innovations of 1829—appointment of Native Commissioners and an Assistant Commissioner—played out in several directions. The most obvious is the immediate near doubling of the total number of original suits lodged, jumping from 1,921 in 1828 to 3,690 in 1830.<sup>97</sup> This increase consisted entirely an increase in original suits lodged with the moonsiffs, with the number of original suits heard by the Commissioner’s court reducing by around 40 per cent from 1,921 to 1,175 during the same period. This demonstrates a high degree of acceptance of the Native Commissioners courts by the local people. Without a doubt, a factor within this acceptance was the convenience of having a court available locally and thus not having to engage in the long journey and expense of travelling to Almora.

Initially, the new Assistant Commissioner’s Court had very little impact on the pattern of cases heard; in his first year in Kumaon Mosley Smith heard only 55 cases. While Traill makes no specific mention of why Smith’s case load was initially so small, it

is reasonable to attribute this to his absence of skills in the local language and unfamiliarity with the local court practices. He had only arrived in India in late May of 1829 and Kumaon was his first appointment, joining at Almora in March of 1830.<sup>98</sup> Extrapolating from the training and development program that an additional Assistant Commissioner, Edward Thomas, underwent during 1833–34, Mosley Smith almost certainly spent much of his early period in Kumaon gaining language skills and an appreciation of the local culture.<sup>99</sup> In later years the number of cases heard by the Assistant Commissioners steadily grew, but it was not until Gowan's arrival 1837 that the Assistant Commissioners heard more cases than the Commissioner.

The 1829 innovations and then the later appointment of Edward Thomas meant that the region went from having only one civil court to eight courts operating in a four tiered system:

- 1 Commissioner's court,
- 2 Assistant Commissioner's courts,
- 1 *suddar ameen's* court, and
- 4 moonsiff's courts.

Under the 'genral principles' the presence of four levels of courts necessitated the development of a new judicial practice in Kumaon: appeals to a higher court for litigants dissatisfied with the initial decision. In Traill's earlier unicameral model there was no real possibility of appeal, even to the courts below on the plains. Highlighting the hybrid nature of the new civil justice model after 1829, the right to appeal to a higher court had emerged through two quite different mechanisms. The right to appeal from the Native Commissioners' courts to the various Commissioner's and Assistant Commissioners' courts was explicitly spelt out in Sec. 40 of the Rules and even backed up by the threat of a fine in Sec. 32 if moonsiffs sought to subvert that right. In contrast, the right to appeal from the Assistant Commissioners' courts remained grounded in the uncodified practices of the 'general principles' of the regulations and had no basis in codified law.

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<sup>98</sup> Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, p. 353; Smith, Mosley to Young, W. H. – Civil Auditor Forth William 9/8/1830, KDRLI, vol: 10.

<sup>99</sup> Traill, G. W. to Campbell, M. - Commissioner of Circuit, 7/7/1834, KDJLI, vol: 30.

As shown in table 6.1, Kumaonis quickly began to use this new-found appeal mechanism. However, a clear differentiation emerged in the appeal rate arising from the low-value claims heard by the moonsiffs and the higher value claims heard by the Assistant Commissioners. Extrapolating from the value and number of suits pending at the end of each year, the average case heard by the Native Commissioners in the period covered in table 6.1 involved property with an average value of around Rs. 14.<sup>100</sup> In contrast, the Assistant Commissioners' courts heard cases which involved property with a much higher average value of around Rs. 108. Interestingly, the average value of property in original suits at the Commissioner's court during 1830–1837 was only Rs. 62, substantially lower than that of the Assistant Commissioners' courts. This low-case value figure and the available case records, suggest that both Traill and then Gowan continued to hear low-value cases, particularly those against Europeans by Kumaoni plaintiffs, who were beyond the jurisdiction of the moonsiffs as outlined in Sec. 1 of the Rules.<sup>101</sup>

Table 6.1 Appeal rates from Assistant and Native Commissioners' Courts 1830-1837. Source: Kumaon Police and Judicial Reports.

Year	In appeal from the Assistant Commissioners' Courts	In appeal from the Native Commissioners' Courts	Appeal rate Native Commissioners	Appeal rate Assist. Commissioner
1830	6	97	3.86%	10.91%
1831	37	110	4.71%	17.79%
1832	42	138	5.27%	16.03%
1833	50	141	4.94%	7.91%
1834	92	173	5.46%	25.77%
1835	87	190	5.19%	9.36%
1836	112	136	5.57%	14.72%
1837	80	125	4.31%	10.83%
Total or Average	506	1110	4.93%	12.83%

In broad terms, litigants at the moonsiffs' courts, mostly dealing with small local disputes in easily accessible local cutcherries, appealed at much a lower rate than those engaged in higher value claims before the Assistant Commissioner's court in Almora.

<sup>101</sup> Traill, G. W. to Holuns, Capt., 4/6/1835, KDJLI, vol: 30; Traill, G. W. to Moody, Capt. - Commanding at Loharghat, 25/7/1835, KDJLI, vol: 30; Traill, G. W. to Mouat, Lieut. Colonel, 24/6/1822, KDJLI, vol: 25.

Only around 5 per cent of litigants at the moonsiffs' court appealed the decision, which argues that the decisions met with a high degree of acceptance and satisfaction and not that pursuing the matter further was not worth the time and bother. As the example of the *urzee* of Waree detailed earlier illustrates, Kumaonis were prepared to go to great lengths to achieve justice if that was what was required.

In contrast, around 13 per cent of litigants appealed the decisions of Assistant Commissioners. Although this may reflect that in these higher value cases, litigants were more prepared to take their chances with another throw of the dice, it is more likely that the Assistant Commissioners gave judgements that were at some distance to the cultural mores of the local people and hence that there was a lower degree of acceptance and satisfaction with the outcome.

## **Traill and beyond**

This chapter has outlined that Traill, without specific legislative prompting, set up a civil justice system in Kumaon from the earliest days of the occupation. Civil justice practices were such a central element of the 'the general principles established throughout the provinces,' particularly revenue practices, that an explicit instruction to establish such a system was simply unnecessary.<sup>102</sup>

Given the near irrelevance of textually mediated jurisprudence from the plains and his freedom from the rigid constraints of the Company's regulations, Traill implemented a hybrid set of civil justice practices adapted to local needs and contingencies. His courts gave voice to local sentiments and practice around justice, even to the extent of incorporating disputes around caste, witchcraft and sorcery as well as incorporating aspects of earlier evidentiary systems the oath of ordeal by hot iron. He then combined these with the 'spirit' of Company's judicial procedures that included measures to avoid apparent conflicts of interest, rigid case recording practices, rigorous procedural fairness practices, the practice of determining a case on the merits of the evidence before the

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<sup>102</sup> Adam, J. - Secretary to Government to Traill, G. W. – Acting Commissioner Kumaon. 'Extract from the proceedings of His Excellency the Right Honorable the Governor-General in Council in the Secret Department', 19/10/1816e, KDRLI, vol: 3.

courts and enforcing the orders of the court through a documented and prescribed process.

The Kumaoni people took to Traill's new civil justice system with alacrity, finding new and innovative ways to incorporate these practices into their existing economic and social life. From small informal beginnings, demand for civil justice services grew to such an extent that by 1829 a major expansion of the system was needed which resulted in a new model. This new model was to be centred on a recycling of the existing institution of the *canoongoe* mediated through a novel legal instrument of a style not seen before in Kumaon, the 'Rules for the Guidance of Moonsiffs.' Adapted from a regulation of the plains, the Rules were the first textually mediated legislation seen in Kumaon that took on aspects of the form of a plains regulation. In this regard then, introduction of the Rules marked a significant point of phase change in the transformation of Kumaon's customary practices from being embedded in oral traditions to a basis in textually mediated, formal governmental practices.

As shown earlier at figure 6.2, participation by the Pahari people in the civil justice system steadily increased during the Traill era, rising to a peak of 5,444 original suits in 1835. However, Traill's departure from Kumaon late in 1835 was followed by a significant drop in the number of original suits heard with 32 per cent fewer cases heard in 1836 with little recovery in 1837. Clearly, something had changed. This change will be dealt with in chapter 8, The Interregnum and New Era. Before moving on to that concluding chapter though, the chapter that follows will address change around property in persons and slavery—a change that was experienced most intensely in Kumaon between Traill's departure in late 1835 and the arrival of the hapless George Edward Gowan as his replacement in April 1836. These events would go on to shape changes in slavery across the rest of Company's territories and the wider empire.

## Chapter 8, The Interregnum and New Era

The office of Commissioner is one of very undefined powers, and appears to have been originally constituted expressly for Mr. Traill...When such an appointment comes to be thrown open to candidates of all kinds and selected without any peculiar fitness, it is manifestly desirable that the office should be placed on a different footing.<sup>1</sup>

R. M. Bird, June 1837

The early Extra-Regulation Order in Kumaon was centred on the energy, personality and actions of one man—George William Traill. He brought together the customary practices of the region with the emergent governmental practices of the Company in a hybrid in which both were transformed. Crucially, Traill's style of rule, while introducing many aspects of formal, textually mediated, state-centred, legal, revenue and administrative practice, was grounded in the personal relationships and mytho-praxis of the region's ancien régime. To the Pahari 'Mr. Traill was Rajah of Kumaon' not the representative of a modern bureaucratic government.<sup>2</sup> Widely admired, even lionized in his lifetime, Traill had been able to resist the homogenizing influence of the Regulation Order and the orthodoxy of its associated formal governmental practices.<sup>3</sup> To a degree, he was constrained and informed by the 'spirit' of the Regulation Order, but Traill's reign of 20 years over the Extra-Regulation Order was 'essentially paternalistic, despotic, [and] personal.'<sup>4</sup> As Whalley put it in 1870, '[t]he system of government...had been framed to suit the particular character and scope of one individual,' adding 'or, as he might have said, had been framed for himself by that individual.'<sup>5</sup>

This personalized mode of governance worked well enough with Traill in charge. Indeed, I argue that it was an essential bridging phase between the modes of the pre-colonial and colonial eras, but the machinery of government Traill left behind could not

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<sup>1</sup> 'Mr R. M. Bird's Note on the Administration of Kumaon,' in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 60-67 para 5.

<sup>2</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35.

<sup>3</sup> Gowan, G. E. to Turner, J. S. - Assistant Commissioner 3rd Division, 29/8/1837, KDRLI, vol: 12.

<sup>4</sup> *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 1.

<sup>5</sup> *Ibid.* p. 1. Here Whalley is paraphrasing Bird's Note of 1836.

easily be taken up by others and certainly not the inexperienced and hapless Lieut. Colonel George Edward Gowan who replaced Traill in April 1836.<sup>6</sup>

Gowan's brief period as Commissioner was typified by Whalley as 'an interval of wavering uncertainty and comparative misrule.'<sup>7</sup> However, the 'Interregnum,' as it was termed by Atkinson to highlight the absence of a sovereign during Gowan's reign, should not be elided from the story of the Extra-Regulation Order.<sup>8</sup> The reaction and response to Gowan's difficulties—brought to light by an inspection tour by the influential administrator R. M. Bird and his subsequent excoriating report—led to external intervention intended to transform Kumaon's legal, revenue and administrative practices.<sup>9</sup> Not the least of these interventions was the eventual removal of Gowan from office on 3 September 1838 after only a little less than two and a half years' service in Kumaon.<sup>10</sup>

Fortunately for the people of Kumaon, this program of intervention and transformation also saw the arrival of the personnel who would rule the region for much of the rest of the nineteenth century and establish what Whalley termed the 'New Era.'<sup>11</sup> These were:

- John Hallet Batten, Assistant Commissioner September 1836 to 1848 and then Commissioner until 1856,
- George Lushington, Commissioner from October 1838 until October 1848, and
- Henry Ramsay, Junior-Assistant Commissioner August 1840, Assistant Commissioner 1848 to 1856 and then Commissioner until 1884.<sup>12</sup>

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<sup>6</sup> Ibid.: Macsween - Secretary to the Lieutenant-Governor N.W.P. to Smith, M – Officiating Commissioner at Kumaon, 5/3/1836, KDMLR, vol: 52.

<sup>7</sup> *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 1.

<sup>8</sup> Atkinson, *The Himalayan Gazetteer*, p. 687.

<sup>9</sup> 'Mr R. M. Bird's Note on the Administration of Kumaon,' in P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 60-67.

<sup>10</sup> Macnaghton, A. M. to Secretary Government N.W.P., 3/9/1837, KDMLR, vol: 61.

<sup>11</sup> Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 1.

<sup>12</sup> Note that Ramsay was in Kumaon from April 1835 to November 1837 as a military officer and may well have met Traill. Moreover, he returned to military service during 1848-49 and participated in the Second Anglo-Sikh War. Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, pp. 233-34.



These men, who, like Traill, spent the rest of their careers in Kumaon, would pass the commissionership and its practices on to each other in a chain of service between late 1838 and 1884. Crucially, Batten and Lushington combined—Batten with his administrative skills and Lushington with his intellectual and juridical skills—to at first absorb the influx of plains-inspired codes, rules and unhelpful level of supervision that were the main thrusts of intervention, and then to deflect the attention of the Regulation Order. With the stifling grip of the Regulation Order loosened and further planned intervention forestalled, especially the codification of Pahari civil and criminal law, the Extra-Regulation Order was to remain distant and distinct for the rest of the colonial era.<sup>13</sup>

## The Interregnum 1836–1838

### *R. M. Bird's tour and report February 1837*

Robert Merttins Bird was the senior member of the Suddar Board of Revenue at Allahabad in 1837 and had made a reputation for himself as the workhorse behind Lord William Bentinck's drive to reform the *mahalwari* settlement model of the North-Western Provinces. These reforms had been codified in the highly prescriptive and utilitarian-inspired Regulation IX of 1833, which mandated detailed mapping and documentation of landholdings and their productive capacity as the basis for a settlement.<sup>14</sup> Considered to be amongst the best informed and most energetic of the divisional Commissioners, Bird was to have a lasting influence on settlement practices in much of North-Western India under Company rule. Indeed, he would go on to define the model for settlement officers and their work through the Bird-Thomason School, 1820–1870. In earlier times, settlements in the N.W.P. had largely been based on past settlements. The Bird-Thomason school would move this model based on the precedent of the past to a more 'scientific' basis in which the natural 'rent'—the margin over bare subsistence + 'normal' wages + the ordinary rate of profit on capital—was calculated from a very detailed

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<sup>13</sup> Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 7-8.

<sup>14</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 78.

understanding of the productive capacity of each and every field.<sup>15</sup> The details of this utilitarian inspired project were later compiled and published as the hyper-prescriptive *Directions for Settlement Officers*.<sup>16</sup> Importantly for events in Kumaon ‘the 1833 settlement generated centripetal forces whose influences only a few civilians would escape.’<sup>17</sup>

Gowan met those forces directly in Bird’s cool season tour of Kumaon during February 1837.<sup>18</sup> Bird—leveraging his status to transcend the strict boundaries of his role as a revenue officer—argued that ‘Kumaon being a remote province, seldom visited by any superior authority, and the people having the greatest terror of coming down into the plains, it appears to me proper to put on record such matters as came under my observation during my visit there, although not immediately connected with our own department, for the information of Government.’<sup>19</sup>

Bird’s subsequent ‘Note on the administration of Kumaon’ covered a broad range of topics in its 35 paragraphs, but cuts to the heart of the matter early when he commented that ‘[t]he present incumbent [Lieut. Colonel Gowan] is not a man of any official experience in any department, and himself requires both guidance and control.’<sup>20</sup> In contrast, Bird’s Note described Assistant Commissioner Batten as ‘a man of a well cultivated mind, much ability, great zeal, indomitable energy, and an earnest desire to promote the welfare of the people under his charge.’<sup>21</sup> Highlighting the primacy of revenue collection to the Company, Bird promptly placed Batten in charge of making the overdue revised settlement in Garhwal and went on to recommend that the settlement for the rest of Kumaon be placed in his hands. This move sidelined Gowan who was

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<sup>15</sup> Eric Stokes, ‘The Land Revenue System of the North-Western Provinces and Bombay Deccan (1830-1860): Ideology and the Official Mind,’ in *Indian Society and the Beginnings of Modernisation c. 1830-1850*, ed. C. H. Phillips and Mary Doreen Wainwright (1976), p. 49.

<sup>16</sup> Lieutenant-Governor N. W. P., *Directions for Settlement Officers: Promulgated Under the Authority of the Honorable the Lieutenant-Governor of the North-Western Province*, pp. 149-53; John Rosselli, *Lord William Bentinck* (London: Chatto & Windus, 1974), p. 256; Mason, *The men who ruled India*, pp. 149-50.

<sup>17</sup> Peter Penner, *The Patronage Bureaucracy in North India: The Robert M Bird and James Thomason School, 1820–1870* (Delhi: Chanankya Publications, 1986), p. 169.

<sup>18</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 79.

<sup>19</sup> ‘Mr R. M. Bird’s Note on the Administration of Kumaon,’ in P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 60-67, para 1.

<sup>20</sup> *Ibid.*, para. 4.

<sup>21</sup> *Ibid.*, para. 6.

befuddled by what his relationship with ‘this class of public functionary’ was, and what his future role in Kumaon would be without responsibility for settlement.<sup>22</sup>

More generally though, Bird’s Note also cautioned against the practice of sending young, inexperienced officers into the hills before they had had the opportunity to be trained and inculcated in the practices of the Regulation Order. Taking his lead from a small number of disgruntled *thuljat* petitioners, Bird formed the opinion that this lack of experience had resulted in poor judicial decision-making, particularly in criminal trials which he described as ‘unimaginably bad.’<sup>23</sup> To ensure quality judicial decision-making in the future, Bird recommended that an appeal mechanism be set up from both civil and criminal cases as well as the Kumaon Commissioner being required to supply a detailed catalogue raisonné of all cases to the Commissioner of Bareilly Division.

Bird also made a series of recommendations about policing in the Terai-Bhabar. This liminal zone had long been subject to the frequent and frightful depredations of plains-based banditti that had spiked just before Bird’s tour.<sup>24</sup> The Extra-Regulation Order, with its apparatus of policing orientated to the needs of the almost crime free hills, had neither the personnel nor equipment to deal with this kind of serious crime. Recognizing these deficiencies, Bird recommended the transfer of the control of criminal matters in the tract to the adjacent plains districts of Bijnour, Moradabad, Pilibheet, and Bareilly.<sup>25</sup> Implementation of this policy brought the liminal zone of the Terai-Bhabar under the criminal justice practices of the Regulation Order. However, this policy was not applied to civil justice and revenue practices which remained under the control of the Extra-Regulation Order.

Bird’s Note also led to consequences for the formal basis of governmental practices in the rest of Kumaon, and he recommended that a brief code for the conduct of civil trials be drawn up that defined the powers and practices of civil and criminal

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<sup>22</sup> Gowan, G. E. to Turner, J. S. – Assistant Commissioner 3rd Division, 6/8/1837, KDRLI, vol: 12.

<sup>23</sup> ‘Mr R. M. Bird’s Note on the Administration of Kumaon,’ in P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 60-67, para 12.

<sup>24</sup> *Ibid.*, para. 16-19.

<sup>25</sup> *Ibid.*, para. 16-24.

judicial officers in Kumaon. He then went on to suggest that the code for Assam that had recently appeared in the newspapers might be a suitable model.<sup>26</sup>

Bird concluded his report with a clear call to bring the Extra-Regulation Order under closer supervision by central authorities and, while not naming Gowan explicitly, made it clear that he was not suitable to continue in his current role:

The general root of the evils which prevail is obvious- the committal of uncontrolled power to those whose fitness for its use has not been proved. The remedy is equally clear, namely, to bring the civil officers of Kumaon under the supervision of those experienced persons to whom the guidance of the other districts of the provinces has been committed, and to provide an appellate power sufficiently near to be available to the hill people.<sup>27</sup>

### *Crisis in civil justice*

One of the aspects of the Extra-Regulation Order's formal governmental practices most severely impacted by Gowan's inadequacies was the functioning of the civil courts. As illustrated earlier in figure 6.2, participation by the Kumaoni people in civil courts fell dramatically in 1836 and 1837. It would seem reasonable to speculate that, at least to a degree, this was a consequence of the break in the direct personal relationship between the Pahari people and Kumaon's Raja, George Traill. His departure for retirement in England in November 1835, coupled with the departure of Mosley Smith for a new position in Meerut on the plains in September 1836, meant that none of the Company officers that remained in Kumaon had a longstanding personal relationship with its people nor the language skills necessary to quickly build such a relationship.<sup>28</sup>

Gowan does not appear to have had a great enthusiasm for building his relationship with the local people through meeting them face to face in his courts and, during his brief period as Commissioner, the equally inexperienced Assistant Commissioners heard more than twice as many cases as he did. This was a dramatic change from the late Traill era where the Commissioner sat in judgement of the bulk of

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<sup>26</sup> Ibid., para. 31.

<sup>27</sup> 'Mr R. M. Bird's Note on the Administration of Kumaon,' in P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 60-67, para 35.

<sup>28</sup> Edward Thomas had departed for a position in Bareilly in September 1834 See Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, p.737.

cases heard by the European officers. In 1837, the only full year for which data is available on the number of cases Gowan heard, he only presided over 260 original suits and 205 appeals, well down from the 952 original cases and 267 appeals that Traill heard in his final year of 1835.<sup>29</sup> Moreover, Gowan's workload did not appear to be increasing as he gained experience and familiarity with Kumaoni law. In the first half of 1838, the last period for which comparable data is available, Gowan only saw a paltry 83 original suits and 25 appeals

As well as being due to the absence of Traill with his personal status as the source of justice, at least some of the drop in the number of civil cases coming before Gowan must be put down to his unorthodox and disconcerting court practices. These came to light in a series of five cases that, through the unprecedented step of being allowed special appeals from the Kumaon Commissioners Court, eventually came before the Lieutenant-Governor N. W. P. for determination.<sup>30</sup> In each of these cases 'the plaintiffs having failed to establish their claims in the civil court [were] treated and punished as criminals.'<sup>31</sup> Indeed, without anything in the form of a criminal trial being held, Gowan had punished both the plaintiffs and some witnesses with sentences of up to five years' hard labour. In his letter to Gowan concerning these matters in February of 1838, James Thomason, the Officiating Secretary to the Lieutenant-General N.W.P. and close confidante of Bird, advised Gowan that the Lieutenant-Governor's investigation could 'not fail to impress upon [him] the importance of observing greater caution and regularity in future...criminal proceedings.'<sup>32</sup> Moreover, he advised that Gowan must keep his civil and criminal proceedings entirely distinct and he should not assume that the 'the failure to substantiate a civil claim, necessarily ...[involved]...criminality, in the assertion of the claim.'<sup>33</sup>

The quite natural reluctance for Kumaonis to seek civil justice in Gowan's court where they might find themselves suddenly convicted of criminal offences notwithstanding, the biggest drop in the number of civil cases apparent in Kumaon at

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<sup>29</sup> Kumaon Police and Judicial Report Series, 1824–1838.

<sup>30</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 90.

<sup>31</sup> Thomason, H. B. to Gowan, E., 22/12/1837, KDMLR, vol: 55.

<sup>32</sup> Thomason, J. - Officiating Secretary to the Governor-General N.W.P. to Gowan, G. E. - Commissioner for Kumaon, 6/2/1838, KDMLR, vol: 55.

<sup>33</sup> Ibid.

this time was in claims before the moonsiffs' courts. Although proportionally not on the scale seen in Gowan's court, the total number of claims instigated in the moonsiffs' courts dropped from 3,663 in 1835 to 2,440 in 1836, a fall of around 33 per cent. This must be attributed to a loss of faith in the system. During his reign, Traill had closely supervised the work of the moonsiffs and had intervened in cases that he suspected were not conducted with propriety.<sup>34</sup> However, this check on corruption was lost with Gowan's arrival. Gowan was well aware of the problems that could arise in the moonsiffs' courts but, in contrast to Traill's practice of close supervision and intervention when required, he believed there was little point in intervening directly.<sup>35</sup>

### *The decline of the moonsiffs*

Rather than remediating the problems of the moonsiffs' self-serving behaviour through supervision as Traill had done, Gowan questioned the fundamental suitability of the *canoongoe* and moonsiffs for judicial office. As early as November 1836, and with only six months experience in the hills, Gowan put his views on this question very clearly to H. B. Harrington, the Registrar to the courts of Suddar Dewani and Nizamat Adalat N.W.P.

The natives of this province labour under a special disqualification for employment as judicial officers of the highest class – Consequently I would by no means leave any offence of a serious nature to the cognisance and [indicipherable] of native judicial officers of even the highest grade – Not that they are deficient in talent, for there are many clever and intelligent men to be met with but are sadly defective in integrity. They are all open to bribery and withal so cunning, it is hardly possible to bring the charge home to them. All, too more or less give way to a spirit of partisanship, or clanship which prevails universally in Kumaon, more particularly among the Joshees, and generally among the Kumaon Brahmins. The Garhwal Brahmins are considered free from such bias, but few of their [indicipherable] any degree of intelligence – This proneness to bribery and intrigue, renders them incapable of administering justice impartially and I am satisfied that no salary, however liberal, that the Govt could furnish on them would in any way tend to remedy such evils- nor can we hope for any improvement until an enlightened education, shall at some future period, instil better principles in them.<sup>36</sup>

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<sup>34</sup> Traill, G. W. to Payne, Capt. Commanding at Phitoragarh, 22/11/1834, KDJLI, vol: 30.

<sup>35</sup> Gowan, G. E. to Harrington, H. B. – Officiating Register to the courts of Suddar Dewany and Nizamat Adawlat N.W.P., 6/11/1836, KDRLLI, vol: 33.

<sup>36</sup> Ibid.

In the 1830s, probity in office, the idea that public and private business needed to be separated, an insistence on transparency and a belief that judicial decisions should be impartial—all aspects of the Rule of Law as we know it today—were new and emergent ambitions within the formal, governmental practices the Company had brought to Kumaon. In earlier times in both England and India, self and clan enrichment were a natural part of all offices and ‘[e]very post carried its perquisites, percentages, commissions, receipt of bribes, its hidden spoils.’<sup>37</sup> The alternative values of the Rule of Law are not timeless established truths, and they had only emerged with any vigour amongst Company officers in India during the late eighteenth and early nineteenth centuries.<sup>38</sup>

Dirks and others argue that this new set of values and practices emerged as part of the response to the ongoing scandals that convulsed the East India Company late in the eighteenth century—scandals that played out most publicly in the extended saga of the impeachment of Warren Hastings, 1788–1795.<sup>39</sup> Company profits at the time were slight, unstable and stood in sharp contrast to the increasing number of Company officers returning from their sojourns in the East fabulously wealthy. Growing rich through private ventures and the taking of ‘presents,’ these ‘nabobs’ with their new and supposedly Asiatic style of corruption were seen as threatening the stability of the ‘old’ corruption, which had long functioned as a secondary political formation and purchasing point for economic and social power in England.<sup>40</sup>

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<sup>37</sup> Thompson, *Whigs & Hunters: The origin of the Black Act*, p. 120. Note that Thompson's comments arise in relation to the scandal around the South Sea Company in the 1720s, not the East India Company in the late 1700s.

<sup>38</sup> McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law*, pp. 10-33. Even here though, the values of the Rule of Law were never universally held or applied.

<sup>39</sup> Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain*, pp. 9-15. Nabob, is a term derived from the honorific *navab* bestowed on semi-autonomous rulers of India by the Mughal emperors.

<sup>40</sup> Philip Harling, *The Waning of 'Old Corruption': The politics of economical reform in Britain, 1779-1846* (London: Oxford University Press, 1996), p. 18.

One of the many responses to the imagined threat that the nabobs presented to the old order and Company profits, was the establishment of the East India Company College Haileybury in the early years of the nineteenth century.<sup>41</sup> Here, the young men that the Company would send out to India to administer empire such as Traill, Lushington and Batten, were drilled, first in Indian languages, but also in ethics, international law, political economy, and history by the likes of Robert Malthus, James Mackintosh and others.<sup>42</sup> This new form of training was intended to inculcate in the young trainees the precepts of utilitarianism, property, the ethical norms of what would become known Weberian public service. Interestingly, Batten’s father, the Rev. Dr Joseph Hallet Batten, lectured in Classics at the College and was principal from 1815 to 1837.<sup>43</sup>



**Figure 8.1. Rev. Dr Joseph Hallet Batten, Principal of the Company School 1815–1837.**

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In contrast, none of the *canoongoe* and moonsiffs had had any experience with the education and ethical training provided by the Company College. Indeed, it is unlikely that they had any experience with anything like an enlightened education or school at all as no school existed in Kumaon before 1842.<sup>44</sup> Moreover, few of the *canoongoe* and moonsiffs would seem to have been touched either by the ‘experience with a better system’ that Traill had hoped for or the values and practices expressed in the ‘Rules for the Guidance of Moonsiffs.’<sup>45</sup> Rather, many of the Native officers had persisted with the customary practices of self and clan enrichment of the pre-colonial era. Being intelligent

<sup>41</sup> Mason, *The men who ruled India*, pp. 140-43. Note that the school only became officially known as Haileybury in 1862.

<sup>42</sup> It would be naïve and fatuous to suggest that all men who attended the Company School were inculcated with the ideals of modern public service. Nevertheless, everything about Traill, Batten and Lushington suggests that they strongly held these principles and tried to implement them in their everyday practices.

<sup>43</sup> Frederic Boase, *Modern English Biography: Containing Many Thousand Concise Memoirs of Persons who Have Died Since the Year 1850, with an Index of the Most Interesting Matter, vol. 4* (Truro: Netherton and Worth, 1906), p. 1894.

<sup>44</sup> The first institution resembling a school did not open in Kumaon until 1842. R.S. Tolia, *British Kumaun-Garhwal: An administrative history of a non-regulation hill province* [sic] vol. II (Almora: Shree Almora Book Depot, 1996), p. 124.

<sup>45</sup> Traill, G. W. to Shakespear, H. - Secretary to the Government Judicial Department, 20/2/1828, KDJLI, vol. 29. Sec. 11.



and agential men, they had, like many others in India, found new and creative ways to pursue self and clan enrichment within the new formal governmental practices the Company introduced.<sup>46</sup>

In parallel to the new training regime at Haileybury, the Company had also engaged in the development and introduction of new bureaucratic practices that Bhavani Raman has recently dubbed the *Document Raj*.<sup>47</sup> She outlines that in response to the scandal of the nabobs, the Company incrementally deployed a new model of political and financial accountability, grounded in continuous writing practices. These new practices were intended to make the daily functioning of both European and Native Company officers visible and legible to their metropolitan overseers.<sup>48</sup> Within this process, the pre-colonial practices of customary officers such as the *canoongoe* and moonsiffs were transformed through writing practices intended, as Lushington would put it in 1839, to ‘check the abuse of power, to correct or at least record negligence, to stimulate sloth, and prevent injustice.’<sup>49</sup> Raman goes on to argue that this transformation ‘enabled a racialized and selective stereotype of native corruption and native duplicity to become the basis of colonial rule.’<sup>50</sup>

However, in the hills, a more complex discourse opened up that was not limited to a simple European–Native binary. Within this discourse, the source of corruption in Kumaon was not to be found in the character of the Khasa or Bhotiya people who, well into the twentieth century, continued to be portrayed as nature’s children and the most honest and law-abiding people on earth.<sup>51</sup> Rather, the sources of corruption and despoilment were, on the one hand, the despotism and Brahmanism of the plains, while on the other, the inevitable and regretted influence of the British themselves. The *canoongoe* and moonsiffs were universally high-caste *thuljat* whose status was predicated on their supposed plains origins and orthodox brahminical caste practices. The *thuljat* were

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<sup>46</sup> Cohn, ‘The initial British impact on India: A Case Study of the Benares Region,’ pp. 428–30. See also, Robert Eric Frykenberg, *Guntur District 1788-1848: A History of Local Influence and Central Authority in South India* (Oxford: Clarendon Press, 1965).

<sup>47</sup> Raman, *Document Raj: Writing and Scribes in Early Colonial South India*.

<sup>48</sup> *Ibid.*, pp. 28, 193.

<sup>49</sup> Lushington, G. T. to Register Suddar Dawani and Nizamut Adalat N.W.P.- Allahabad, 8/5/1839, KDRLI, vol: 13.

<sup>50</sup> Raman, *Document Raj: Writing and Scribes in Early Colonial South India*, p. 193.

<sup>51</sup> Jim Corbett, *Man-eaters of Kumaon* (Harmondsworth: Penguin Books, 1979).

not portrayed as native Paharis within this discourse. Rather, they were understood to be natives of the plains and outsiders that the noble Paharis needed to be protected from by vigilant Europeans.<sup>52</sup> This theme of the corrupting influence of the *thuljat* and other plainsmen coupled with a reported ‘positive dread’ on the part of most Kumaonis of conducting business through Native officials, formed an ongoing and pervasive trope in the KDPMR.<sup>53</sup> This trope was articulated most clearly by Lushington who wrote soon after taking office in Kumaon that:

[The question is, whether]...the alleged venality and oppression of the Ministerial Brahmins [*canoongoe* and moonsiff] (who in this province appear to occupy the position of the kaits of the plains, having however the power of superior caste as well as superior knowledge) will continue to frustrate the exertions of their superiors, or whether the hill tribes, ignorant, timid, and apathetic as they doubtless are, will under the operation of a written law, administered it is to be hoped with fairness and impartiality learn to assert their rights and dignity as thinking beings—much doubtless has been done to ameliorate their condition during the time we have ruled them—equally certain is that much remains to be done.<sup>54</sup>

### ***Separation of the role of canoongoe and moonsiff***

In response to Gowan’s advice on the suitability of Kumaonis to hold judicial office, the Lieutenant-Governor of the N.W.P. ordered that there should be a number of changes to the roles of the Native Commissioners in July of 1837.<sup>55</sup> The roles of the *canoongoe* and moonsiff were to be split and made separate offices. The number of Native Commissioners was reduced to four with one *suddar ameen* and one moonsiff located in each of the district headquarters at Srinagar in Garhwal and Almora in Kumaon. Here, they could be kept under the close supervision of European officers. Moreover, Gowan instructed that care be taken that the two appointees in each district were not from the same family.<sup>56</sup> This last measure was designed to use the competitive and clannish nature

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<sup>52</sup> Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, pp. 11-14.

<sup>53</sup> Lushington, G T to Secretary to the Board of Revenue N.W.P. – Allahabad, 11/6/1840, KDRLI, vol: 14; Traill, G. W. - Rules regarding the hire & payment of Khuseeas in Kumaon, 6/7/1834, KDJLI, vol: 30; Traill, G. W. to Newnham, Henry - Secretary to the Board of Commissioners at Furukabad, 1/11/1817c, KDRLI, vol: 7; Traill, G. W. to Sutchwell - Deputy Assistant Commissioner Bareilly, 16/12/1826, KDJLI, vol: 28; Traill, G. W. to Swetwellian, Lieut. - Executive Officer in Kumaon, 25/6/1827, KDJLI, vol: 29.

<sup>54</sup> Lushington, G. T. to Secretary of Government Judicial and Revenue Department, 3/1/1839, KDJLI, vol: 34.

<sup>55</sup> Gowan, G. E. to Thomason, J. - Officiating Secretary to the Lieutenant-Governor N.W.P., 25/7/1837, KDJLI, vol: 33.

<sup>56</sup> Gowan, G. E. to Batten, J. H., 20/7/1837, KDJLI, vol: 33.

of the relationships between the aristocratic *thuljat* families to short circuit the matrix of conspiracy and intrigue that they had theretofore practised. In particular, it was a measure intended to break up the power of the region's most prominent Brahmin family, the Joshi clan. Gowan believed that this extended *thuljat* family were 'so deeply imbued with a party spirit and proneness for intrigue, as to render them totally unfit for the office.'<sup>57</sup> This desire to break the power of the 'Joshee tribe,' even extend to the appointment of persons from the plains to positions such as sheristadar (chief administrative officer of the courts) when no non-Joshi alternative was available. These appointments were made despite having to pay higher wages to attract such men.<sup>58</sup>

### ***Settling boundary disputes***

In parallel to the splitting of the office *canoongoe* and moonsiff, Gowan also sought to contain the influence of the *canoongoe* though changing their role in the settling of boundary disputes. Still smarting from Bird's rebuke delivered a month earlier, and the rejection of his proposed new settlement by the Suddar Board of Revenue, Gowan scrambled to find a meaningful role through implementing an aspect of the new settlement regime prescribed by Regulation IX of 1883 that had not been transferred to Batten.<sup>59</sup>

One of the few aspects of the settlement process that Gowan retained control of was the resolution of disputes about villages' external boundaries. Resolution of these disputes, as opposed to boundary disputes within villages, was seen as an essential precursor to any successful settlement. The existing method of dealing with such matters through the civil courts was both time consuming and, given that it involved a good deal of discretion on the part of *canoongoe*, had opened up opportunities for self-enrichment by the Native Commissioners. Emphasizing the construct of a corrupt *thuljat* and noble Khasa dichotomy, Gowan sought to resolve these two issues by implementing a set of codified practices where the determination of a boundary dispute would be put into the hands of local panchayats and juries of arbitration where Khasa would dominate. Within

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<sup>57</sup> Gowan, G. E. to Turner, J. S. - Officiating Commissioners of the 3rd Division Bareilly, 4/7/1837, KDJLI, vol: 33.

<sup>58</sup> Ibid.

<sup>59</sup> Tolia, *Founders of Modern Administration in Uttarakhand, 1815-1884*, p. 40.

this new set of practices, Native officers, both patwari and *canoongoe*, only had a technical, administrative role, rather than a decision-making role.

Like Traill had in earlier times, Gowan turned to an existing piece of plains legislation as the model for his new codified practice around resolving village boundary disputes—'Letter No. 40 from the Secretary Suddar Board of Revenue N.W.P.'<sup>60</sup> Again, like Traill had with the 'Rules for the Guidance of Moonsiffs,' Gowan took pains to modify the original text 'to meet the peculiar circumstances of this Province but the principles evolved in them is essentially the same as [indecipherable] to which Reg. IX of 1833 has given the force of law in the plains districts.'<sup>61</sup> Reflecting his level of administrative skill, however, Gowan did not think to integrate his modifications and Letter No. 40 into a single document and both needed to be read together to discern what the law in Kumaon was. Given how many Persianate words unfamiliar to Paharis that 'Letter No. 40' contained, and the lack of clarity about which section persisted unmodified and which did not, this must have been confusing to all participants. Nevertheless, desperate to achieve quick compliance, Gowan informed the Assistant Commissioners that:

Every probable case of doubt or difficulty, likely to arise, has been as far as possible, provided for in the rules themselves, and I have to require that you will enjoin in the Native officers under your control the strictest attention to every direction therein contained, and that you will take care to visit the least deviation from the written orders with a suitable reprehension or punishment.<sup>62</sup>

The purport of these detailed and prescriptive rules was to the effect that that:

- Boundary disputes would not be taken up by courts in the first instance, and the role of the courts was limited to deciding whether that proper procedure had been carried out and valid certificates issued.<sup>63</sup> Within this new practice, justice was not to be found in a personal decision by a judge based on the merits of a case but in the technical validity of a document.
- All disputes were to be decided by a panchayat, or a jury of private arbitrators composed of men decided upon through a process of random

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<sup>60</sup> 'Extract of Letter No. 40 from the Secretary Suddar Board of Revenue N.W.P.' to the several Commissioners Revenue and Circuit, 25/7/1837, KDRLI, vol: 12.

<sup>61</sup> Gowan, G. E. as a Circular to Capt. Corbet and Thomas, S. J. - Assistant Commissioners, 28/8/1837, KDRLI, vol: 12.

<sup>62</sup> *Ibid.*, para. 3.

<sup>63</sup> *Ibid.*, Sec. 3-5.

selection moderated by the right to challenge to achieve procedural fairness. Recusants, such as those who refused to participate in the panchayat or jury of arbitration or accept the decision of these bodies were to be severely punished.<sup>64</sup>

- Direct intervention by European officers in the dispute was only to occur if convenient, and no other option was viable.
- The role of Native officers was limited to calling the panchayat or jury of private arbitrators in rigid compliance with the rules for assembling such bodies and then certifying that the prescribed procedure had taken place. Native officers were to have no discretion as to what the decision was.

Perhaps unsurprisingly, Gowan reported little immediate success or progress in implementing these rules.<sup>65</sup> However, some years later Batten reported that moving to a dispute settlement model based on panchayats and juries of arbitration and reliance on ‘a document accompanied by the proper attestations, showing the actual determination of the boundaries by the people themselves’ had done much to avoid the making of false records by Native officers.<sup>66</sup>

Moreover, these agreed boundaries, both those explicitly determined through a formal dispute and those implicitly agreed to in the acceptance of existing boundaries, were considered final and binding.<sup>67</sup> As such, the courts would no longer hear petitions alleging dispossession of one village by another as civil disputes. Rather, they would be heard as criminal suits that Batten threatened ‘would generally end by involving some party or another disagreeably.’<sup>68</sup>

### ***Gowan’s departure***

Gowan stumbled in disarray through many crises through 1836–1838. These included disputes with the military that involved public shouting matches with senior officers, failure to progress the overdue revised settlement, continued confusion about his relationship with Batten, a surge in serious crime in the Terai-Bhabar, and the inept handling of the dismissal of the *canoongoe* and moonsiff of Shore District, Ram Kishan

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<sup>64</sup> Ibid., sec. 9-10.

<sup>65</sup> Gowan, G. E. to Turner, J. S. - Assistant Commissioner 3rd Division, 29/8/1837, KDRLI, vol: 12.

<sup>66</sup> Batten, *Report on the Settlement of the District of Gurbwal in the Province of Kumaon: 15th August 1842*, p. 16.

<sup>67</sup> These fixed and rigid boundaries did not deny the customary right of others to collect firewood, timber and grass or to graze with the boundaries. See: Translation ‘Deed of Revenue Engagement, or Malgoozaree Pottah’ in *Official Reports on the Province of Kumaon*, p. 355.

<sup>68</sup> Gowan, *Report on the Settlement of the District of Gurbwal in the Province of Kumaon: 15th August 1842*, p. 17.

Joshi. Gowan even dismissed the depressed dipsomaniac Head English Writer Mr Conway, who Traill had suffered to continue to employ since the early years of the Extra-Regulation Order.<sup>69</sup> Both the extended correspondence through which these disputes were conducted and the admonishments that Gowan received for his clumsy handling of all these affairs make for painful reading.<sup>70</sup> Ultimately though, Gowan was found wanting in his role as a judicial officer and it was determined that he lacked the ‘temper, patience, sound judgement and a knowledge of the common principles of justice....by the simple people of Kumaon,’ and he was dismissed from his role as Commissioner in September 1838.<sup>71</sup> Gowan made over his office to George Thomas Lushington on 30 November of that same year.<sup>72</sup>

## **The New Era 1838–1843 and beyond**

Long before Gowan’s dismissal though, moves had been afoot to redevelop and reform the practices and the legislative basis of the Extra-Regulation Order in line with Bird’s suggestion that a brief code for the conduct of civil trials be drawn up that defined the powers and practices of civil and criminal judicial officers.

The first legislative step in the reform process was the passing of Act X of 1838 which came into force around October of the same year.<sup>73</sup> This minimalist act was only two short sections long and provided little insight into the future form of judicial administration in Kumaon. First, the Act repealed Regulation X of 1817 which theretofore had governed criminal matters in Kumaon. Second, it placed civil justice, criminal justice and revenue matters under the control of the Suddar Diwani Adalat

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<sup>69</sup> Gowan, G. E. to Turner, J. S. – Assistant Commissioner 3rd Division, 6/8/1837, KDRLI, vol: 12; Herman – Secretary to the Lieut. Governor of the N.W.P. to Gowan, G. E., 10/7/1837, KDMLR, vol: 54; Gowan, G. E. to Scott – Assistant Commissioner Moradabad, 25/2/1837, KDRLI, vol: 12; Batten, J. H. to Gowan, G. E. - Commissioner Kumaon, 10/7/1837, KDMLR, vol: 55; Gowan, G. E. to Conway – Head English Writer, 11/5/1837, KDRLI, vol: 12.

<sup>70</sup> Turner, F. J. - Officiating Commissioners of the 3rd Division Bareilly to Gowan, G E 4/7/1837, KDMLR, vol: 54.

<sup>71</sup> ‘Proceedings of the Political Department No. 841,’ 1/9/1839, KDMLR, vol: 61.

<sup>72</sup> Macnaughten, A. M. to Secretary to Government N.W.P., 3/9/1838, KDMLR, vol: 59; Gowan, G. E. to Secretary to the Right Honourable Governor-General of N.W.P. at the Revenue Department, 30/11/1838, KDJLI, vol: 34.

<sup>73</sup> Great Britain Parliament, *Acts of the Government of India from 1834 to 1838 inclusive* (London: Ordered, by The House of Commons, to be Printed, 1840); Gowan, G. E. to Thomason, J. - Officiating Secretary to the Governor-General N.W.P., 10/10/1838, KDJLI, vol: 34.

(Chief Civil and Revenue Court), the Nizamat Adalat (Chief Criminal Court) and the Suddar Board of Revenue respectively.

The earliest consultations about the existing and possible future legislative basis for the Extra-Regulation Order appears in the KDPMR in March of 1837.<sup>74</sup> In an extensive report on the justice system in Kumaon to Henry Byng Harrington, the Register of the Suddar Diwani and Nizamat Adalat at Allahabad, Gowan casually noted that the courts of the province operated in a manner similar to those of Assam.<sup>75</sup> Assam, far to the east of Kumaon, shared many of Kumaon's characteristics of economic, political and cultural distance and distinction from the plains. Like Kumaon, Assam was a Non-Regulation Province and had even had the similar experience of being in the charge of a young, unconventional and talented Company officer from early in its occupation, David Scott.<sup>76</sup> Moreover, as with Traill's departure, the Company had had to develop an administrative model not based on the talents and personality of a single man after Scott died at the hands of local rebels in 1831.

This vague awareness of the geopolitical similarities of Kumaon and Assam and the possibility that a similar legislative solution might be useful, coalesced in August of 1838. At this time, Gowan noted in a letter to the Secretary of Government that, while introducing the regulations to Kumaon would not be practical, a few simple rules were essential—rules similar, I believe, to the Assam Rules.<sup>77</sup> However, Gowan was not able to carry these proposals forward. With his dismissal only two months later in September, all future consultations about the implementation of the Assam style Rules in Kumaon were conducted with Lushington.

A second round of consultations began in October of 1838, when the Assistant-Secretary to the Governor-General forwarded a printed copy of the 'Rules for the Administration of Civil and Criminal Justice in Assam' to Lushington and asked for his opinion of the expediency of implementing similar rules in Kumaon.<sup>78</sup> In his reply of

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<sup>74</sup> Gowan, G. E. to Harrington, H. B. – Officiating Register Nizamat Adawlat N.W.P., 17/3/1837ab, KDJLI, vol:33.

<sup>75</sup> It is likely here that Gowan is echoing a notion originally put forward by Bird.

<sup>76</sup> Nirode K Barooah, *David Scott in North-East India 1802-1831: A study in British paternalism* (New Delhi: Munshiram Manoharlal, 1970), pp. 1-21.

<sup>77</sup> Gowan, G. E. to Secretary to the Law Commission, 22/8/1838, KDJLI, vol: 34.

<sup>78</sup> Assistant Secretary to the Governor-General to Lushington, G.T., 22/10/1838, KDMLR, vol: 59.

January 1839, Lushington enthusiastically supported the proposal adding that the sooner the Assam Rules—with some trifling amendments—were implemented in Kumaon the better.<sup>79</sup> He believed that '[t]hey will be found well adapted to the wants of the people here,' but saw their major advantage not in relation to the Kumaoni people, but in regard to the conduct and practices of the European and Native Commissioners:

Defining and limiting the authority of each functionary (which up to this time appears to have been a thing unknown and unheard of in Kumaon) will be the chief and obvious benefit of the new system and under its operation we shall I trust no more meet with various irregularities of principle and practice which appear to have prevailed here....<sup>80</sup>

Confusingly, the printed set of rules that would go on to be used in Kumaon are commonly referred as the 'Assam Rules' in later sources such as Tolia and Whalley. This is despite the fact that in the contemporary primary sources the set of rules implemented in Kumaon are always referred to as the 'Kumaon Printed Rules' which consisted of two separate documents.<sup>81</sup> The first was the 'Rules for the Administration of Criminal Justice in Kumaon' and the second the 'Rules for the Administration of Civil Justice in Kumaon.'<sup>82</sup> Both were intended to transition much of the region's judicial practice from the idiosyncratic and generally orally mediated practices that Traill had established, to practices grounded in a formal, textually mediated document functioning as a constitution. Importantly though, neither document said much about what the criminal or civil law was to be in Kumaon, and they do not represent a broad scale attempt to codify the law itself. As during the Traill era then, the criminal and civil law of Kumaon would continue to be primarily found in the precedents and everyday judicial practices of the various Commissioners and not in positive textually mediated legislation.

### ***'Rules for the Administration of Criminal Justice'***

Reflecting the continuing relative insignificance of criminal justice in the hills, the 'Rules for the Administration of Criminal Justice in Kumaon' were only six pages long,

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<sup>79</sup> Lushington, G. T. to Secretary of Government Judicial and Revenue Department, 3/1/1839, KDJLI, vol: 34.

<sup>80</sup> Ibid.

<sup>81</sup> No copy of the original 'Assam Rules' is to be found in in the KPMR. In each instance where a copy was forwarded to Kumaon for comment, the forwarding officer asked for the return of the original. Assistant Secretary to the Governor-General to Lushington, G.T., 22/10/1838, KDMLR, vol: 59.

<sup>82</sup> See Appendices 8.3 and 8.4



used relatively straightforward, simple language and consisted of only four sections.<sup>83</sup> Sec. I, cl. 1 defined the jurisdiction of each of the four grades of judicial officers; the Commissioner, Senior Assistants, Junior Assistants and *suddar ameen*.<sup>84</sup> In a clear change from earlier policy, Sec. I, cl. 2 for the first time explicitly gave the *suddar ameen* the power to try criminal matters but limited their jurisdiction to cases where the possible fine did not exceed Rs. 50 or imprisonment, with or without labour, for up to six months. Even here though, and reflecting moves to bring Native Commissioners under close European supervision, the *suddar ameen* could only hear criminal cases referred to him by the Senior Assistant.

However, the Criminal Rules were not solely directed at limiting the powers of Native Commissioners. Under Sec. I, cl. 1–3, 6–9, 11–13, each of the three grades of European Commissioners also had clear and defined limits set for the amount of fine and imprisonment they could impose.

Sec. I, cl. 5, 9 codified the earlier orally based practice of allowing appeals from lower courts introduced in 1829 and explicitly allowed for appeals from the decisions of the three lower classes of judicial officer to their immediate superior. Unlike the Civil Rules though, there was entirely no provision for appeal from a decision of the Commissioner on a criminal matter.

Sec. II, cl. 1–9 of the Criminal Rules defined the relationship between each of the four grades of judicial officer and detailed many of the procedures to which they were to conform. These procedures included the novel concept of empanelling a jury for all Commissioners' criminal trials found at Sec. II, cl. 5. Consisting of at least three persons, clause 5 insisted that all evidence be taken in the jury's presence. However, the jury's decision was not final, and Sec. II, cl. 6 made clear that their determination was merely advisory and that the final decision in all cases rested with the Commissioner.<sup>85</sup>

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<sup>83</sup> See appendix 8.3

<sup>84</sup> The moonsiffs appear to have had no role in criminal matters.

<sup>85</sup> Lushington held a very favourable view of the use of juries and only one instance of a Commissioner overriding a jury is found in the KDPMR. Lushington, G. T. to Edmonstone, G. J. - Register Suddar Nizamat Adualat N.W.P., 9/9/1846, KDJLI, vol: 38.

Reflecting concerns expressed by R. M. Bird about evidence in civil matters becoming the basis for criminal prosecutions, Sec. III created elaborate and very restrictive procedures for prosecution of perjury and forgery matters arising from civil cases.

Finally, Sec. IV outlined that policing in Kumaon was to come under Regulation XX of 1817 and that the Commissioner was declared to be the Superintendent of Police for the Province.<sup>86</sup> However, reflecting an awareness of Kumaon's distant and distinct conditions, the Rules went on to state that the Regulation only applied 'wherever the circumstances of the province may admit to the application of its provisions.' This provision resulted in policing in the hills of Kumaon continuing to be conducted in the existing manner outside of the strict control of the Regulation Order.<sup>87</sup>

### ***'Rules for the Administration of Civil Justice'***

In contrast to the Criminal Rules, the 'Rules for the Administration of Civil Justice' is a much more substantial document.<sup>88</sup> Reflecting the relative importance of civil justice in Kumaon, the Rules were 24 pages long, often contain legalistic language and consisted of 11 sections. Like the Criminal Rules, they were primarily intended to transition much of the region's judicial practice from the idiosyncratic and generally orally mediated practices of the Traill era, to practices based on a formal, textually mediated document functioning as a constitution. As part of this transition, the Civil Rules both introduced new legal concepts and practices as well as formalizing existing practices in a textually mediated form.

One of the earliest of the new practices was found at Sec. I, cl. 4 which explicitly recognized the possibility of 'special appeal' to the Suddar Diwani Adalat from decisions of the Commissioner in civil matters that had earlier been used to provide relief in the five civil cases that had resulted in jailing of the complainants. Special appeal was an elaborate process however, and it did not automatically establish the right of appeal from the Kumaon Commissioner's decisions. Tellingly, there is no record in the KDPMR of a

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<sup>86</sup> For Regulation XX of 1817 see <http://www.southasiaarchive.com/Content/sarf.146425/222754/048>

<sup>87</sup> See Appendix 8.3.

<sup>88</sup> Ibid.

special appeal ever being allowed from Kumaon's civil courts suggesting that there were no further instances of decisions that were 'unimaginably bad.'<sup>89</sup>

The Civil Rules also gave a textually mediated form to the Commissioner's implicit power to discipline the Native Commissioners. Sec. I, cl. 10 created a provision for fining, suspending and dismissing a *suddar ameen* for misconduct. Traill had elided such a clause from the 'Rules for the Guidance of Moonsiffs' despite the provision being prominent in Regulation XXIII of 1814, from which the Rules were drawn.<sup>90</sup> Highlighting the general distrust in which the Native officers were held in the post-Traill period, there is no equivalent clause for the European officers.

The provisions for dismissing Native Commissioners were first used in 1842 when Lushington dismissed Beem Dutt Khundouree, the moonsiff in Garhwal.<sup>91</sup> B. D. Khundouree was a member of a family that had been employed by both the Kumaon Rajas and the Nepali governments and had continued to favour his family in his decisions.<sup>92</sup> Despite Lushington being unable to explicitly prove misconduct, his advice to dismiss Khundouree was accepted on the basis of both the very low number of cases Khundouree disposed of each month, as well as fulfilling the strategic objective of breaking the duopoly of the 'two favoured tribes of Brahmins...which I could not but allow to be an evil.'<sup>93</sup>

One of the other significant informal and orally based practices of the Traill era that was formalized and codified in the Civil Rules was allowing suits on questions of caste and marriage to be heard. Sec. II, cl. 5 allowed great discretion to the Assistant Commissioners as to which suits of this kind were heard and which were not, but the clause specifically allowed for such suits 'to be brought on the file and tried as a regular suit.' Not all matters around caste were civil matters though. In recognition of the cultural landscape of Kumaon and the potential for violence to erupt if some caste matters were not dealt with effectively, cases where 'any party who may be moved to

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<sup>89</sup> 'Mr R. M. Bird's Note on the Administration of Kumaon,' in P. Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government*, N.W.P., pp. 60-67, para 12.

<sup>90</sup> See Appendix 6.2 *Regulation XXIII of 1814*. Sec. IX –Third and Fourth.

<sup>91</sup> Lushington, G. T. to Smith, M. -Register to Suddar Nizimut Adulat N.W.P., 27/8/1842, KDJLI, vol: 37.

<sup>92</sup> Lushington, G. T. to Register – Suddar Nizimut Adulat N.W.P., 2/2/1842, KDJLI, vol: 36.

<sup>93</sup> Lushington, G. T. to Hamilton – Officiating Secretary to the Governor, 9/2/1842, KDJLI, vol: 36; Lushington, G. T. to Smith, M. -Register to Suddar Nizimut Adulat N.W.P., 27/8/1842, KDJLI, vol: 37.

wantonly and carelessly inflict[ed] that greatest of all injuries (in the opinion of the Hindoos/ being loss of caste upon an innocent person)' were directed to be continued to be dealt with as criminal matters.<sup>94</sup>

Another aspect of existing judicial practice formalized and codified by the Civil Rules was the use of arbitrators in civil matters. Sec, II cl. 10 authorized the use of 'every proper means' to induce the parties to a dispute to refer the matter to arbitrators. These arbitrators were, in turn, directed to work towards a determination in the context of existing customs and norms that could 'embrace the whole merits of the case.' Importantly, the arbitrators' decisions were to have the same force as judicial judgements except where it could be shown that they were made with 'flagrant and palpable partiality.'

A very new and alien concept was introduced to civil proceedings in Kumaon with allowance for instituting suits as a pauper. This complex formal practice introduced from English law had previously existed in an undocumented form as the right to approach Traill with any concern informally. Sec. II, cl. 11 transformed this informal justice practice into a right founded on a textually mediated practice although it is clear that the Paharis maintained the practice of approaching the European commissioners informally with any matter of concern. Like the 'special appeal,' there is no evidence found in the KDPMR that a Pahari ever approached the court as a pauper or made other use of this alien concept.

Similarly, pre-existing practices around the power of case precedents found codified expression in Sec. III, cl. 4. This clause allowed for a second or special appeal on the grounds that a decision was 'clearly in opposition to, or inconsistent with, another decree of the same court, or another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action.' Theretofore, precedent had functioned informally, and, given the absence of lawyers, one suspects somewhat haphazardly in Traill's everyday judicial practices. However, the effect of Sec. III, cl. 4 when combined with the compulsion to provide a written copy of all decisions written in the local dialect of Hindi

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<sup>94</sup> Lushington, G. T. to Register – Suddar Diwani & Nizimut Adalat N.W.P., 19/1/1841, KDJLI, vol: 36.

found in Sec. II, cl. 3 and Sec VII, cl. 3, meant that written evidence of precedent now had the force of compulsion in the court's decision-making.

Highlighting their acceptance and understanding of these new civil justice practices, the local people quickly picked up on the concept of precedent as a force in judicial decision-making. Shortly after the introduction of the Civil Rules, requests for copies of earlier decrees by third parties not involved in the original case boomed to the degree that the writers in the *cutcherry* had to draft in their relatives to keep up with demand. Batten argued that this flood of requests for copies of decisions was 'afforded by the use of unstamped paper [and they are] tempt[ed] to take up every case in which they, their friend, or enemies have been engaged from the British conquest to the present time.'<sup>95</sup> Batten's solution to stemming this incessant demand for written copies of precedents was to turn to Traill's earlier tactic of using a price signal. He advised that copies of the decision should only be supplied on an 8 anna stamp paper provided by the requestee, a recommendation that was supported by both Lushington and the Company-Government.<sup>96</sup>

One of the major reversals of Traill's policies found in the Civil Rules was that Sec. IV allowed for the regular use of *vakeels* and *pleaders*. Although the Civil Rules did not provide for *vakeels* to be attached to any court, and the Commissioner had the right to exclude any person he found incompetent from being a *vakeel*, the Civil Rules for the first time codified the right to be represented in court. However, to limit predatory behaviour by the *pleaders*, the Civil Rules took the trouble to set their fee to a maximum of 5 per cent of the sum awarded against to the losing suitor.

Section VIII relating to mortgages, sought to bring about significant changes in the status and functioning of both verbal and written agreements in Kumaon. Prominent amongst these changes was Sec. VIII, cl. 11 which made clear that mortgages where money was lent on the implied security of a person not a party to the transaction—most

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<sup>95</sup> Batten, J. H. to Lushington, G.T., 3/5/1839, KDJLI, vol: 34.

<sup>96</sup> Lushington, G. T. to Batten, J. H., 9/10/1839, KDJLI, vol: 36; Lushington, G. T. to Senior Assistant Kumaon, 6/9/1839, KDJLI, vol: 36.

commonly effectively selling an unsuspecting relative into slavery—were never to be enforced.

In addition, Sec. VIII, cl. 12 attempted to make a major change to the status of verbal mortgages. This clause asserted that, while all existing verbal mortgages were to be recognized and enforced by the courts, after the promulgation of the Civil Rules and ‘as far as possible,’ that only written mortgages were to be recognized by the courts. This assertion of the value of written mortgages over verbal mortgages played into, Section XI of the Civil Rules which provided for the establishment of an office for the registration of all deeds in Kumaon at Srinagar and Almora. Emphasizing the value now placed on ‘continuous writing,’ the Junior Assistant was to maintain a ledger book made of English paper in which the identifying details of each deed was entered, dated and signed off by the Junior Assistant for a fee of one rupee with a fee of eight anna for a copy of the registration.<sup>97</sup> As with the new method of settling boundary disputes then, justice around mortgages was not to be found in a personal decision by a judge based on the merits of a case, but in the technical validity of a document.

However, demonstrating the agency of Kumaoni people to embrace what they found of value in the new formal governmental practices of the New Era and to ignore those that they did not, the local people continued to give equal weight to verbal and written deeds and chose not to register the majority of mortgages and other deeds.<sup>98</sup> Batten put this down to ‘the well known repugnance of the hill-men to adopt any practice, good or bad, which was not that of their father.’<sup>99</sup> Given this reality, the courts chose to give some degree of preference to registered deeds, particularly in matters involving the ranking of debts claimed against bankrupt and deceased estates.<sup>100</sup> However, and using the flexibility inherent in Sec. VIII, cl. 12’s provision that it was only to apply ‘as far as possible,’ unregistered verbal deeds continued to be accepted if the court was satisfied of their veracity. Lushington’s view, developed with the benefit of several years of experience, was that a stricter application of Sec. VIII, cl. 12 and later

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<sup>97</sup> These fees were to be kept by the Junior Assistant as a perquisite and to defray the cost of purchasing the ledger.

<sup>98</sup> Lushington, G. T. to Edmonstone, G. J. - Register Suddar Nizamat Adualat N.W.P., 9/9/1846, KDJLI, vol: 38.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

Acts was not suitable for Kumaon because of the difficulties created by the slow and uncertain communication of the region and the ‘state of society’ more generally.<sup>101</sup>

### *Change in the technology of the media of law*

The dissemination of Kumaon Printed Rules also marked a significant transition in the technology of lawmaking, revenue gathering, and administration in the Pahar and with this, a significant change in the legibility of the Extra-Regulation Order in the New Era. The Criminal Rules and Civil Rules were not disseminated as handwritten manuscripts as all earlier proclamations had been. Rather, they were disseminated in a unified document that was *printed* in the Nagari script using the local dialect of Hindi. In contrast to the Regulation Order that was mediated through the Persian language and script, the Pahari dialect of Hindi in the Nagari script had been the primary medium of law, revenue collection and administration in Kumaon since the earliest days of the Extra-Regulation Order.<sup>102</sup> However, this had always been in the form of handwritten manuscripts largely using feather quills as the writing instrument.<sup>103</sup> Documents produced using lithography or a printing press—common mediums of text reproduction on the plains—are absent from the Letters Issued series of the KDPMR up to 1840.<sup>104</sup> However, this was to change during the New Era, and the number of documents such as Batten’s Settlement Reports and legislation was produced using print media steadily increased. Paralleling this increased use of print media was a steady decline in the use of quills in the production of handwritten documents; their use was replaced by split-nib metal dip pens.<sup>105</sup> The subsequent improvement in the legibility of all handwritten document in the KDPMR is notable.

In earlier times, Traill had largely relied on oral transmission of information about changes to laws and procedures. Often only a few copies of an order or proclamation were produced, with the display of a copy at the main cutcherry considered sufficient to

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<sup>101</sup> Ibid.

<sup>102</sup> Traill, G. W. to Registrar Nizamut Adualat Fort William, 26/6/1819, KDRLI, vol: 7.

<sup>103</sup> Stationary order for Commissioner’s office, 29/4/1816, KDMLR, vol: 8.

<sup>104</sup> Note that some printed documents such as Pensioner Certificates and Stamped paper were used but these were all imported from the plains and not specific to Kumaon. Traill, G. W. to Metcalfe, Charles – Secretary to Government Political Department Fort William, 5/6/1820, KDRLI, vol: 7; Traill, G. W. to Brodie – Superintendent of Stamps, 1/5/1826 1/5/1826, KDRLI, vol: 9.

<sup>105</sup> Lushington, G. T. - Stationary orders, 10/7/1846 KDRLI, vol: 14.

start the transmission of the information throughout the community. As discussed earlier, this rumour of the law was always a dynamic product of memory, experience and ambition.

In contrast, both Lushington and Batten valued written law over orally mediated law as a tool of enlightenment.<sup>106</sup> They were keen to use the new medium of print to inform both the Native officers and the wider community—especially people living some distance from the main cutcherries—of the new legal framework and procedures that would be adopted in Kumaon.<sup>107</sup> Perhaps even more importantly, they were also keen to mark the New Era and its new constitution with the status that a printed document had relative to a handwritten manuscript. Working together closely, and plainly delighting in a shared intellectual task, Batten and Lushington were keen to produce a document that could be understood by most Kumaonis free of the formal and elaborate Persianized language of the plains.<sup>108</sup> Careful to have their translation first approved by Government, they produced 100 copies of the Kumaon Printed Rules at the then extravagant cost of Rs. 65, and then painstakingly corrected any mistakes in the resultant printed version by hand.<sup>109</sup> These were then distributed to Assistant Commissioner's offices in Garhwal and Kumaon, as well as those of the *suddar ameen*, moonsiff, sheristadar and the police thanas.<sup>110</sup>

## Outcomes of Bird's interventions

Whalley, writing in 1870, summarized the outcome of the changes that flowed from R. M. Bird's tour and report rather succinctly. 'No practical good was found to result from it.'<sup>111</sup>

Issues with the rigidly codified nature of many of the interventions and innovations in Kumaon's distant and distinct conditions soon became apparent. Resolution of these issues involved either taking a relaxed approach to the letter of the

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<sup>106</sup> Lushington, G. T. to Secretary of Government Judicial and Revenue Department, 3/1/1839, KDJLI, vol: 34.

<sup>107</sup> Lushington, G. T. to Hamilton – Officiating Secretary to the Governor, 9/2/1842, KDJLI, vol: 36.

<sup>108</sup> Lushington, G. T. to Batten, J. H., 9/10/1839, KDJLI, vol: 36.

<sup>109</sup> Lushington, G. T. to Register – Suddar Diwani & Nizimut Adalat N.W.P., 26/4/1839, KDJLI, vol: 36; Batten J. H. to Lushington, G T., 18/6/1840, KDJLI, vol: 35.

<sup>110</sup> Batten J. H. to Lushington, G T., 18/6/1840, KDJLI, vol: 35.

<sup>111</sup> Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 68.



legislation, significant amendment to the legislation, or reversal of the intervention. In each of these endeavours, Lushington and Batten received the help of an old friend of Kumaon, Mosley Smith. Traill's assessment that he had 'superior qualities for the public service' would seem to have been accurate, and Smith saw rapid advancement after leaving the hills.<sup>112</sup> He progressed through a series of short stints across the North-Western Provinces, including stints as Secretary to the Suddar Board of Revenue and Special Deputy Collector for Benares, Jaunpore, Mizrapore and Ghazepore. By March of 1839, he found himself working as Registrar to the Suddar Diwani Adalat and the Nizamat Adalat at Allahabad, right at the centre of control apparatus that Act X of 1838 had placed over Kumaon.<sup>113</sup>

### ***Revenue***

Batten provided a detailed account of his early attempts to make a settlement based on the principles of Regulation IX of 1833, with its emphasis on calculation of 'natural' rent determined through detailed measurement of the productive capacity of land in standard units using scale maps, in his *Report on the Settlement of the District of Gurbhal in the Province of Kumaon* of 1842. In this report, he outlined that the Native officers—the tehsildar, the *canoongoe* and patwari—were astonished by terms like 'Regulation IX. of 1833' and his title of Deputy Collector. He went on to add that he had been equally confounded by the prospect of wandering over 4,000 square miles of territory with neither a village map 'nor a record of area on which the slightest reliance could be placed.'<sup>114</sup> Batten goes on to explain that his difficulties arose because initially, he still wrote and thought in the language and tone of a regular Settlement Officer working in a regular surveyed district and still clung to a vision of a settlement that conformed with the 'line and rule' of the regulations.<sup>115</sup> However, in the light of Kumaon's conditions, Batten was soon forced to transcend the mindset of a regular Settlement Officer and from:

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<sup>112</sup> Traill, G. W. to Campbell, M. - Commissioner of Circuit, 7/7/1834, KDJLI, vol: 30.

<sup>113</sup> Doss, *A General Register of the Hon'able East India Company's Civil Servants of the Bengal Establishment from 1790 to 1842*, pp.353-54.

<sup>114</sup> Batten, *Report on the Settlement of the District of Gurbhal in the Province of Kumaon: 15th August 1842*, p. 3.

<sup>115</sup> *Ibid.*, p. 4.

...the moment I rejected the notion of forming my village settlements on comparisons of measurement rates, or rather of rates per fractions of an area guessed at, but never measured; and I took into consideration the casual circumstances of the villages, independent of the quantity and quality of the land, the latter merely forming only one item, though an important one, of my calculations—the greater part of my doubts and difficulties vanished.<sup>116</sup>

He found that only by focusing on setting what he saw as a ‘fair Government demand’ while recording rights and liabilities based, not on authoritative village records, but ‘*according to their own showing*’ could he make any progress at all.<sup>117</sup> In broad terms then, Batten had either returned to or reinvented many of the settlement methods used by Traill and he documented that:

[t]he jumwabundee now forwarded for the approval of the Board and the Government has been founded on the past payments of each estate, or set of estates, viewed in relation to its present state of prosperity, as shown by their state of cultivation, the number, character and health of its inhabitants, the locality of their possessions, and their general resources whether mercantile or agricultural, as fairly proved according to the opinion of their influential neighbours, consulted in open punchayet on the subject.<sup>118</sup>

This is not to say that Batten’s settlement making process had made no headway in forwarding the intentions of Regulation IX of 1833 with its greater emphasis on formal textually mediated governmental practices. Batten’s new-style *pottab*—the written agreement to pay land tax with each village usually held by one or more *pudhan* or headmen of the village—were very different from the *pottab* of Traill’s era.<sup>119</sup> Not only did Batten’s *pottab* include details of what the village must pay and when, but also spelt out matters such as the obligation of the village to supply *khuseea*, repair roads, forward public mail and report heinous crime. These were all matters that Traill’s *pottab* had been silent on. It was through the mechanism of Batten’s new style *pottab* then, that many of the orally mediated practices of Traill’s era such as the obligation to supply *khuseea* were

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<sup>116</sup> Ibid.

<sup>117</sup> Ibid. Original emphasis.

<sup>118</sup> Batten, *Report on the Settlement of the District of Gurbwal in the Province of Kumaon: 15th August 1842*, p. 4. Original published in italics but presented here in normal font to enhance readability.

<sup>119</sup> Translation ‘Deed of Revenue Engagement, or Malgoozaree Pottah’ in Batten, *Official Reports on the Province of Kumaon*, pp. 354-55.

transitioned into the more textually mediated, formal governmental practices of the New Era.

What Batten's *pottab* did not achieve was the detailed recording of landholding in the form of a *rakba* with their detailed mapping of individual holdings within the coparcenary of a village. Nor did it achieve the detailed registration of each peasant's share of the coparcenary in a *kbewat*. The Board had believed that implementing such detailed recording practices, something relatively easily achieved with the existing administrative apparatus found on the plains, would protect the proprietary rights of minor landholders and lead to higher levels of cultivation. However, Batten convinced the members of the Board that, given the scarcity of literate persons in Kumaon, implementing a plains-style settlement model based on written *rakba* and a *kbewat* was impossible.

Despite the absence of these documents, Batten argued that individual property rights were still effectively protected. The relatively egalitarian social structures of Kumaon meant that most peasants were not held in the thralldom of the caste hierarchies of the plains. Moreover, awareness and acceptance of the civil courts as the site where disputes were settled had grown to such an extent that most Kumaoni peasants were willing and able to assert their property rights through these formal legal practices.<sup>120</sup> Batten put this level of agency by the hill peasants at the time as:

No fear of extra *bardaish* [demand to provide goods] will now induce a Kumaonee peasant to abstain from suing the concealers of his name, possessions and liabilities, for even the minutest fractions of his rights.<sup>121</sup>

The Board was able to accept this reliance on the agency of most Kumaoni farmers to assert their rights in the courts rather than rely on the authority and legibility of a written *rakba* and *kbewat* for two reasons.<sup>122</sup> First, the *pottab*, focused on the village as a whole, achieved the Board's primary objective of regular and stable revenue flow. Second, Batten's *pottab* made clear to the *pudhan* that if he wanted to demand payment from an individual coparcener through a summary suit in the civil courts, he must have

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<sup>120</sup> 'Appendix, Batten, J. H. to Lushington, G. T. dated 1st June 1840' in *ibid.*, pp. 347-48.

<sup>121</sup> Batten, J. H. 'Final Report on the Settlement of Kumaon,' in *Official Reports on the Province of Kumaon*, p. 332.

<sup>122</sup> Elliot, H. M. - Secretary to the Sudder Board of Revenue to Lushington, G. T. dated 10 July 1840 in *ibid.*, pp. 356-57.

kept creditable records in a book that showed all of the coparcener's rights and shares. Given that the *pudhan* were almost universally illiterate, both Batten and the Board believed that this last step would achieve little in the short term. Nevertheless, over time the inducement to keep records implicit in the *pottab* would gradually increase compliance with standard recording practices and develop the habit of self-government by the village as a community.<sup>123</sup>

### *Criminal justice*

In the hills, the introduction of the new 'Rules for the Administration of Criminal Justice' had little discernable impact on crime, policing and punishment.<sup>124</sup> Unfortunately however, this issue is not possible to consider through tools such as the time series analysis of heinous crimes used in chapter 5.<sup>125</sup> With its initial emphasis on bringing practices in Kumaon into line with practices of the Regulation Order, the New Era saw an almost complete break with the structured reporting practices around criminal justice of the Traill and Gowan periods. Many of the annual Police and Judicial Reports at the crucial changeover period, 1838–1840, are absent from the KDPMR, and each of Reports that appeared immediately after this lacuna used a different format with different categories. Because of these frequent changes, it is not possible to continue the time series of heinous crime from the Traill era, nor to start a new time series. Nevertheless, it can be gleaned from the scattered data available that serious crime levels continued much as before with a small but steady increase from a trivial to an insignificant level.<sup>126</sup>

Fortunately, an alternative is available and Lushington's prose representations of crime in the region provide useful, even elegant, insights into the dynamics of Kumaon's criminal justice system during the early New Era. This is particularly the case when he is defending the region against further encroachment from the modes and practices of the Regulation Order.

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<sup>123</sup> Ibid.

<sup>124</sup> Note that the oath of ordeal was abandoned under the influence of Act II of 1840. Moreover, that juries were first used in 1840, steadily becoming the norm in all serious criminal trials.

<sup>125</sup> See chapter 5, Figure 5.1

<sup>126</sup> Lushington, G. T. to Register – Suddar Diwani & Nizimat Adalat N.W.P., 19/1/1841, KDJLI, vol: 36; Lushington, G. T. to Register Suddar Nizamat Adulat N.W.P., 25/3/1844, KDJLI, vol: 38; Lushington, G. T. to Hamilton – Officiating Secretary to the Governor, 9/2/1842, KDJLI, vol: 36.

Even early in his commissionership, he felt able to respond to official doubts about the apparently extremely low crime rate with:

I may perhaps be allowed to state with some confidence my opinion, that heinous crime is almost unknown in the northern and middle parts of the district – that in all parts it is rare and that in the southern parts only, with the districts touching the Terai [Bhabar] and in the Terai itself, that outrages on life and property are / or were/ a frequent occurrence.<sup>127</sup>

By 1841, Lushington felt able to defend not only the reality of the low crime levels seen in the region but also speak in praise of its policing and judicial system. In his Police and Judicial Report regarding the calendar year of 1840, Lushington outlined that:

The system of criminal justice in force in Kumaon contains many things to recommend it – and I should be sorry to see any attempt made to assimilate it further than has already been done to that of the Regulation Provinces – its most obvious advantages are cheapness and intelligibility. The language used in the courts is that actually spoken and understood by the people – not a jargon manufactured by court officials, anxious to display their slight small spattering of Persian equally at the expense of their own native tongue and suitors – By this system too, the people are not exposed to the tyranny of an organised police – but its chief and greatest advantage is that it appears to be preferred by the people themselves to the system in force in the Regulation Provinces.<sup>128</sup>

Concern about these issues by the Pahari—intelligibility of language used in the courts and the nature of the policing system—was focused on the liminal space of the Terai-Bhabar where control of criminal but not civil justice had passed to the control of the Regulation Order in 1838.<sup>129</sup> These circumstances had created a dual-track system for those Paharis who moved between the hills and the Terai-Bhabar each year following the rhythms of the seasons. In civil and revenue matters they were always under the control of the Extra-Regulation Order, but in criminal matters, they passed back and forth between the control of the Extra-Regulation and Regulation Orders as they moved between the hills and the Terai-Bhabar.

Highlighting Pahari agency within the Extra-Regulation Order, agitation over these matters by the local people started to come to a head in early 1841. In response to

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<sup>127</sup> Lushington, G. T. to Secretary Governor-General Judicial and Revenue Department, 18/9/1839, KDJLI, vol: 36.

<sup>128</sup> Lushington, G. T. to Register – Suddar Diwani & Nizimut Adalat N.W.P., 19/3/1841, KDJLI, vol: 36, para. 13.

<sup>129</sup> Gowan, G. E. to Lairdson, J. Officiating - Commissioner of the 3rd Division Bareilly, 19/2/1838, KDJLI, vol: 31; Gowan, G. E. to Magistrate Moradabad, 9/3/1838, KDJLI, vol: 31.

inquiries regarding this agitation by W. J. Connolly, Commissioner of Rohilkhund on behalf of the Lieutenant-Governor, Batten prepared a report on the Pahari's concerns. After extensive consultation with the local people, Batten felt able to express the view that without a shadow of a doubt '999 to 1,' that the Paharis were dissatisfied with the transfer of responsibility for criminal justice from the hills to the plains.<sup>130</sup> This dissatisfaction was reflected in the number of Paharis migrating to the Terai-Bhabar each year. Before 1838, the number of Paharis making the round trip each cool season to clear land and cultivate crops had been steadily increasing. However, given the Pahari's negative experience with the criminal justice system of the Regulation Order, this migration had gone into a steady decline with a subsequent drop in land revenues and pasturage fees.<sup>131</sup>

The grievances of the Paharis were many and interwoven with the hill/plains and Hindu/Muslim divides and antagonisms. As Batten reported, 'the hill men consider their dignity injured by the transfer... [and are]...concerned in upholding the superior dignity of the Kumaon territory to that of the Rohilla Musulmans.'<sup>132</sup> Emphasizing their preference for the practices of earlier times, Batten went on to report that a large gathering of hill men had told him that 'Mr Traill...never allowed the gentlemen of Rohilkhund District the slightest 'dukhol' in the Kumaon Turai.'<sup>133</sup>

On a more practical level, Paharis had very real grievances with the style of policing they experienced in the Bhabar-Terai under the Regulation Order. As outlined in chapter 5, policing in the hills was not the responsibility of a dedicated, organized police force. Rather, it was embedded in the region's pre-existing customs and institutions with policing a shared responsibility of the region's traditional offices of *kamin*, *siana*, *pudhan*, and talukdar along with the new hill patwari. Lushington believed that the hill policing system was 'to a greater extent than is known elsewhere in India—

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<sup>130</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid., para. 3.

<sup>133</sup> Ibid. Note that the area adjacent to Kumaon on the plains was, in broad terms, dominated by Muslims prior to Independence.

natural—[and] I think it answers very well for this province where crimes of a heinous nature are seldom committed.’<sup>134</sup>

Batten reported that, while to a degree, bringing the Terai-Bhabar under the control of plains magistrates and their organized police force had reduced the level of predation by criminal gangs from the plains, it had also caused many problems. Plains police were often said to make mountains out of molehills, and, being unacquainted with the cultural patterns of hill people, often put people before a distant magistrate in response to spiteful and spurious allegations that had no basis in fact. Moreover, in the absence of any markets to purchase supplies, the police lived on the local people ‘at rack and manger.’<sup>135</sup> The practice of police extorting goods and services was a widespread problem in Hindustan at the time, but, given the acknowledged bad character of the police employed in the Terai-Bhabar—who else would take the job in such a desolate place—the problem had risen to intolerable levels.<sup>136</sup>

The problems engendered by the cultural and linguistic distance between Paharis and plainsmen did not end with the police. Batten reported that plains magistrates were able to understand neither the petitions of the hillmen written in the Nagari script nor their *viva-voce* representations in the courts. This mutual unintelligibility meant that the Paharis had to pay for everything to be translated into the Persian script, often rather imperfectly, which only added to the confusion and expense.<sup>137</sup> Moreover, the Paharis were used to fairly free and impartial access to justice. On the plains, access to magistrates was only available through *alma* who, with no personal connection to the Paharis, felt no compulsion to bring matters to the Magistrates attention. Batten pointed out that ‘the natural result of which is, either a denial of justice, or justice obtained through the means of bribery, and sometimes after the suffering of extortion.’<sup>138</sup>

Finally, Batten reported the new arrangements meant that many Paharis were called to distant and multiple courts in the unhealthy season and at other times of the

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<sup>134</sup> Lushington, G. T. to Hamilton – Officiating Secretary to the Governor, 9/2/1842, KDJLI, vol: 36.

<sup>135</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35.

<sup>136</sup> ‘Clarke, R. H. to Commissioner of Rohilkhund, 14/2/1842’, in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, pp. 78-81.

<sup>137</sup> Batten, J. H. to Lushington, G.T., 18/3/1841, KDJLI, vol: 35. Section 4 -1<sup>st</sup> and 5<sup>th</sup>

<sup>138</sup> *Ibid.* Section 4 -2<sup>nd</sup>

year completely at odds with the rhythms of their transhumant lifestyle.<sup>139</sup> The inconvenience and danger this exposed the Paharis to opened up still further the potential for abuse by vexatious rivals.

Commissioner Lushington strongly supported Batten's analysis of the problems that placing policing and criminal justice under the control of plains authorities had caused and summarized them as:

The hardships are as follows – it is a great and grievous hardship to a Puharree to be dragged down to Moradabad, Philibut or Binjnore on a petty charge of theft on which perhaps has no assault occurred at all – it is a hardship that men should be subjected to tribunals in which a language they detest is used, therefore which they cannot defend themselves in their own native habit/ because it is not understood lastly – it is a great and grievous hardship to render men amenable to laws that have never been promulgated or made known to them, and this ignorance and consequent violation of which cannot in justice be imputed to them as a crime.<sup>140</sup>

As a result of the agitation by the hill people and after extensive examination of alternatives, in March of 1842 the Government of the North-Western Provinces returned control of the Bhabar if not the Terai to the hill authorities and, with this, returned criminal law in this space to the precedents and practices of the Extra-Regulation Order.<sup>141</sup> A concession was made to the liminal nature of the space, however, and plains magistrates were allowed concurrent jurisdiction in the Bhabar up to the foot of the hills. Moreover, the hill authorities were instructed to work closely with those plains magistrates. These concessions notwithstanding, however, at the end of the day, the lush seasonal pastures and rich well-watered alluvial soils of the Bhabar were again firmly under the control of the Extra-Regulation Order.

The return of the Bhabar also marked a dramatic turnaround on the part of the plains authorities from the doubt and suspicion of the Interregnum. In commenting on the new arrangements for the Bhabar, the Secretary to the Government expressed the view that he relied 'confidently in the judgement and energy of the Commissioner, Mr

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<sup>139</sup> Ibid. Section 4 -3<sup>rd</sup>

<sup>140</sup> Lushington, G. T. to Commissioner of Circuit Rohilkund Division, 21/3/1841, KDJLI, vol: 36.

<sup>141</sup> 'Secretary of Government N.W.P. to Commissioner of Rohilkund, 11/3/1842', in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 81.

; Hamilton, R. N. C. – Secretary to the Governor to Lushington, G. T., 11/3/1842, KDMLR, vol: 69.



Lushington, aided by the zealous co-operation of Mr Batten, in gaining from the arrangement now sanctioned every advantage that can reasonably be contemplated.’<sup>142</sup>

### *Civil justice*

As with criminal justice, little positive change was experienced by most Kumaonis with the introduction of the ‘Rules for the Administration of Civil Justice in Kumaon.’ Indeed, there was a range of negative impacts.

The most obvious of the negative impacts resulted from the centralization of the courts at Almora and Srinagar. Intended to bring the Native Commissioners under closer European supervision, this centralization caused access problems for people living in the interior.<sup>143</sup> In response, the use of village panchayats by Kumaonis became more common in civil matters, and this customary dispute resolution mechanism became increasingly inseparable from the formal courts. Indeed, the number of cases decided using panchayat assessors eventually became a regular aspect of statistical reporting on civil justice.<sup>144</sup> Lushington, however, remained ambivalent about the use of panchayats and noted that they ‘can be riven with feuds and rivalries’ and in consequence, he returned to Traill style levels of supervision and retained the right to overturn their decisions.<sup>145</sup> Lushington’s concern about panchayats only grew over time, and in 1846 Lushington lamented that ‘[i]t appears generally to be considered that a just, honest and impartial Punch is a thing in no way attainable in this age.’<sup>146</sup>

More broadly though, and other than the diminution of the role of Native Commissioners, Lushington quickly took steps to return the workings of the civil courts to customs and practices of the Traill era. One of the clearest examples of this is found in Lushington’s Police and Judicial Report relating to 1840 where like Batten had done with settlement matters, he had either reverted to or reinvented many of Traill’s courtroom practices.

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<sup>142</sup> ‘Secretary of Government N.W.P. to Commissioner of Rohilkund, 11/3/1842’, in Whalley, *British Kumaon: The Law of the Extra-Regulation Tracts Subordinate to the Government, N.W.P.*, p. 81

<sup>143</sup> Lushington, G. T. to Register – Suddar Nizimut Adulat N.W.P., 2/2/1842, KDJLI, vol: 36.

<sup>144</sup> Lushington, G. T. to Smith, M. - Register to Suddar Nizimut Adulat N.W.P., 9/3/1843, KDJLI, vol: 37; Lushington, G. T. to Edmonstone G. J. - Register Suddar Nizamat Adulat N.W.P., 4/7/1844, KDJLI, vol: 37.

<sup>145</sup> Lushington, G. T. to Register – Suddar Nizimut Adulat N.W.P., 2/2/1842, KDJLI, vol: 36.

<sup>146</sup> Lushington, G. T. to The Honourable Lieutenant-Governor, 15/3/1846, KDJLI, vol: 38.

In this report he put forward the premise that ‘[m]y first object has been simplicity and consequent cheapness of procedure – secondly quickness and impartiality in decision, – and thirdly publicity.’<sup>147</sup> To further his first objective he explicitly rejected all forced analogies and precedents from the Regulation courts and focused entirely on Pahari law and practice. To ensure quickness, he established the practice of immediately confronting all the parties concerned and driving the suit to its essentials rather than waiting for the issues to arise in the discourse. Moreover, to assure public understanding of his decisions, he took particular care to articulate the basis for his orders clearly and audibly to all present.<sup>148</sup>

Lushington’s revitalization and enhancement of Traill’s civil court practices saw a dramatic lift in the number of Paharis seeking justice through the courts after the drop in participation seen between 1836 and 1838 during the Interregnum. By 1841, the numbers of original civil suits lodged in the Kumaon courts was higher than at any time during the Traill era at around 6,500 cases. This continued to grow with more than 10,000 cases lodged in 1842 and over 11,000 cases lodged in 1843.<sup>149</sup> No doubt these figures were boosted by the abolition of the 8 anna lodgement fee for suits in 1839, but clearly, the Kumaoni people had returned to full acceptance and confidence in the civil courts of Kumaon.

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<sup>147</sup> Lushington, G. T. to Register – Suddar Diwani & Nizimut Adalat N.W.P., 19/1/1841, KDJLI, vol: 36.

<sup>148</sup> Ibid.

<sup>149</sup> Lushington, G. T. to Register – Suddar Nizimut Adalat N.W.P., 2/2/1842, KDJLI, vol: 36; Lushington, G. T. to Smith, M. - Register to Suddar Nizimut Adalat N.W.P., 9/3/1843, KDJLI, vol: 37; Lushington, G. T. to Edmonstone G. J. - Register Suddar Nizamat Adualat N.W.P., 4/7/1844, KDJLI, vol: 37.

## Glossary

Word	Explanation
<i>adscripti glebae</i>	Slaves who served the master of the soil, who were annexed to the land, and passed with it when it was conveyed.
<i>amil</i>	Collector or farmer of revenue.
<i>Banjaras</i>	A community usually described as migratory who were often engaged in the transport of goods in colonial times.
<i>begar</i>	Compulsory labour provided to the state. Alternatively, 'A forced labourer.'
<i>bethus</i>	Agrestic slaves.
<i>bhaichara</i>	Brotherhood.
<i>Bhotiya</i>	Persons of the northern districts of Kumaon and Garhwal of Tibetan origin.
<i>burkundazes</i>	Armed men working in association with the police
<i>canoongo,</i>	The office of Kanungo: this was abolished in Bengal at the time of the permanent settlement but was preserved in Benares and the Ceded and conquered provinces.
<i>canoongoe</i>	The corrupt form of <i>Kanungo</i> generally used in Kumaon (speaking, or who speaks) lit, An expounder of the laws, but applied in Hindustan especially to village and district revenue-officers, who, under the former governments, recorded all circumstances within their sphere which concerned landed property and the realization of the revenue, keeping registers of the value, tenure, extent, and transfers of lands, assisting in the measurements and survey of the lands, reporting deaths and successions of revenue-payers, and explaining, when required, local practices and public regulations: they were paid by rent-free lands and various allowances and perquisites.
<i>chaprasis</i>	A <a href="#">junior office worker</a> who carries messages.
Chowdrey, Many spellings	In the context of Kumaon during the period in question this term means both agent and a landowner of a particular family.
coolie	In India and (later also) China: a hired labourer (esp. one employed by a European); a porter (now esp. in a railway station). Hence also: an Asian labourer working abroad (now chiefly <i>hist.</i> ).

<i>corvée</i>	A day's work of unpaid labour due by a vassal to his feudal lord; the whole forced labour thus exacted; in France, extended to the statute labour upon the public roads which was exacted of the French peasants before 1776.
<i>cutcherry</i>	An office of administration, a court-house. Also, the business office of an indigo-planter, etc.
<i>Diwan</i>	The head financial minister or treasurer of a state under former Muslim governments.  The prime minister of a native state. The chief native officer of certain Government establishments, such as the Mint.
<i>dom</i>	Dalit.
<i>doom</i>	An expression of popular feeling under great excitement, a protest on the part of the people against certain acts of their rulers which have provoked general discontent.
<i>Extra-Regulation Order</i>	Used to denote the administrative order of Kumaon as a space beyond the regulation of the Regulation Order.
<i>faujdar</i>	An officer of the Mogul government, who was invested with the charge of the police, and jurisdiction in all criminal matters. A criminal judge, a magistrate. The chief of a body of troops.
<i>gaudiya and mithila</i>	Traditions of Hindu law.
<i>hallee</i>	Slave performing agricultural labour in Kumaon.
<i>hissedar</i>	Cultivating proprietors.
<b>infructuous</b>	Not fruitful.
<i>italaa nama</i>	A notice, a summons, a citation, a notice served on cultivators when they fall in arrears, threatening them with an attachment if not paid by a given time.
<i>jaedad</i>	in this context, an assignment of the revenues of a tract of land for the maintenance of troops.
<i>jagir</i>	A place or position. A tenure common under Muslim rule in which the revenues and the judicial and policing power to collect those revenues was held either conditionally or unconditionally usually lapsing on the death of the holder See Regulation XXXVII of 1793.
<i>jajmani</i>	Indian social caste system and its interaction between upper castes and lower castes. It was an economic system where lower castes

	performed various functions for upper castes and received grain and other items in return.
<i>jemadar</i>	Junior native officer corresponding broadly to a lieutenant.
<i>jumma</i>	Revenue demand or agreement.
Kali Kumaon	Eastern district of Kumaon.
<i>kamin</i>	Head of a bhaichara in Kumaon.
<i>katil,</i>	Land either too distant or too steep to make regular manuring a practical economic investment and so only used occasionally when the natural process of fallowing have restored its fertility.
KDPMR	Kumaun [sic] Division Pre-Mutiny Records. A collection of 212 volumes of the correspondence of the Kumaon Commissioners.
<i>Khasa</i>	Name of the ancestral tribe (also Khash or Khas) from which the majority of Kumaons population is descended.
<i>khasra</i>	A legal agricultural document that specifies land and crop details.
<i>kbewat</i>	In the north-west provinces, the record or register of the shares in which a coparcenary village is distributed : assessment with the Ryots according to, their shares.
<i>khoosh kureed</i>	Paying ready money, purchasing in private sale.
<i>kbuseea</i>	Term used in Kumaon for coolie labourers.
<i>kisht</i>	Instalment, portion; the amount paid as an instalment; the period fixed for its payment: as a revenue term it denotes the portion of the annual assessment to be paid at specified periods in the course of the year.
<i>lex loci</i>	The law of the country in which a legal transaction is performed, a tort is committed, or a property is situated; freq. followed by a defining word or phrase.
<i>mofussil</i>	Hinterland.
moonsiff	In South Asia: a judge; <i>spec.</i> a junior-grade judge in a civil court.
<i>mulcted</i>	To punish (a person, an offence) by a fine; to exact money from (a person); to tax. Also (occas.): †to subject to a penalty of any kind ( <i>obs.</i> ).
<i>nalli</i>	A measure of land based on the amount of seed needed to sow it.
Nazir	An inspector, a supervisor: in ordinary use, the officer of the court who is charged with the serving of process, or who is sent to take depositions, and make inquiry into any breach of law.

<i>nerrick</i>	A fixed price issued by government. Order or rate list.
<b>Non-Regulation Province</b>	An Indian province exempted from the operation of the Indian Government regulations and governed instead by a Commissioner under the direct authority of the Governor General in Council.
<i>nuzurana</i>	A gift. Most commonly a fee upon assignment of revenue.
<i>paekasht</i>	Land within a village's boundary cultivated by persons from outside the village and not included in the villages rent assessment.
<i>Pahari</i>	Of the hills, people of the hills.
<i>panchayat</i>	In South Asia: a group of five or more people which sits as a council or a court of law to decide on matters affecting a village, community, or caste OED.
pargana	A district, a province, a tract of country comprising many villages.
<i>pargana sarishtadar</i>	Senior register, record keeper, denoting the head provincial <i>canoongoe</i> .
patwari	Village record keeper.
<i>peshkar</i>	An agent, a deputy, a manager in general for a superior or proprietor, or one exercising in revenue and custom affairs a delegated authority.
<i>pottah</i>	The deed held by the <i>pudhan</i> , setting forth his liabilities, duties, dues, &c.
<i>pudhan</i>	The person holding the revenue engagement ( <i>pottah</i> ) with Government either by his own right, or by election of the Hissadars. In communities divided into clans, each division elects its own Pudhlm as manager and collector of revenue, and all the Pudhans are both jointly and separately responsible for the whole revenue, except where an authoritative separation of responsibilities has taken place.
purwana	A letter of authorization; an order, a licence, a pass.
<i>rakba, rukbar</i>	Enclosure area, the lands comprised within the boundaries of a village, or constituting an estate: the measured or ascertained extend of such lands.
<i>razeenumah</i>	Private written legal agreement.
<i>rubakari</i>	Rubakari, corruptly, Roobicaree, H. The written record of a case, stating the particulars and the grounds of the decision drawn up and authenticated by the judge in a Company's court, on passing sentence.

sanad	In South Asia: an edict or ordinance issued by the prince or ruler of a state, e.g. the peshwa of the Maratha kingdom, or by a president of the East India Company; (during the period of the British Raj) a deed granted to the rulers of the princely states, either confirming them in their position in return for their allegiance, or ensuring the succession of their heirs.
Sheristadar	Chief administrative officer of the courts.
<i>siana</i>	Head of a bhaichara in Garhwal.
<i>suddar ameen</i>	Chief native commissioner, arbitrator or judge.
Suddar Diwani Adalat	Chief Civil and Revenue Court.
Suddar Nizamat Adalat	Chief Criminal Court.
<i>talaon</i>	Irrigated land usually found only on valley floors in Kumaon.
talukdar	The holder of a taluk or hereditary estate, or the officer who has charge of the district so called.
<b>tehsildar</b>	Tax officer.
Terai- Bhabar	Lineal swamplands fringing the southern borders of the Himalaya for much of their length.
thana	Police post.
<i>thuljat</i>	A sanskritized Kumaoni able to assert a higher caste status.
<i>upraon</i>	Terraced fields on hillside usually rain fed.
<i>urzee</i>	Petition, report, request.
<i>vakeel</i>	An agent or representative ie Lawyer/solicitor.
<i>zamindar</i>	For most of North India, a landowner, especially one who leases his land to tenant farmers. In Kumaon, any and all landholders.

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## Appendix 5.1. Regulation X of 1817

### A. D. 1817. REGULATION X.



**A Regulation** for the trial of persons charged with the commission of certain heinous offences in Kumaon and other tracts of territory ceded to the Hon'ble the East India Company by the Rajah of Nepal, and subject to the British Government, passed by the Vice-President in Council on the 22nd July, 1817; corresponding with the 8th Sawun 1224 Bengal era; the 24th Sawun 1224 Fussily; the 9th Sawun 1224 Willaity; the 9th Sawun 1874 Sumbut; and the 7th Rantzaun 1232 Higeree.

Of the territories ceded to the British Government by the Rajah of Nepal under 

Preamble
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 the treaty of peace concluded on the 2nd day of December, 1815, many portions have been since restored to the Native chiefs, to whose authority they were formerly subject, or have been transferred to the independent authority of other Native chieftains or powers.

The portions of territory ceded by the Rajah of Nepal which have been retained under the authority and dominion of the British Government, are as follows: viz.

1<sup>st</sup>. The tract of country called Deyrah Doon, heretofore forming a part of Gurhwal.

2<sup>nd</sup>. The province of Kumaon:

3<sup>rd</sup> Jounsar, Bawur, Poondur, and Sundokh, and other small tracts of country situated between the Rivers Jumna and Sutlej.

By the provisions of Regulation IV, 1817, the tract of country denominated Deyrah Doon has been formally annexed to the district of Saharunpore, and the laws and regulations in force in the latter district, have, with certain exceptions, been extended to the Deyrah Doon. Local circumstances, however, have rendered it inexpedient that a similar arrangement should at present be adopted

in the province of Kumaon, or in the reserved tracts of country situated between the Rivers Jumna and Sutlej.

The administration of the police and of civil and criminal justice, with the management of the revenues, as well in Kumaon as in the several places last mentioned, is conducted by British officers, under instructions issued for their guidance by the Governor-General in Council.

Embarrassment, however, having been experienced in the several places above mentioned, from the want of a suitable tribunal for the trial of prisoners charged with offences of a heinous nature, the Vice-President in Council, with a view to provide for the due and deliberate investigation of charges of that nature, has been pleased to enact the following rules, to be in force from the period of their promulgation.

British officers in charge of Kumaon and other tracts of country ceded by the Raja of Nepaul, not to award punishment against offenders charged with certain crimes of heinous nature.

II. The British officers who now are, or hereafter may be, invested with the charge and superintendence of the police, and with the administration of criminal justice in the province of Kumaon or in the several

reserved tracts of territory situated between the rivers Jumna and Sutlej are hereby prohibited from awarding punishment against any persons charged before them with having been concerned, either as principals or as accomplices, in the commission of the following offences, viz. murder, or any species of homicide not manifestly accidental or justifiable; robbery by open violence, as defined in Section 3, Regulation LIII, 1803; violent affrays attended with serious casualties or circumstances of aggravations; treason or rebellion against the State.

Such offenders, how to be proceeded against.

III. If any person subject to the jurisdiction of the British officers above alluded,

whether from local residence or from perpetration of a criminal act within the limits of the British territory under their respective superintendence, shall, on due and careful investigation, appear to have been concerned, either as a principal or as an accomplice, in the commission of any of the crimes above mentioned, such

person shall be kept in close custody, and shall be committed to take his trial before a Commissioner to be nominated and appointed for that purpose by the Governor-General in Council.

Commissioners to be appointed by Government.

IV. It shall be the duty of the local officer, immediately on making the commitment, to report the case to the Governor- General in Council, who will take the necessary measures for nominating an experienced judicial officer as Commissioner to hold trials of this nature, at such time and place as may appear proper in each instance, or at such stated periods as may be found convenient.

Powers vested in the Commissioner.

V. In the conduct of the trial, the Commissioner will exercise the same powers as are vested in Judges of Circuit, and will be guided by the spirit and principles of the regulations in force in the ceded and conquered provinces; provided, however, that it shall not be necessary that any law officer should attend the trial, or that any futwa should be required in such cases.

Commissioner authorised to release prisoner if not convicted.

VI. If the Commissioner should be of opinion that the crime charged against the prisoner is not established by the evidence, he prisoner shall issue his warrant for the release of the prisoner.

Commissioner to refer the case to the court of Nizamut Adawlut if the charge be proved.

VII. If the Commissioner shall consider the crime charged against the prisoner to be established, he shall either refer the case to Nizamut Adawlut for the final sentence of the Court of Nizamut or if the case be within the competence of Judges of Circuit under the regulations in force in the ceded and conquered provinces, he shall issue his warrant for the punishment of the criminal.

With a report and the proceedings of the case.

VIII. If the case shall be referred to the Nizamut Adawlut, it shall be the duty of the Commissioner to forward to that court a



full report on the case together with his own proceedings and those of the officer by whom the commitment may have been made.

IX. On receipt of the proceedings, the Court of Nizamut Adawlut will, without requiring any futwa from their law officers, pass such sentence or order as on due consideration they may deem proper and consistent with the spirit and principles of the regulations in force in the ceded and conquered provinces.

Nizamut Adawlut to pass their final sentence.

X. The sentence of the Nizamut Adawlut, whether for the release or punishment of the prisoners, shall be issued through the channel of the Commissioner who may have held the trial, and shall be duly enforced by the local British officers by whom the commitment may have been made, or who may at the time be entrusted with the management of the local police.

Sentence how to be carried into effect.

XI. *First.* Whenever a Native subject of the British Government charged with having been concerned in the commission of a criminal offence within the territories of any independent State or Chieftain situated in the vicinity of Kumaon, or of the reserved tracts of country between the Jumna and Sutlej rivers, shall be apprehended by, or shall be delivered up to the British officers invested with the charge of the police in those places respectively, the officers in question shall be deemed competent to investigate the charge, and to release or punish the accused, under the general powers vested in them by the Governor General in Council.

In what cases the local officers may take cognizance of crimes committed within the territories of independent States or Chieftains.

*Second.* Provided, however, that if the charge shall be of the nature of any of those described in Section 2 of this regulation, the local officer shall proceed in the manner directed in Sections 3 and 4 of this

The rules contained in certain sections of this regulation, to be considered applicable to such cases.

regulation; and the Commissioner who may be appointed to hold the trial, as well as the court of Nizamut Adawlut, shall in such cases be guided by the provisions of Sections 5, 6, 7, 8, 9 and 10 of this regulation.

XII. It shall not be competent to the local officers intrusted with the administration of criminal justice in Kumaon, and in the

Crimes committed before 15<sup>th</sup> May 1815 not cognizable by British officers.

several reserved tracts of territory situated between the rivers Jumna and Sutlej or to any Commissioners who may be appointed under this regulation, or to the Nizamut Adawlut, to take cognizance of any crime of offence which may have been committed in any part of the tracts of country above adverted to previously to the 15<sup>th</sup> May, 1815, being the date of the convention by which they were surrendered to the Hon'ble the East India Company.

XIII. No part of the regulations in force in the ceded and conquered provinces by which the punishment of the crimes specified in Section 2 of this regulation may

Sentences, how to be regulated with regard to offences committed between 15<sup>th</sup> May 1815, and the promulgation of this Regulation.

be enhanced beyond the punishment ordinarily inflicted for such crimes according to the former laws and usages in force in those tracts of country, shall be considered applicable to persons convicted of having committed those crimes previously to the promulgation of this regulation.

XIV. In cases, however, in which the penalties established by the regulations in force in the ceded and conquered provinces

The preceding note likewise applicable to this section.

for murder or other species of homicide, robbery by open violence, violent affrays attended with serious casualties or circumstances of aggravation, or for treason and rebellion against the state, may appear to be more lenient than those to which the offenders would have been subjected under the pre-existing laws and usages of Kumaon, and of the reserved tracts of territory situated between the rivers Jumna and Sutlej, such offenders shall, nevertheless, have the benefit of the provisions now established, supposing the offences to have been

committed between the 15th May, 1815, and the period of the promulgation of this regulation.

### Appendix 5.2.1. Heinous crimes in Kumaon, 1825–1837

Statement of heinous crimes ascertained by the police officer or otherwise to have been committed within the Province of Kumaon and the computed value of property robbed or stolen														
Crime	1824	1825	1826	1827	1828	1829	1830	1831	1832	1833	1834	1835	1836	1837
Dacoity with murder.	0	0	2	0	1	0	0	0	0	0	1	1	1	2
Dacoity with wounding or torture.	0	2	1	0	0	1	0	1	1	0	0	0	0	0
All other dacoities unattended with personal violence.	0	0	2	0	0	2	2	2	1	2	1	1	1	1
Total dacoities.	0	2	5	0	1	3	2	3	2	2	2	2	2	3
Murder by thugs	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Highway robberies, burglaries, cattle stealing, or theft attended with murder.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Highway robberies, burglaries, cattle stealing, or theft attended with wounding.	2	0	0	0	0	0	0	0	1	0	0	0	0	12
Highway robberies, burglaries, cattle stealing, or theft attended without personal violence, but which the value of property robbed or stolen exceeded Rs50.	1	6	8	8	5	8	7	6	19	10	7	9	15	21

Highway robberies, burglaries, etc but in which the value of property robbed or stolen was less than Rs50. <sup>1</sup>					40	19	28	37	30	14	26	21	21	16
Wilful murder	0	0	0	0	1	3	3	2	4	4	0	5	5	3
Homicide not amounting to murder.	0	0	0	0	0	1	1	0	1	1	1	2	0	0
Violent affrays attended loss of lives in disputes regarding boundaries or the possession of land, crops, wells, etc.-	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Violent affrays attended loss of lives in disputes originating in cases distinct from those mentioned in the preceding column.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Serious Crime.	3	8	13	8	7	15	13	11	27	17	10	18	22	39
Total estimated value of property robbed or stolen. <sup>2</sup>	₹ 65	₹ 1,130	₹ 1,484	₹ 1,250	₹ 936	₹ 3,135	₹ 2,119	₹ 2,300	₹ 7,058	₹ 4,449	₹ 3,334	₹ 3,293	₹ 3,631	₹ 2,901
Total estimated value of property recovered. <sup>2,3</sup>	₹ 65	₹ 1,020	₹ 670	₹ 180	₹ 456	₹ 760	₹ 756	₹ 800	₹ 1,856	₹ 1,438	₹ 1,097	₹ 629	₹ 817	₹ 448

## Notes

1 First Reported 1928. Not included in Total Serious Crime Figure.

2 From late 1835 these figures included annas. Here I have rounded to the nearest rupee.

3 Figure Indecipherable 1837 Second Half of Year and left blank in this table.

4 From 1831 the reports become biannual each for the first and second half of the year. These have been summed to produce a full year.

5 1824 data is draw from the 1825 report where it appears as comparative data.

## Appendix 5.2.2. Kumaon Casualties 1825-1837

Kumaon Casualties 1825-1837													
	1825	1826	1827	1828	1829	1830	1831	1832	1833	1834	1835	1836	1837
Tygers and wild beasts.	57	54	73	37	46	44	31	30	30	38	31	28	20
Accidental deaths.	136	100	75	48	115	140	111	107	121	73	91	79	61
Suicides.	42	35	31	42	42	33	44	41	38	60	39	42	59
Suttees.	4	6	9	17	8								
Self immolation at Kedarnath and Bradrinath.	22	9	22	22	25	20	18	66	21	29	30		
Total persons.	261	204	210	166	236	237	204	244	210	200	191	149	140
Cholera and plague deaths				13069								633	

### Appendix 5.2.3. Number of convicts and prisoners in jail, 1824–1837

Statement shewing the number of convicts or other description of prisoners in confinement on the 31st Dec 1824-1837 in Kumaon.													
Category	1824	1825	1826	1827	1828	1829	1830	1831	1832	1834	1835	1836	1837
Persons confined under civil proceeds.	4	2	5	6	8	8	9	2	1	9	7	6	5
Persons confined under sentence of Nizimat Adulat.	2	2	2	2	2	1	2	0	2	2	2	1	1
Persons confined under sentence of the Court of Circuit. (Category first appears in report dated 28/2/1831)							1	17	3	5	20	10	10
Persons sentenced by the Commissioner to temporary imprisonment.	19	24	31	62	49	51	72	72	75	79	64	97	80
Persons required by the Commissioner to find security.	0	0	0		0	0	2	0	0	0	0	0	0
Persons in custody under examination before the Commissioner.	0	0	0	2	1	12	1	6	7	6	6	32	11
Persons committed.	2	2	4	4	0	6	11	0	1	12	0	2	0
Total number of convicts & prisoners.	27	30	42	76	60	78	98	97	89	113	99	148	107

## **Appendix 6.1. Rules for the Guidance of Moonsiffs**

1 The persons who may be invested with the powers of a Moonsiff under this Regulation are empowered to receive, try and determine, all suits referred to them against any native inhabitant of their respective jurisdictions, for money or other personal property, not exceeding in amount twenty five rupees, provided that the cause of action shall have arisen within the period of four years previously to the institution of the suits and that the claim included the whole amount of the demand arising such cause of action.

2 The Moonsiffs are also empowered to receive all claims preferred to them for rents of land situated in their jurisdictions provided that the rent claimed be due on account of the current year.

3 They are also authorized to investigate and determine all claims preferred to them for damages on account of injuries sustained from cattle to crops and villages within their jurisdiction provided that such claims be proffered within one month from the date of the injury complained against.

4 The Moonsiffs are further authorised to hear and determine in the character of arbitrations all suits for money or other personal property exceeding Twenty Five Rupees but not exceeding One hundred Rupees in amount or value when such suits may be referred to them by the Commissioner with the mutual consent of both parties

5 The Moonsiffs are prohibited from hearing, trying or determining any suits, in which they themselves, or their relatives, or dependents, or the Vakeels, or persons employed in their cutcherries, may be parties,- Moonsiffs are themselves to investigate the suit cognisable by them in a public cutcherry, or Court Room, and are not to allow their Officers, servants, or defendants, or any other person to interfere therein. In receiving, trying and determining suits, they shall be guided by the rules prescribed in the following section.



6 No person shall be allowed to plead or act as a vakeel, in the court of any Moonsiff, unless he be a relative, servant or dependant of the person, for whom he may be appointed to act unless he produced a written vekalut nama.

7 In suits instituted before any Moonsiff in conformity with these Regulations, an institution fee shall be levied from the plaintiff of 8 annas on each suit, such fee shall be paid to the Moonsiff who will give a written receipt for the same to the payer.-

8 The plaint shall state precisely the grounds of complaint, the time where the cause of action arose, the name and evidence of the person or persons complained against, the total sum of money or amount of personal property claimed, and all material circumstances, which may elucidate the transaction, and may tend to bring the matter in dispute to a distinct issue..

9 It shall be the duty of the Moonsiff to restrain and discourage as much as possible the insertion in the plaint and answer irrelevant matters, and of term of abuse and reproach against the character of the defendant and others. The plaint shall be signed and numbered and dated in the order in which it may be received by the Moonsiff and the number of the suit, the names of the parties, the date of the petition is received, the amount claimed, and the subject matter of the suit, shall be carefully entered in a book, to be kept by the Moonsiff according to the form No. 1; two blank columns shall

No. 1 Form of a Register Book of suits, instituted before Moonsiffs or referred to Suddar Ameens.-

Number of the suit	Date of institution or reference	Names of the parties	Amount and subject of the claim	Date and abstract of the final order	Date on which copies of the decrees were furnished or tendered to the parties
No 1	2 <sup>nd</sup> of February 1815	Ramchand Paul vs	Debt on bond 17 Rs	20 <sup>th</sup> of March 1815.	24 <sup>th</sup> of March 1815. One copy

		Punchoo Gope		Decreed in favour of the plaintiff 17 Rs principal. Interest 2 Rs interest. Defendant to pay costs, 8 annas. Total 19Rs * annas	furnished to the plaintiff himself & another to the vakeel of the defendant.-
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be left in the Book, in the first of which shall be inserted the date of the decision and an abstract of the final order passed in each suit, showing whether the claim be decreed whole or in part, or nonsuited, or adjusted by razeenamah or dismissed on investigation of the merits, or otherwise disposed of, and the amount of the costs adjudged against either or both of the parties; In the second blank column shall be inserted, the date on which the copies of the decrees may be furnished or tendered to the parties.-

10 When the complaint shall have been received and entered in the Book according to the prescribed form, the Moonsiff shall cause to be served on the defendant a written notice under his seal and signature, containing only the number of the suit, the names of the parties, and a short statement of the defendant, and requiring the defendant to attend in person or by vakeel, and to deliver an answer to the plaint on or before a certain day, which must be specified in the notice.

11 The Moonsiff shall deliver the notice to the plaintiff or to his vakeel and the plaintiff may either himself serve the notice on the defendant or through any other person whom he may choose to employ for that purpose.- Provided however, that the name of person intended to be employed in this duty be in all cases endorsed on the notice by the Moonsiff previously to its having delivered to the plaintiff or his vakeel for inspection.-

12 The person through whom the notice may be served, shall require from the defendant a written acknowledgement, to be endorsed on the back of the

notice, signifying that it has been duly served upon himself, and shall further cause some of the defendants neighbours, or any Pudhan, or other principle inhabitants of the village, to witness the due execution of the service, and he shall at all times state in his report the names or names of such witness or witnesses.

13 If a defendant, who may have been served with a notice as directed in the preceding sections, shall not appear in person, or by vakeel, within the time specified; or if having appear shall refuse to answer the plaint, or having answered shall not attend during the trial, the Moonsiff, after examining the plaintiff's evidence in support of the claim, shall give judgement in the same manner as if the defendant had appeared and answered to the plaintiff and had attended during the trial.-

14 In cases in which a defendant, to whom a notice may have been issued in conformity with the preceding sections, may abscond or conceal himself, or cannot after diligent search be found, or shall refuse the required written acknowledgement, the person entrusted with the execution of the process, shall certify the same on the back of the notice, and shall require some person or persons being neighbours of the defendant, or a Pudhan, or other principal inhabitant of the village, in which the defendant may usually reside, to certify on the back of the process, that after diligent search the defendant cannot be found, or that he has refused to give the required written acknowledgement.

15 When a return to this effect is made, the Moonsiff shall cause a proclamation to be affixed in a conspicuous part of his own cutcherry and a copy of the same on the outer door of the defendants usual place of residence, or some other conspicuous place near it – The proclamation shall contain a copy of the original notice, and shall state that if the defendant do not appear in person, or by vakeel, within the period of 15 days, from the date of the proclamation, the suit will be brought to a hearing and determination, without the appearance or answer of the defendant.-

16 If the defendant shall still not appear either in person or by vakeel, the Moonsiff shall proceed to try the case exparte.-

17 When the defendant shall attend at any time preced [sic] to the decision of the suit, the Moonsiff shall take down his answer in writing to the plaintiff and shall also take down the examination of the plaintiff on any points requiring elucidation.-

18 If the plaintiff be satisfied by the defendant, the Moonsiff shall take from him a razeenamah stating the manner in which the defendant has satisfied him, such document to be signed by both parties and duly witnessed.-

19 If the parties are willing to dispense with the examination of witnesses the Moonsiff shall give his examination on due consideration of the plaint and answer and any vouchers which may be produced or he may decide the claim by the oaths of either of the parties as if the other party consented to that mode of adjudication.-

20 If the plaintiff shall not attend on the day of the trial, either in person or by vakeel the Moonsiff shall dismiss the suit and not again entertain it without the express sanction of the Commissioner to be obtained by the plaintiff.-

21 If the plaintiff or defendant shall be desirous of summoning any witness, the Moonsiff residing within their respective jurisdictions shall issue a summons specifying the Number of the suit, the name of the party and whose requisition the summons is made and the names and places of the witness – such summons shall be delivered to the party applying for it or his vakeel to be served by himself or any other person he may select provided that the name of the person whom it is intended to employ in such duty be endorsed on the summons by the Moonsiff at the time of delivery for execution.-

22 No female of rank or respectability shall be summoned as a witness [.} If the evidence of such a person be required the case shall be reported by the Moonsiff to the Commissioner.-

23 If any person on whom a summons may have been duly served shall fail to attend on the day appointed the Moonsiff shall report the circumstances of the case to the Commissioner.-

24 If any Moonsiff shall require the evidence of a person not residing within his jurisdiction he shall make application to the Commissioner.-

25 If however the residence of the witness shall be at a considerable distance from the Moonsiff's catcherry or if the other circumstances should render the personal attendance of such witnesses inconvenient, the Moonsiff shall transmit to the Commissioner any written interrogations which he may think necessary or which may be suggested by the parties or their vakeels.-

26 The Moonsiffs are strictly prohibited from confining or detaining witnesses but shall take their examinations with all possible expedition so that they may be exposed to no vexatious or unnecessary delay. In the examination of witnesses the Moonsiffs shall not administer any oath except at the express requisition of either parties, they shall prevent the parties from instructing or intimidating the witness and shall not put them questions suggesting a particular answer, or regarding the personal character of the parties, or on points evidently irrelevant to the matters in dispute.-

27 The deposition of every witness shall commence by specifying the name, the father's name (or if the deponent is a married woman, the name of her husband) the religion, cast, profession, age, and shall be subscribed by the witness with his or her name or marks.-

28 When an exhibit is filed in a suit before the Moonsiff, it shall be marked with some letter or number, and such letter or number shall be distinctly referred to in those parts of the depositions of the witnesses, or of the proceedings, or of the decree, as may allude to such exhibit.-

29 When the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the Moonsiff shall give judgement according to practice and right.-

30 The decree shall specify the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract of the facts alleged in the pleadings of both parties, and an elucidation of

the principle grounds and reasons, on which the decision passed. It shall state specifically the sum of money, or the value or amount of the costs or damages payable by the parties respectively. If any claim shall appear to the Moonsiff to be evidently litigious and vexatious, he shall adjudge suitable costs and damages against the Plaintiff and insert the same in the mode above directed in the decree.-

31 When the decision shall have been thus passed, the Moonsiff shall cause two copies of it to be prepared and after attesting them with his seal and signature shall, within one week after the date of the decree, tender the said copies in open Cutcherry both to the plaintiff and the defendant or to their vakeels respectively., he shall endorse on the back of the said copies the actual date on they might be tendered and to the parties in open Cutcherry, and if either or both of the parties shall fail to attend, or shall refuse to receive the copies so tendered he shall certify the same on the back of the copies.-

32 Any Moonsiff who may be guilty of wilfully misstating or falsifying or causing to be misstated or falsified, the date and purport of the endorsement above directed to be written on the copies of the decrees from either of the parties with a view of defeating, or opposing a bar to the right of appeal, shall, on proof thereof to the satisfaction of the Commissioner be liable to such discretionary fine to Government as may be deemed proper by that Court.-

33 The copies of the decrees above directed to be tendered to the parties by the Moonsiffs, need not be written on stamp paper.-

34 If a party, vakeel or witness in any depending suit, shall be guilty of disrespectful behaviour to the Moonsiff in open court, The Moonsiff is empowered to impose such fine on the party, vakeel or witness, so offending, as may appear proper. The Moonsiff is however strictly prohibited from realizing such fine by his own authority. He shall report the circumstances of the case to the Commissioner, who will either, modify, or confirm the fine imposed by the Moonsiff.-

35 It shall be the duty of the Moonsiffs to transmit to the Commissioner on the fifteenth of each month, or as much sooner as may be practical, a report of all suits decided them in the preceding month, drawn according to the annexed form No. 2. These reports shall be

No.2 Form of Monthly Report of cases decided by A.B. [sic?] moonsiff or suddar ameen of \_\_\_\_\_ in the month of \_\_\_\_\_ corresponding with the month of \_\_\_\_\_.

Number of the suit on the Registry Book & date of the institution/ or reference	Names of parties	Substance of the suit	Date and substance of the decision	Value of stamp paper on which the plaint was written
No 6 4 <sup>th</sup> February 1815	Ramchurn Verses Radhanath	Debt of 20Rs	Decree on the 3 <sup>rd</sup> Sept for 20Rs and 2Rs 8 annas Costs	

accompanied by the original papers and documents in the case, that they may be deposited among the records of the Court.

36 The Moonsiff shall likewise be required to transmit on the 15<sup>th</sup> of January and the 15<sup>th</sup> of July each year or as much sooner as may be practical, a report of the causes depending before them on the 1<sup>st</sup> of January and 1<sup>st</sup> of July drawn out according to the annexed form No.3.

No. 3 Half Yearly Report of cases depending before AB [sic?] Moonsiff or Suddar Ameen \_\_\_\_\_ of \_\_\_\_\_ on the 1<sup>st</sup> of July 1815

Number of the cause on the Registry Book and date of initiation or referencing	Names of the parties	Substance of the suit	Remarks explanatory of the cause remaining undecided

No 9 4 <sup>th</sup> May 1815	Ramchuru Verses Gungarara	30 Rupees Balance of account	Suspended for the evidence of a witness, on the part of the defendant, who has been summond
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37 The required monthly and half yearly reports shall be enclosed in a cover addressed to the Commissioner and sealed with the seal of Moonsiff in such a manner as may enable the Court to detect any instances in which the packets may be opened, or the seals broken, during their transmission to the Court

38 The Moonsiffs are strictly prohibited from enforcing their own decrees, and from issuing any process or using any coercive means for the purpose, except in cases in which the Commissioner may deem it expedient to employ them in the expectation of the duty.

39 Whenever a party who may have obtained a decree in the Court of a Moonsiff shall be desirous of having it enforced he shall present the same with a petition to the Commissioner.-

40 Any person dissatisfied with the decision of the Moonsiff shall be at liberty to appeal from it to the Commissioner provided the petition of appeal be presented within two months after the date on which copies of the decree may have been furnished or tendered to the parties or their vakeels.-

41 The Commissioner may bring up for trail before himself or before the Suddar Ameen any cause pending before a Moonsiff or may transfer such cause from one Moonsiff to another.-

42 The Moonsiff in consideration for their trouble shall receive all institution fee on all suits decided by them on an investigation of the merits or adjusted by razeenamah, but they shall not be entitled to any remuneration on suits dismissed on default, together with their monthly reports they shall send separate statements showing the amount of the institution fees of causes decided by them



on the merits or adjusted by razeenamah and also of the fees of causes dismissed on default, the amount of which shall be later remitted by the Moonsiff to the Suddar Treasury with their reports. The Moonsiff shall report to the Commissioner any causes of manifest forgery or perjury which may come before them.-

Dated 25<sup>th</sup> May 1829 Signed Geo. W. Traill

## Appendix 6.2. Regulation XXIII of 1814

A REGULATION for reducing into one Regulation, with Amendments and Modifications, the several Rules which have been passed regarding the Office of Moonsiffs or Native Commissioners, and of Sudder Ameens or Head Commissioners; for modifying and extending their respective Powers in the Trial and Decision of civil Suits; and for authorizing them to discharge certain additional Duties under the Direction of the Zillah and City Judges.-  
PASSED by the Vice-President in Council, on the 29th November 1814; corresponding with the 15th Augbun 1221 Bengal era; the 2d Augbun 1222 Fussily; the 16th Augbun 1222 Willaity; the 2d Augbun 1871 Sumbut; and the 16th Zebeija 1229 Higeree.

WHEREAS rules have from time to time been enacted for constituting the office of *moonsiffs* or native commissioners, and of *sudder ameens* or head commissioners for the trial and decision of causes of a certain amount or value : and whereas those rules have appeared in some instances to require revision: and whereas it is expedient, with the view of expediting the trial and decision of civil suits, to extend the jurisdiction of the said moonsiffs and *sudder ameens*, and to authorize the judges of the *zillah* and city courts to employ them in the execution of certain additional duties : and whereas it will contribute to the public convenience to transfer to the provincial courts the control now exercised by the Sudder Dewanny Adawlut in the appointment and removal of *moonsiffs* and *sudder ameens*, and to reduce into one regulation the whole of the provisions which will be applicable to the office of *moonsiffs* and of *sudder ameens*, the following rules have been passed, to be in force from the 1st of February 1815, throughout the territories immediately dependant on the presidency of Fort William.

II. Regulation XL. 1793, Regulation XXXI. 1795; Section 5, Regulation XXXVI. 1795; Section 8, Regulation XXXVIII. 1795; clauses first, second, and third, of Section 3, Regulation VI. 1797; Regulation XVIII. 1797; Section.20, Regulation VII. 1800; Regulation XVI. 1803; Section 3, Regulation XLIII. 1803; Sections 9. to 19, inclusive, of Regulation XLIX. 1803; such part of Section 19, Regulation V. 1804, as refers to native commissioners; Section 9, Regulation II. 1806; Section 8, Regulation VIII. 1809; Sections 9. and 10, Regulation XIII. 1810; such

parts of clauses first and second, of Section II, Regulation XIX. 1810, as are applicable to moonsiffs and to sudder ameens, are hereby rescinded.

III. *First.* On the receipt of this regulation, the *zillah* and city judges shall recall and cancel all commissions which may have been granted to natives, authorizing them, in to the capacity of referees and arbitrators only, and not in that of *moonsiffs*, to hear and determine suits for sums of money, or personal property not exceeding fifty sicca rupees in value or amount, and those offices shall be abolished.

*Second.* Any suits, which may be depending before them in their capacity of referees, shall be transferred, at the discretion of the judge, to any of the *moonsiffs* or *sudder ameens*; and the same fee as would have been payable to the original referee, shall on the decision of the suit be paid to the *moonsiffs* or *sudder ameen* to whom it may be transferred.

*Third.* Any suits which may be depending before them in their capacity of arbitrators, shall be decided by them under the general rules prescribed in Regulation XVI. 1793, Regulation XV. 1795, Regulation XXL 1803, and Regulation VI. 1813.

IV. In cases, in which the office of referee and arbitrator is united with that of *moonsiffs*, such moonsiffs is authorized to hear and determine all causes now depending before him, whether in his capacity of *moonsiffs*. Until new *sunmuds* can be prepared and the arrangements prescribed in the following section can be carried into effect, the persons who now hold the office of *moonsiff* shall be authorized, under the sunnads heretofore granted to them, to exercise the full powers conferred on moonsiffs by this regulation.

VI. *First.* The judges of the several *zillahs* and cities shall on the receipt of this regulation prepare and submit to the provincial court a new establishment of moonsiffs whose local jurisdictions shall be so arranged as to correspond exactly with those of the *thanas* or local police jurisdictions. They shall at the same time report to the provincial court the name of the town or village in each jurisdiction,

which may be most central, or otherwise most conveniently adapted for the establishment of each moonsiffs *cutcherree*.

*Second.* The jurisdiction of the moonsiffs shall have the same local denomination as that of the corresponding police jurisdiction.

*Third.* If the number of persons now holding the office of *moonsiffs* in any *zillah* or city should exceed that of the police jurisdictions, the judge shall select from them those individuals, of whose capacity and integrity he entertains the most favourable opinion: But if the number of moonsiffs should be less than that of the police jurisdictions, the judge shall select such an additional number of persons for the office of *moonsiff* as may be necessary; in both instances he shall report the grounds for his selection to the provincial court, with reference to the provisions of Section 8 of this regulation.

*Fourth.* When the selection of *moonsiffs* for each *zillah* or city, and the places in which their respective *cutcherrees* are to be held, shall have been approved by the provincial court, the whole of the *sunnuds*, which may have been formerly granted to *moonsiffs*, shall be recalled and cancelled, and new *sunnuds*, drawn up according to the form No. 1. In the appendix to this regulation, shall be furnished to all those whose appointments may be confirmed and sanctioned by the provincial court under the preceding clause.

*Fifth.* The offices of those *moonsiffs* whose appointments under the first part of clause third of this section will be no longer necessary, shall be abolished; and the, *zillah and city* judges shall adopt the necessary measures for transferring the papers and proceedings in depending causes to the jurisdictions of those *moonsiffs* to which they may respectively appertain.

VII. The provincial courts are empowered to include two or more entire police jurisdictions within that of one *moonsiff*, and to abolish any of those offices; whenever local or special circumstances may in the judgment render it expedient: they are further at all times authorized to cause the *cutcherree* of a *moonsiff* to be removed from the town or village in which it may be held to any other town or

village within the limits of the same *moonsiffs* jurisdiction may appear more convenient.

VIII. *First.* In the future nomination of individuals for the office of *moonsiffs*; the *zillah* and city judges are not restricted to any particular class or description of persons, provided that they are either of the Hindoo or Mahomedan persuasion, but are required generally to select, in preference to other individuals, such of the *pergunnah* or city *cauzies* as may appear to be duly qualified for the trust.

*Second.* The *zillah* and city judges shall communicate to the provincial court such information as they may have obtained regarding the age, capacity, character, education, and past employments of any person whom they may recommend for the office of *moonsiff*, and no person shall be authorized to officiate as *moonsiff* without the previous sanction of the provincial court.

IX. *First.* Whenever a *zillah* or city judge, shall see cause for the removal of a moonsiff on the ground of any misconduct, neglect of duty, incapacity, or other disqualification, the judge shall report the circumstances of the case with his opinion on the subject to the provincial court, who will pass such order on the report as may appear to be proper, or will call for any additional information, or direct any further inquiry, which the nature and circumstances of the case may require.

*Second.* Whenever a *moonsiff* may be guilty of extortion, or of any other gross act of misconduct, the judge is authorized to suspend him from his office; but in such instances it shall be the duty of the judge to report the circumstances of the case without delay, for the information and orders of the provincial court.

*Third.* In other cases of misconduct and neglect of duty, which may not be of a nature to require either the suspension or dismissal of a *moonsiff* from his office, the judge is authorized to impose on the *moonsiff* a fine not exceeding twenty rupees in amount, and the order of the judge in such cases shall be final.

Fourth. No moonsiff shall be removed from his office, unless the provincial court shall be satisfied that there is sufficient cause for his removal.

X. First. *Moonsiffs* shall be liable to an action in the civil court for corruption, in the discharge of their trust, or for extortion, or for an oppressive or unwarranted act of authority; and upon proof of the, charge to the satisfaction of the judge, he shall cause the offender to pay such damages and costs to party injured as may appear to be equitable.

*Second.* A *moonsiff* shall also be liable to a criminal prosecution for corruption, extortion or other misdemeanour committed by them in the discharge of any part of their duty, and on conviction before the court of circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no *moonsiff* shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a *moonsiff* who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the judge shall be previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded.

XI. Every person who may in future be appointed to the office of *moonsiff*, will be furnished by the judge with a *sunnd* drawn up according to the form No. 1. of the appendix to this regulation; and previously to entering upon the duties of his office, he shall take and subscribe an oath according to the form prescribed in No. 2. of the appendix. The judge however is empowered, in all cases in which he may deem it expedient, to exempt such *moonsiff* from taking the oath, and to cause him to subscribe a solemn declaration to the same effect.

XII. Whenever a *sunnud* may be granted to a moonsiff, under the preceding section, a copy of it under the official seal and signature of the judge shall also be delivered to him, in order that it may remain permanently affixed in some conspicuous place in his *cutcherree*.

XIII. *First.* The persons who may be invested with the powers of *moonsiff* under this regulation, are empowered to receive, try, and determine all suits preferred to them against any native inhabitant of their respective jurisdictions for money or other personal property, not exceeding in amount or value, the sum of sixty-four sicca rupees, provided that the cause of action shall have arisen within the period

of one year previously *to* the institution of the suit, and that the claim include the whole amount of the demand arising from such cause of action ; and provided further, that the claim be really for money due, or for personal property, or for the value of such property, and be not for damages on account of alleged personal injuries, or for personal damages of whatever nature.

*Second.* The *moonsiffs* are prohibited from hearing, trying, or determining any suits in which they themselves, or their relatives, or dependants, or the *vakeels*, or other persons employed in their *cutcherrees*, may be parties, or in which a British subject, or European foreigner, or an American may be a party.

*Third.* They are further prohibited from receiving or trying any suits which persons may desire to prefer to them *in forma pauperis*.

XIV. *Moonsiffs* are themselves to investigate the suits cognizable by them in a public *cutcherree*, or court-room, and are not to allow their officers, servants, or dependants, or any other person to. Interfere therein. In receiving, trying, and determining suits, they shall be guided by the rules prescribed in the following sections, and in points not expressly provided for in this regulation, they shall observe as nearly as may be practicable the rules prescribed in the regulations for the guidance of the *zillah* and city courts in the trial and decision of civil suits.

XV. *First.* No person shall be allowed to plead or act as a *vakeel* in the court of any *moonsiff*, unless he be a relative, servant, or dependant of the person for whom he may be appointed to act; or unless he shall have received a *sunnud* of appointment from the *zillah* or city judge.

*Second.* If in any instance it appears to be essentially necessary that *vakeels* be appointed to attend the pleading of causes before any of the *moonsiffs*, the *zillah* and city judge are authorized to appoint a sufficient number of persons of good character and duly qualified, and to grant to them *sunnuds* drawn up according to the form No. 3. in the appendix to this regulation. The *zillah* and city judges are enjoined not to exercise the discretion vested in them by this clause, of appointing *vakeels* to the *moonsiff*'s courts, unless they shall be satisfied of the expediency or necessity of that measure.

*Third.* The *vakeels* so appointed shall be sworn to a faithful discharge of their duties, and shall be liable both to a civil action, and a criminal prosecution, for all breaches of trust, fraud or acts of wilful misconduct, committed by them in their capacity of *vakeels*. They shall not however be removed from their offices without proof to the satisfaction of the judge of misconduct, or of incapacity or of gross profligacy or misbehaviour, or unless the judge shall consider it expedient to continue the number of *vakeels* appointed; in which case he is at all times authorized to recall and cancel the *sunnuds* granted to them.

*Fourth.* The *vakeels* who may be appointed under this section are left to settle with their constituents the fees to be paid to them for the pleading of causes, and for all other acts that may be performed by them. The amount of the fees which may be voluntarily agreed upon, shall be specified in the *vakalutnamh*, which shall be written on the prescribed stamp paper, and the *moonsiff* may include the same (or any part thereof which may appear reasonable) in his judgment against the party cast.

*Fifth.* The *moonsiffs* are carefully to prevent persons from acting as *vakeels* in their respective *cutcherrees*, who may not be relatives, servants, or dependants of the parties in causes before them; or may not have received *sunnuds* to act as *vakeels* from the judge of the *zillah* or city in which they may be employed.

XVI. In suits instituted before any *moonsiff* in conformity with Section 13. of this regulation, no institution fee shall be levied from the plaintiff, but the following stamp duties shall be levied in lieu thereof, in conformity with the provisions contained in Regulation I. 1814; viz. if the sum of money or value of personal property claimed shall not exceed sixteen sicca rupees, the plaint or petition shall be written on stamp paper of one rupee. If above sixteen, and not exceeding thirty-two rupees, two rupees. If above thirty-two, and not exceeding sixty-four rupees, (which is the highest sum cognizable in *suits* before a *moonsiff*) four rupees.

XVII. The plaint shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total sum of money or amount of personal property



claimed, and all material circumstances, which may elucidate the transaction, and may tend to bring the matter in dispute to a distinct issue.

XVIII. It shall be the duty of the *moonsiff* to restrain and discourage as much as possible the insertion in the plaint of irrelevant matter, and of terms of abuse and reproach against the character, of the defendants or others. The plaint shall be signed and numbered, and dated in the order in which it may be received by the moonsiff, and the number of the suit, the names of the parties, the date on which the petition is received, the amount claimed, and the subject matter of the suit, shall be carefully entered in a book, to be kept by the *moonsiff* according to the form No. 4, of the appendix; two blank columns shall be in the book, in the first of which shall be inserted the date of the decision and an abstract of the final order passed in each suit, shewing whether the claim be decreed in whole or part, or nonsuited, or adjusted by *razeenumah*, or dismissed on investigation of the merits, or otherwise disposed of, and the amount of the costs-adjudged against either or both of the parties. In the second blank column shall be inserted, the date on which the copies of the decrees may be furnished or tendered to the parties. With a view to ascertain that the register books are regularly kept in the manner above prescribed, and that depending suits are brought to a hearing according to their order on the file, the *zillah* and city judges are respectively required to inspect them once at least in each year, and for this purpose shall require the several *moonsiffs* to transmit them to the court either during the period of the Dussera or Mohurram vacation, as may be most convenient.

XIX. *First.* When the complaint shall have been thus received and entered in the book according to the prescribed form, the moonsiff shall cause to be served on the defendant a written notice under his seal and signature, containing only the number of the suit, the names of the parties; and a short statement of the demand, and requiring the defendant to attend in person or by *vakeel*, and to deliver an answer to the plaint on or before a certain day, which must be specified in the notice.

*Second.* The *moonsiff* shall deliver the notice to the plaintiff or to his *vakeel*, and the plaintiff may either himself serve the notice on the defendant, or through any other person whom he may choose to employ for that purpose;-Provided however, that the name of the person intended to be employed in this duty be in all cases endorsed on the notice by the *moonsiff*, previously to its being delivered to the plaintiff or his *vakeel* for execution.

*Third.* The person through whom this notice may be served, shall require from the defendant a written acknowledgment, to be endorsed on the back of the notice, signifying that it has been duly served upon him, and he shall further cause some of the defendant's neighbours, or au)' *mundul* or *patwaree* or other principal inhabitant of the village, or the *mobulladar* of the ward, to witness the due execution of the service, and he shall at all times state in his report, the name or names of such witness or witnesses.

XX. When the defendant may be a weaver or a person employed in the provision of the Company's investment under the commercial residents, or in the provision of salt or opium in those departments, the notice above prescribed shall be enclosed within a sealed cover, addressed to the resident or agent or to the assistant or to the *gomashtah ameen* or head officer of the nearest *aurung*, *kothee*, or *chowkcee*, subordinate to them, and shall be subscribed with the official seal and signature of the *moonsiff*. The resident, or agent, or his assistant, or head native officer, shall cause the notice to be duly served and acknowledged by the defendant, and shall then return it to the *moonsiff*.

XXI. *First.* If a defendant who may have been served with a notice as directed in the two preceding sections shall not appear in person or by *vakeel*, within the time specified, or if having appeared, he shall refuse to answer the plaint, the *moonsiff* shall proceed to try the cause *ex parte*, and after examining the plaintiff's evidence in support of his claim, shall give judgment in the same manner as if the defendant had appeared and answered to the plaint.

*Second.* It shall, however be the duty of the *moonsiff*, previously to trying the case *ex parte*, to make such inquiries from the persons who witnessed such service, as may satisfy his mind, that the notice was duly served on the defendant.

XXII. *First.* In cases in which a defendant to whom a notice may have been issued in conformity with the preceding sections, may abscond or conceal himself, or cannot after diligent search be found, or shall refuse to give the required written acknowledgment, person entrusted with the execution of the process, shall certify the same on the back of the notice, and shall require some person or persons being neighbours of the defendant, or a *mundul*, or a *puttwaree*, or other principal inhabitant of the village, or a *mobulladar* of the ward, in which the defendant may usually reside, to certify on the back of the process, that after diligent search the defendant cannot be found, or that he has refused to give the required written acknowledgment.

*Second.* When a return to this effect is made; the *moonsiff* shall cause a proclamation written in the current language and character of the country to be affixed in a conspicuous part of his own *cutcherree*, and a copy of the same on the outer door of the defendant's usual place of residence, or some other conspicuous place near it: The proclamation shall contain a copy of the original notice, and shall state that if the defendant do not appear in person, or by a *vakeel*, within the period of fifteen days from the date of the proclamation, the suit will be brought to a hearing and determination, without the appearance or answer of the defendant.

*Third.* If the defendant shall still not appear either in person or by *vakeel*, the *moonsiff*, on the expiration of the period limited in the proclamation, shall proceed to try and determine the suit *ex parte*, with the same precautions, and in the same manner, as is prescribed in clause second, Section 21. of this regulation.

XXIII. In suits depending before them, the *moonsiffs* are hereby strictly prohibited from requiring security (either *maal* or *bazir zaminee*) from the defendants, or from attaching their property. But if the *moonsiff* shall be satisfied by sufficient proof, that the defendant intends to abscond and to withdraw himself from the

jurisdiction of the court, or that he means to dispose of the property in his possession for the purpose of avoiding the execution of an eventual Judgment against him, the *moonsiff* shall report the circumstances of the case to the judge, who will exercise his discretion in each instance, and pass such orders as may appear necessary, under the provisions contained in Sections 4. and 5, Regulation II. 1806. The judge may cause those orders to be executed either by the *moonsiff*, or by the proper officers of his own court, as may appear most convenient.

XXIV. When the defendant shall attend either in person or by *vakeel*, within the period limited in the notice or proclamation, or at any subsequent period, before the plaintiff's evidence or proofs shall have been receive in the case, he shall be allowed to take a copy of the plaintiff's petition, and to file his answer to the complaint.

XXV. *First.* It shall be the duty of the *moonsiffs* to restrain and discourage as much as possible, the insertion in the answer of any matter evidently irrelevant to the suit, and of terms of abuse and reproach against the character of the parties or other persons.

*Second.* If the answer of the defendant shall be a simple admission or denial of the matter contained in the plaint, no further pleading shall be necessary in suits before the *moonsiffs*, but if the answer shall contain any plea or allegation, which may require a reply on the part of the plaintiff, in order to bring the matter in dispute to a distinct issue, or to which, the plaintiff may be desirous 'of replying, such reply shall be filed on the next court day after that on which the defendant may have given in his answer. The plaintiff shall not introduce in his reply any matter not contained in his complaint. He shall either acknowledge the answer of the defendant to be true, or simply and shortly deny the truth of such of the facts in the answer, as he intends to dispute, or simply deny the truth of the facts contained in it, or the competency of the answer.

*Third.* The defendant shall rejoin to the reply on the same day. He shall not introduce in his rejoinder any matter not contained in his answer. He shall simply deny the truth of the reply of the plaintiff, or of those parts of it which he

means to dispute or aver the truth or competency of his own answer, and no further pleadings whatever shall be admitted in suits before the *moonsiffs*.

*Fourth.* The answer, reply, and rejoinder, in suits tried by the *moonsiffs*, are not required to be written on stamp paper.

*Fifth.* In suits in which the plaintiff may delay to file his reply, or the defendant to file his rejoinder, within the fixed periods; the *moonsiffs* are not required to postpone the trial of the suit on that account, but may proceed in it in the same manner, as if the reply or the rejoinder had been actually filed.

XXVI. The *moonsiffs* shall try all suits depending before them, in the order in which they have been filed or numbered; provided however, that the *zillah*, or city judge be at all times authorized, either upon a report from the *moonsiff*, or upon other grounds of information, to direct the *moonsiff* to bring any particular suit or suits to a hearing and determination without attending to the regular order of the file.

XXVII. *First.* In cases, in which the answer shall have been filed, and the parties or either of them shall fail to appear in person or by *vakeel* at the time when the suit is first called for trial, the *moonsiff* shall suspend the trial, and again affix in some conspicuous place in his *cutcherree*, a notice that the suit will again be called over for trial after the expiration of a fixed period, not less than ten days. If the plaintiff shall not appear before the *moonsiff* in person, or by *vakeel* duly authorized within the limited time, the *moonsiff* shall dismiss his claim; if the defendant shall not so appear by the prescribed time, the *moonsiff* shall proceed to try the case *ex parte*.

*Second.* Provided however, that if the suit be dismissed without an investigation of the merits, and either of the parties shall appeal from the decision of the *moonsiff*, it shall be the duty of the court trying the appeal to determine the case on its merits, or to remand it back to the *moonsiff* by whom it was dismissed, or to any other competent authority, for a further investigation.

XXVIII. The *moonsiffs* are to try the suits depending before them by hearing the pleadings of the parties, by examining their documents, and by taking the depositions of their witnesses in the presence of the parties or of their *vakeels* duly constituted. They may also examine the truth of the claim by the oaths of the parties, if they mutually consent to that mode of examination.

XXIX. *First.* If the plaintiff or defendant shall be desirous of summoning any witnesses to appear before the *moonsiff*, and such witnesses shall not attend at the requisition of the parties, the *moonsiff* is authorized to summon as witnesses, any persons subject to his jurisdiction, excepting women whose rank may be such as to render it improper to require their appearance in public. When the evidence of such women is necessary, it is to be taken in the mode prescribed by Section 6, Regulation IV. 1793; Section 2, Regulation VIII. 1795; and Section 7, Regulation III. 1803.

*Second.* The summons shall specify the number of the suit on the file, the name of the party at whose request it may be issued, and the names and residence of the witnesses, and shall require them to appear at the *cutcherree* of the *moonsiff* on a specific day; and there to depose concerning the matter in dispute between the parties.

*Third.* The application of parties for the attendance of witnesses before a *moonsiff* need not be written on stamp paper, nor shall any fee be demanded or received by the *moonsiff* for issuing the prescribed summons.

*Fourth.* The *moonsiff* shall deliver the summons to the party applying for it, or to his authorized *vakeel*, and such party or *vakeel* may either serve the summons himself, or through any other person whom he may choose to employ for that purpose; provided however, that the name of the person intended to be employed in this duty be in all cases notified to the *moonsiff*, and endorsed on the summons previously to its being delivered to the party or his *vakeel*, for execution.

XXX. If any individual whose evidence is required shall be a person employed in the provision of the Company's investment under the commercial residents, or in

the provision of salt and opium under the agents of Government, the summons shall be served in the same manner as is prescribed in Section 20. of this regulation, respecting the issue of notice to a defendant. The *moonsiffs* will be careful not to summon such persons unnecessarily, and on their attendance, shall cause them to be examined and dismissed with all practicable despatch.

XXXI. *First.* If any person upon whom a summons may have been duly served in the manner above prescribed, shall not attend on the day appointed, the *moonsiff* is authorized to attach any property belonging to such person which may be found within his jurisdiction. If after a reasonable time subsequent to such attachment; the person summoned shall still omit or refuse to attend, and it shall satisfactorily appear by the oath of the party requiring his evidence, that the testimony of such person is material to the cause, the *moonsiff* shall report the circumstances of the case to the judge, who will exercise his discretion in issuing such further process in order to compel the appearance of the witness before the *moonsiff*, as might be issued under the regulations if the suit were depending before the judge.

*Second.* If notwithstanding this further process, the attendance of the witness cannot be obtained, the judge shall at his discretion impose on such witness a fine not exceeding in any case the value or amount of the property in dispute; such fine shall be realized under the general provisions in force for the execution of decrees.

*Third.* In cases in which a witness duly summoned may attend before the *moonsiff*, but shall refuse to give his evidence, or to subscribe his deposition, the *moonsiff* shall impose such fine upon as may appear proper. The *moonsiff* is however strictly prohibited from realizing such fine by his own authority; he shall report the circumstances of the case to the judge, who will either remit or modify, or confirm the fine imposed by the *moonsiff*, and will proceed to realize it in the same manner as is prescribed in the preceding clause.

XXXII. *First.* If any *moonsiff* shall require the evidence of a person not subject to his jurisdiction, and such person shall not attend at the requisition of the parties,

the *moonsiff* shall make application to the *zillah* or city judge, who will issue the necessary process for procuring his attendance, either through the proper officers of his own court, or through the judge or the *moonsiff*; within whose jurisdiction such person may reside.

*Second.* If however the residence of the witness shall be at a considerable distance from the *moonsiff's* *cutcherree*, or if other circumstances should render it inconvenient or improper to compel the personal attendance of any witness, the moonsiff is hereby authorized and require to transmit to the judge any written interrogatories, which he may think it necessary, or which may be suggested by the parties or their *vakeels*, in the suit. On the receipt of such written interrogatories, the judge will proceed to obtain the evidence of the witness in the mode prescribed by Section 6, Regulation IV. 1793; Section 2, Regulation VIII. 1795; and Section 7, Regulation III. 1803.

XXXIII. The *moonsiffs* are hereby strictly prohibited from confining or otherwise, punishing witnesses, and they are enjoined to take the depositions of witnesses attending before them with all due expedition, so that they may not be exposed to any vexatious delay or unnecessary detention from their respective homes and employments.

XXXIV. The *moonsiffs* shall administer to witnesses such oaths as may be considered most binding on their conscience, according to their respective religious persuasions. But if the witness shall be of a rank, which according to the prejudices of the country would render it improper to compel him to take an oath; the *moonsiff* may *dispense* with his being sworn; and in lieu thereof, cause him to subscribe a solemn declaration (or *hulffhamab*) under the rules prescribed in Section 6, Regulation IV. 1793; and Section 7, Regulation III. 1803; or such other rules as may hereafter be prescribed.

XXXV. The *moonsiffs* are at all times authorized to cause the examination of a witness to be taken on a solemn declaration, or even without such solemn declaration, whenever the parties in the suit, or their respective *vakeels*, may voluntarily and mutually agree to such witness being so examined.



XXXVI. In the examination of witnesses, the *moonsiffs* are enjoined carefully to prevent the parties and their *vakeels* or agents from instructing or intimidating the witnesses, or from putting to them leading questions or questions suggesting a particular answer; questions also with regard to the personal character of the parties, or on points evidently irrelevant to the matter in dispute, are to be avoided as much as possible.

XXXVII. The deposition of every witness shall commence by specifying the name, the father's name, (or, if the deponent be a married woman, the name of her husband,) the religion, cast, profession, age, and place of residence of the deponent, and shall be subscribed by the witness with his or her name or mark.

XXXVIII. *First.* No fees shall be levied on exhibits filed before the *moonsiffs*, and exhibits shall be received in suits depending before them, without any *derkhaust* or written application for that purpose.-The *moonsiffs* are strictly prohibited from admitting or filing as an exhibit, or from receiving in evidence, any obligation, instrument, bond, deed, or document, whether it be the original, or a copy, of a description which is or may be required to be written on stamp paper, unless it shall have been duly executed on stamp paper of the description, value, and denomination prescribed by the regulations.

*Second.* In cases in which a *moonsiff* shall entertain doubts whether a document presented. to him as an exhibit has been duly executed on paper bearing the prescribed stamp, he shall transmit such document, with a statement of the case, to the judge for his opinion and shall be guided by the, instructions he may in consequence receive from the judge, either in rejecting or admitting such exhibit.

*Third.* When an exhibit is filed in a suit before the *moonsiff*, it shall be dated and signed or sealed by him, and shall be marked with some letter or number to identify it; and such letter or number shall be distinctly referred to in those parts of the depositions of the witnesses or of the proceedings or of the decree as may allude to such exhibit.

XXXIX. When the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the *moonsiff* shall give judgment according to justice and right.

XL. The decree shall specify the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract statement of the material facts alleged in the pleadings of both parties, and an elucidation of the principal grounds and reasons on which the decision may be passed. It shall state specifically the sum of money, or the value or amount of the personal property adjudged, and the amount of the costs or damages payable by the parties respectively. If any claim shall appear to the *moonsiff* to be evidently litigious and vexatious, he shall adjudge suitable, costs and damages against the plaintiff and insert the same manner directed in the decree.

XLI, *First*. When the decision shall have been thus passed, the *moonsiff* shall cause two copies of it to be prepared, and after attesting them with his seal and signature shall, within one week after the date of the decree, tender the said copies in open *cutcheree*, both to the plaintiff and defendant, or to their *vakeels* respectively; he shall endorse on the back of the said copies the actual date on which they may be tendered to the parties in open *cutcheree*, and if either or both of the parties shall fail to attend, or shall refuse to receive the copies so tendered, he shall certify the same on the back of the copies.

*Second*. Any *moonsiff* who may be guilty of wilfully misstating, or falsifying, or of causing to be misstated or falsified, the date and purport of the endorsement above directed to be written on the copies of the decrees, or of keeping back such copies of decrees from either of the parties, with the view of defeating or opposing a bar to their right of appeal shall, on proof thereof to the satisfaction of the provincial court, be liable to demission from office, and to such discretionary fine to Government as may be deemed proper by that court.

*Third*. The copies of decrees above directed to be tendered to parties by the *moonsiffs* need not be written on stamp paper.

XLII. If a party, *vakeel*, or witness in any depending suit shall be guilty of disrespectful behaviour to the *moonsiff* in open court, the moonsiff is empowered to impose such fine on the party, *vakeel*, or witness so offending as may appear proper. The *moonsiff* is however strictly prohibited from realizing such fine by his own authority. He shall report the circumstances of the case to the judge, who will either remit, modify, or confirm the fine imposed by the *moonsiff*; and in either of the latter two cases, will proceed to levy it under the general provisions in force for the execution of decrees under the general provisions in force for the execution of decrees.

XLIII *First*. It shall be the duty of the moonsiff to transmit to the judge on the fifteenth of each month, or as much sooner as may be practicable, a report of all the suits decided by them in the preceding month, drawn up according to the annexed form No 5 of the appendix. These reports shall be accompanied by all the original papers and documents in the case, that they may be deposited among the records of the court.

*Second*. The *moonsiffs* shall likewise be required to transmit, on the 15th of January and 15th of July of each year; or as much sooner as may be practicable, a report of the causes depending before them on the 1st of January and 1st of July drawn out according to the annexe form No. 6, of the appendix.

*Third*. The required monthly and half yearly reports shall be enclosed in a cover addressed to the judge and sealed with the seal of the *moonsiff*. The packet shall be forwarded to the judge by public dawk, (the officers of which are here by required to receive and convey such packets free of postage,) or by a servant of the *moonsiff*; or the *moonsiff* may deliver it to the nearest police *darogah*, who shall give a receipt for it, and convey it to the judge. The *moonsiffs* are directed to seal and fasten the public packets and reports which they may have occasion to transmit to the court, in such a manner as may enable the court to detect any instance in which the packets may be opened, or the seals broken, during their transmission to the court.

XLIV. The moonsiffs are strictly prohibited from enforcing their own decisions, and from issuing any process, or using any coercive means for that purpose, except in cases in which the judge, under the power vested in him by Sections 51. and 52, may deem it expedient to employ them in the execution of that duty.

XLV. *First.* Whenever a party who may have obtained a decree in the court of a *moonsiff* shall be desirous of having it enforced, he shall present a petition to the *zillah* or city judge, written on the stamp paper prescribed by Section 18, Regulation J. 1814. If the decree shall have been passed previously to the 1st of February 1815, the petition shall be presented within the period of one year from that date; if the decree shall be passed on or after the 1<sup>st</sup> of February 1815, the petition shall be presented within the period of one year from the date of the decree.

*Second.* Such petition shall be presented either in person or through an authorized pleader of the court, and shall contain a statement of the number of the suit, of the name, and designation of the *moonsiff* by whom it was decided, of the names of the parties in the cause, of the date of the decision, and of the total sum which may have been adjudged to the petitioner, either on account of the original claim or of costs of suits; the petition shall further state whether an appeal has or has not been admitted from the *moonsiff's* decision.

*Third.* When such petition shall be received, the judge shall cause the purport of the petition to be compared with the decree in the original record of the suit, and with the statement contained in the monthly report of causes decided by the *moonsiff*.

*Fourth.* If the suit shall have been regularly appealed, the execution of the *moonsiff's* decree shall be suspended or otherwise according to the rules in force.

*Fifth.* If the petition for the execution of a *moonsiff's* decree shall not be presented until after the periods prescribed in clause first of this section, and no satisfactory cause shall be shewn for the delay such decree shall not be executed but the party shall be allowed to institute a new suit in the *zillah* or city court; .in the trial of such suits the defendant shall not be allowed to impugn the merits of the original

judgment, passed by the *moonsiff*, unless the suit shall have been tried *ex parte* in the first instance; but he may shew that the sum originally decreed, or any part of it, has been subsequently paid, .or that the matter in dispute has been adjusted by the parties since the date of the original judgment.

*Sixth.* If the petition for the execution of a *moonsiff's* decree, shall be presented within in the limited periods prescribed by clause first of this section; and no appeal shall have been preferred from the• decision, such decree shall be enforced in conformity with the regulations; provided however, that if the judge shall have reason to believe that the decree was obtained in an irregular manner, or that on any other sufficient grounds it ought not to be enforced, he may permit the party against whom the decree may have been passed, to prefer an appeal from such decree, although the prescribed period for admitting such appeal may have elapsed.

*Seventh.* With a view to prevent the protracted imprisonment of persons confined in execution of decrees for sums of inconsiderable amount, it is hereby provided, in addition to the rule contained in Section 11, Regulation II. 1806, that no person from and after the 1st February 1815, shall be liable to personal confinement, in satisfaction of a decree for any sum, not exceeding sixty-four sicca rupees, beyond a period of six. months; but that at the expiration of that period, any person so confined, shall be entitled to be released; but any property which may belong to such person shall at all times, either during his imprisonment or subsequently to his release, be liable to attachment and sale for the purpose of realizing the amount of the judgment, or such part thereof as may remain due.

XLVI. *First.* Any person dissatisfied with the decision of a *moonsiff*, shall be at liberty to appeal from it to the judge, provided the petition of appeal be presented within thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or to their *vakeels*, in conformity with Section 41. of this regulation; a discretionary power however is vested in the judge of admitting appeals from decisions of the *moonsiffs*, although the petitions

may not be presented within the prescribed period, if the appellant shall shew satisfactory cause for not having before presented the petition.

*Second.* All petitions of appeal from decisions of the *moonsiff*, are to be presented to the judge of the *zillah* or city, in which the *moonsiff* may officiate, and the *moonsiffs* are prohibited from receiving any petitions of appeal from their own decisions.

*Third.* All petitions of appeal from decisions of *moonsiffs* are to be presented by the appellant in person, or by one of the authorized *vakeels* of the court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective *vakeels* are to be allowed the same fees as in other suits tried before the judge.

*Fourth.* Decisions of the *moonsiffs* are not to be set aside for want of form, or for irregularity in their proceedings, but on the merits only.

*Fifth.* When an appeal may be received from the decision of a *moonsiff*, the judge is empowered to suspend the execution of the decree, provided the party appealing against it, shall give good and sufficient security, within a reasonable period to be fixed by the judge, to perform the decree of the court.

XLVII. *First.* The *zillah* and city judges may for any reason that may appear to them sufficient, bring up for trial before them, or their registers, or the *sudder ameens*, any causes, that may be depending before the *moonsiff*, or may transfer such causes from one *moonsiff* to another.

XLVIII. Upon the death, removal, or resignation of any *moonsiff*, the judge shall, if necessary, immediately nominate another person in his room for the approbation of the provincial court, and shall cause all papers in the causes depending before the late *moonsiff* to be delivered over to his successor, or otherwise to be disposed of as circumstances may require.

XLIX. *First.* The compensation, which the *moonsiff* shall be hereafter entitled to receive for their trouble in the trial of suits which may be decided by them

subsequently to the 1st February 1815, and for the necessary establishment of officers, shall be adjusted in conformity with the following causes.

*Second.* On every suit which may be now depending or may be hereafter instituted in the *cutcheree* of the *moonsiffs*, and which may be adjusted by *razeenamab* or decided by the moonsiffs on an investigation of the merits, subsequently to the 1st February 1815 they shall be entitled to receive the full amount of the institution fee, or the full value of the stamp paper, substituted for such institution fee, on which the plaint or petition in such suit may have been written.

*Third.* Together with the monthly report of causes decided, which the *moonsiffs* are required to transmit under Section 43. of this regulation, the *moonsiffs* shall forward a separate statement under their respective seals and signatures, exhibiting the amount of the institution fee, or the value of the stamp paper substituted for such institution fee, in all suits which may have been decided by the *moonsiffs* during the past month, on an investigation of the merits of the case, or which may have been adjusted by *razeenamabs* of the parties; from this statement shall be carefully excluded the amount of the institution fee, or the value of the stamp paper substituted for such fee, in those plaints, which may have been dismissed from the non-attendance of the plaintiff, or from any other ground of nonsuit or default. The *moonsiffs* shall not be entitled to any remuneration on suits, which may have been disposed of by them without a determination on the merits of the case, or in adjustment by *razeenamabs* of the parties.

*Fourth.* The statement so transmitted shall be carefully revised, and shall be compared with the original records of the suits by the *serishtadar*, or treasurer, or other authorized officer of the court, and shall be countersigned by such officer in testimony of his having ascertained the accuracy of the statement; an order shall then be endorsed on the statement under the seal of the court, and the signature of the judge, and such order shall be a sufficient authority to the treasurer of the court for the payment of the amount to the *moonsiffs*.

L. *First.* In questions which may arise in suits depending before the judge of any *zillah* or city court, relating to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands or houses, or regarding the right of way in roads or pathways, or regarding any right in forests, commons, rivers, lakes, ponds, wells, reservoirs, or watercourses, or regarding the quantity or description of land and the rent to which it is liable, and generally in all questions of local rights and usages which cannot be conveniently decided without an inquiry on the spot, the *zillah* or city judge may empower any *moonsiff* within his jurisdiction to make a local investigation into the merits of the question in dispute.

*Second.* The *zillah* or city judges shall furnish to the *moonsiffs* such part of the proceedings, and such detailed instructions in each case, as may be necessary for his information and guidance; and shall enjoin the *moonsiff*, either merely to take the requisite evidence in the presence of the parties or their *vakeels*, and to transmit the same to the court, or likewise to transmit, with the evidence so taken, a report of his own sentiments on the point at issue founded on the result of the investigation held by him.

*Third.* The proceedings of the *moonsiff* are to be received as evidence in the case, with regard to the specific matter whereto he may have been directed to investigate; but if the judge shall have reason to be dissatisfied with the proceedings of the *moonsiff* he is at liberty to make such further inquiry as may be requisite, and to pass such ultimate judgment as may appear to him to be right and proper.

LI. *First.* The *zillah* and city judges are further authorized to employ the *moonsiffs* in delivering over formal possession of lands, houses, or other real property, in conformity with decrees regular or summary.

*Second.* Previously however to issuing any instructions to a *moonsiff* for the performance of any of the duties described in this or the preceding section, the judge shall require either the plaintiff or the defendant, according to the circumstances of the case, to pay into court such a sum of money as may be an



adequate remuneration to the *moonsiff* for his trouble, provided such sum do not exceed the probable expense which would be incurred if an *ameen* or a native officer of the court were employed in the execution of the same duty.

*Third.* The *moonsiff* shall be entitled to receive such sum as may have been paid into court under the preceding clause, except under circumstances, in which he may appear to have performed the duty entrusted to him in a negligent, unjust, or improper manner; in such cases, the said sum of money shall be returned to the party who deposited it in court.

LII. The *moonsiffs* may be employed at the discretion of the *zillah* and city judges in the attachment and sale of personal property for the purpose of realizing the amount of fines, of decrees regular or summary, and shall be entitled to receive a commission of one anna commission on each rupee on the proceeds of such sales.

LIII. The *zillah* and city judges are further empowered to employ the moonsiffs in ascertaining and reporting upon the sufficiency of securities, and the indigence of persons suing in *forma pauperis*.

LIV. The provisions of the preceding sections are not intended to preclude the *zillah* and city courts from deputing an *ameen* for local inquiries, or from employing the authorized officers of the court in the execution of the various duties above detailed, whenever they may deem it expedient to do so in conformity with the existing regulations; and the *zillah* and city judges will be careful, that the time of *moonsiffs* not be much occupied in the miscellaneous duties described above, as to interfere materially with the early trial and decision of the regular suits depending before them.

Local rule for *moonsiffs* in the town of Juggunauthpooree in *zillah* Cuttack. Section LVI. not transcribed.

Local rules for *moonsiffs* in *zillab* Chittagong. Section LVII to LXXVIII. not transcribed



APPENDIX.

No.1

FORM of SUNNAD to be granted to persons appointed to the office of *moonsiff*.

[?]1, A. B. judge of the *zillab* or city of..... in virtue of the powers vested in me by Regulation XXIII. 1814, do hereby appoint you C. D. to the office of *moonsiff* of..... with the same local jurisdiction as that of the police jurisdiction of..... You are to hold your *cutcherree* at.....and are to affix this sunnad or a copy of it, duly authenticated, in some conspicuous place in the *cutcherree* . . Under the rules now in force you will receive the remuneration to which you may be entitled for the trial and decision of suits from the *zillab* or city court; and you are not entitled to receive any institution or other fee, any deposit or sum of money, or valuable consideration from any parties, or other persons, on account of the institution or trial, the proceedings, process, or decision of any suit before you. You are not empowered to take or demand any security; to levy any fine, or to execute any decree, without the previous sanction and orders of the *zillab* or city court in each instance. You are to hear and determine all suits cognizable by you, and to execute all other duties entrusted to you in your capacity of *moonsiff*, in strict conformity with the rules prescribed in the regulations now in force, or which may hereafter be enacted.'



No .. 2.

FORM of OATH to be administered. to persons appointed to the office of *moonsiff*

‘ I, A. B. appointed to the office of *moonsiff*’ .....of do solemnly swear, that in the trial and determination of all suits which may come under my cognisance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favour, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive any money, effect, or property, on account of any suit that may come before me for decision, or on account of public duty which I may have to execute. I will strictly adhere to all the rules prescribed for my guidance, and I will in all respects truly and faithfully execute the trust reposed in me.’

This clause is rescinded by Section 6, Regulation XIII. 1824



No.3.

FORM of SUNNUD to be granted to persons who may be appointed to officiate as *Vakeela* in the *cutcherees* of the *Moon6i.iffs*.

‘ I A. B. judge of the *zillah* or city of.....do hereby appoint you C. D. to act in the capacity of *vakeel* in the *cutcheree* of the *moonsiff* of..... You will not be liable to be removed from your office, unless the judge of the district or city of.....in consequence of misconduct on your part, or of there being no longer any necessity for your being employed in the capacity of *vakeel*, shall deem it proper to recall and cancel this *summud*.’



No. 4.

FORM of a REGISTER BOOK of SUITS (instituted before *Moonsiffs*) (or referred to *Sudder*

*Ameens*.)

Number of the suit	Date of its institution (or reference)	Name of the parties	Amount and subject of the claim.	Date and abstract of the final order	Date on which copies of the decree were furnished or tendered to the parties
No. 1	2d of February, 1815	Ramchand Paul, vs Punchoo Gope	20 <sup>th</sup> of March 1815. Decreed in favour of the Plaintiff 33 Rs. Original and 2Rs interest. Defendant to pay costs 4 Rs 6As. Total; 39Rs 6As.	24 <sup>th</sup> of March 1815 One Copy furnished to the Plaintiff himself, and another to the <i>vakeel</i> of the Defendant.	
No. 2	2d February	Khodabukas, vs. Meerun	Debt of 7 Rupees for value of rice furnished to Defendant.	Adjusted by <i>razeenamah</i> , 10 <sup>th</sup> of February	
No. 3	3d February	Poorun Sing vs. Mohun Chassa	Arrears of rent 14 Rupees.	April 1 <sup>st</sup> . Decreed for 7 Ruppees. Parties to pay own costs	April 7 <sup>th</sup> . Plaintiff absent. Copy of decree furnished to the Defendant

No. 5.

FORM of MONTHLY REPORT of CAUSES decided by A. B. *Moonsiff* or *Sudder Ameen* of .....in the Month of..... corresponding with the Month of.....

Number of the suit on the Register Book, and date of its institution (or reference)	Names of the parties.	Substance of the suit	Date and substance of the decision.	Value of stamp paper on which the plaint was written.
No. 6 4 <sup>th</sup> February 1815	Ramchurn, vs. Radanath	Debt of 20 Rupees.	Decreed on the 3d April, for 20 Rupees and 2 Rupees 8As. costs	2 Rupees.



No. 6.

HALF YEARLY REPORT of CAUSES depending before A. B. *Moonsiff* or *Sudder Ameen*  
of.....

on the 1st of July 1815.

Number of the suit on the Register Book, and date of its institution (or reference)	Names of the parties.	Substance of the suit	Remarks explanatory of the cause remaining undecided..
No. 96 4 <sup>th</sup> of May 1815	Ramchurn, vs. Gungram.	30 Rupees balance of accounts.	Suspended for the evidence of witness on the part of the Defendant, who have been summonsd.



No. 7.

FORM of SUNNUD to be granted to persons appointed to the office of *Sudder Ameen*.

‘ I A. B. judge of the *zillah* or city of .....in virtue of the powers vested in me by Regulation XXIII. 1814, do hereby appoint you C. D. to the office of *sudder ameen* of the *zillah* or city of.....You are to hold your *cutcherree* at....., and are to affix this *sunnud*, or a copy of it, duly authenticated, in some conspicuous place in the *cutcherree*. You will receive the remuneration to, which you may be entitled for the trial and decision of suits, from the *zillah* or city court; and you are not entitled to receive any institution or other fee, any deposit or sum of money or valuable consideration from any parties or other persons on account of the institution or trial, the proceedings, process, or decision of any suits before you. You are not empowered to take or demand any security, to levy any fine, or to execute any decree, without the previous sanction and orders of the *zillah* or city court in each instance. You are to hear and determine all suits cognizable by you, and to execute all other duties entrusted to you in your capacity' of *sudder ameen*, in strict conformity with the rules prescribed in the regulations now in force, or which may hereafter be enacted.’



No. 8. ·

FORM of OATH to be administered to persons appointed to the office of *Sudder Ameen*.

‘I A. B. appointed to the office of *sudder ameen* of the *zillah* or city.....do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favour, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute; I will strictly adhere to all the rules prescribed for my guidance ; and I will in all respects truly and faithfully execute the trust reposed in me.’



## Appendix 8.1. Mr. R. M. Bird's *Note*

Mr. R. M. Bird's *Note on the Administration of Kumaon, dated 13<sup>th</sup> June 1837.*

My instructions to the Commissioner, 3rd Division, respecting the settlement of Kumaon are already on record, and need not be further referred to. But Kumaon being a remote province, seldom visited by any superior authority, and the people having the greatest terror of coming down into the plains, it appears to me proper to put on record such matters as came under my observation during my visit there, although not immediately connected with our own department, for the information of Government.

2. The records, both English and Native, of the Kumaon office are in a state of most admired confusion; and it was not, therefore, possible to verify such facts as I desired to enquire into by reference to written documents. What I am to mention, therefore, was principally obtained from other sources, but, as I used every precaution to avoid being misled by false information, I believe most of the circumstances which I may state may be at any rate sufficiently depended upon to form good ground for more deliberate enquiry.

3. As the people are too ignorant to know anything of our mode of dividing business into departments, each altogether unconnected with the other, petitions on every possible subject, revenue and judicial, civil, criminal, and political, were pressed upon me, and the matters brought forward in these petitions first attracted my attention to many points of enquiry.

4. The first point to notice is the European establishment. There is an officer 

European Establishment
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 called a Commissioner and three European assistants for the management of a country paying Rs. 2,34,000 to Government.

5. The office of Commissioner is one of very undefined powers, and appears to have been originally constituted expressly for Mr. Traill. From all I can see and hear, the results of the experiment have not turned out altogether favourable, although framed to suit the particular character and scope of one individual. When such an appointment comes to be thrown open to candidates of all kinds



and selected without any peculiar fitness, it is manifestly desirable that the office should be placed on a different footing. The present incumbent [ Colonel Gowan] is not a man of any official experience in any department, and himself requires both guidance and control. He was appointed fifteen months ago.

6. The three assistants are, Mr. Batten, Captain Corbet, and Mr. Thomas. The

Assistant Commissioner, Mr Batten
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former gentlemen has but a short time held office in the hills; but he is a man of a well cultivated mind, much ability, great zeal, indomitable energy, and an earnest desire to promote the welfare of the people under his charge. His danger would be impatience of unavoidable errors and imperfections, and pushing his designs beyond the bounds of practicability; but under the judicious guidance of matured information and experience he will be an invaluable officer. As his health will oblige him to retain his appointment in the hills for a considerable period, we should endeavour to turn his services to the best account. Government have appointed him Joint Magistrate and Deputy Collector of Gurhwal, and I have directed that he shall assume independent charge of the settlement of that province, under the immediate guidance of the Commissioner of the Division. I would propose, if Government approve the measure, that the whole of the Settlement Department of Kumaon be placed under Mr. Batten, and that he should commence the settlement of Kumaon proper and Kalee Kumaon when he has completed Gurhwal, another officer being deputed to take his common duties in the latter district during his absence.

7. The other two assistants are Captain Corbet and Mr. Thomas. These

Captain Corbet and Mr. Thomas.
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gentlemen have both been some time in Kumaon, and if there were any system of decision, or any fixed method of proceeding laid down, would, I have no doubt, succeed very well in common duties; But at present rule or method is a thing unknown, and the orders are such as to fill a practised mind with surprise.

8. If, however, any system were organized, it is impossible to imagine that there

Want of system in the disposal  
on business.

would be occupation for three officers within,  
the narrow limits of Kumaon exclusive of  
Gurhwal, and, in fact occupation is only

obtained by the same case being continually re-tried. This was my own  
impression, and it was most distinctly and forcibly stated, and many of the  
attendant evils clearly pointed out in a petition of which I subjoin an abstract.

9. Captain Corbet commands the Local Corps, and resides at Howelbagh. This is

No necessity for two Assistants  
in Kumaon

a distance of not more than two hours' ride from  
Almorah, and consequently Captain Corbet's  
services would be always available at the sudder

station, and his assistance would be amply sufficient to enable the Commissioner  
to dispose of all business before him. If, therefore, it be considered expedient to  
retain Mr. Thomas in the province, I would recommend that he be placed under  
Mr. Batten's orders in Gurhwal, and he will probably by the time Mr. Batten has  
completed the settlement of Gurhwal, and is prepared to undertake another  
portion of the territory, have acquired sufficient acquaintance with his duty to be  
capable of officiating during Mr. Batten's absence.

10. Some arrangement of the duties would even then be required between the

Commissioner should be  
empowered to distribute the  
judicial work

Commissioner and his assistant Mr. Corbet. The  
best mode of proceeding would be to direct that  
Colonel Gowan, under the general

superintendence of the Commissioner of the Division, make such an assignment  
of the duties as may be most expedient, as is done in other districts.

11. It seems to me inexpedient to send young gentlemen to the hills as soon as  
they enter upon the public service, as has been done in many instances. It is  
better they should acquire habits of regularity, and become initiated into public  
duty in districts more closely superintended, and where administrative knowledge  
is in a more advanced stage, and the people themselves exercise more of a check  
over eccentric proceedings than is at present the case in Kumaon.

12. Some confusion arises from the title of Commissioner of Kumaon. It was

Proposed restriction of the powers of the Commissioner of Kumaon

especially assigned to Mr. Traill, and special powers were also conferred on him, with reference, I presume, to the seclusion of the tract from the

rest of the provinces, and to the peculiar qualifications possessed by him for its management.

13. Circumstances are now changed, and to me it does not appear expedient that the Commissioner of Kumaon should possess any other powers than those of Collector and Magistrate, and of a Zillah Judge in civil cases. It should be a part of the duty of the Commissioner of the Bareilly Division to spend two or three weeks of every year at Almorah. Criminal cases which are beyond the competence of the Commissioner of Kumaon are already, by special order of Government, heard and decided or referred by the division officer. But it is also

Commissioner of the (Robilkhund) Division might receive and transmit statement of suits and petitions of appeal to Sudder Dewany Adawlut.

expedient that an appeal should lie in criminal cases to that officer. At present there is no such appeal, and the state of the administration of criminal justice is unimaginably bad. It also seems to me unobjectionable that the

Commissioner of the Division should be directed during his residence at Almorah to receive a statement—a kind of catalogue *raisonne*—of civil cases decided by the Commissioner of Kumaon, and any objections or applications of appeal which may be offered; and that he should forward this catalogue, certifying any cases which appear to him to require notice, to the Sudder Dewany Adawlut: the latter court might then call for such cases as it should think fit.

14. Unless this, or some such plan, or some plan of bringing the civil decisions of the Kumaon authorities under the supervision of those who have some experience in judicial affairs, be adopted, the condition of civil justice must continue in a lamentable state. The exercise of altogether irresponsible authority by persons not possessed of enlarged knowledge or of lengthened experience in public affairs, and unpractised in the ascertainment of truth amidst confused and conflicting statements, can only lead to the most unhappy results.

15. From the European I come to Native establishment. This, also, requires a Native establishment. thorough reconstruction. It consists of a not very large number of very ill-paid persons, whose salaries are not fixed on any scale having reference to the ability or labour required, and who obtain some unauthorized addition to the scanty pay out of the amount collected as tulubana. This appears to me altogether objectionable, and I would propose, if Government approve, to call on the Commissioner of Bareilly to submit, in concert with the Commissioner of Kumaon, a schedule of a moderate establishment on a proper scale of pay, to which the sanction of Government should be sought; and I would direct the whole of the tulubana receipts to be carried to the account of Government.

16. The next subject of notice is the police. It is stated that there is no faithful Police establishment of Turai. record of crimes committed in any part of the province, and that in fact crime is less infrequent than has been generally supposed and stated. On that point, however, my information is altogether general and vague. But the particular subject which I consider it my duty to bring to notice is the police of the Turai.

17. There is a strip of country, extending from the Ganges opposite Hurdwar on The Turai haunted by robbers. the west to the confines of Oudh on the east, which has been long the haunt of banditti, and the scene of the most atrocious crimes, committed with perfect impunity. This tract originally belonged to Kumaon under the Nepal Government, and has remained attached to it since, I presume, merely because the evil consequences of that arrangement have not been brought to the notice of Government.

18. The officers residing in the hills have no sort of control over this tract, nor Description of the Turai any information of what passes there. The tract varies in breadth from ten to near thirty miles. It is peculiarly unhealthy, and chiefly covered with dense forest. During eight months of the year it is altogether abandoned, except by the tribes called Boksas and Tharoos, who alone of all human kind appear able to endure the pernicious climate. For four months in the year it is the resort of the hill-people and their

cattle, and through it pass all the tracks by which the commerce of the hills and the plains is carried on.

19. During the busy season the banditti establish themselves in the forest in

Habits of the robbers

overwhelming numbers, and commit the most fearful atrocities against the merchants passing through with goods, the herdsmen from the hills and plains who take cattle there to graze, and the inhabitants of all the villages and towns bordering on the forest

20. The information I could obtain can have no pretension to statistical accuracy,

The atrocities committed by them

but the histories which were told me of skeletons of human beings found tied to trees, and supposed to be the wretched herdsmen whom the robbers had bound alive and so left miserably to perish, and the accounts of merchants and travellers killed and wounded, appeared authentic; and the village of Roodurpore was stated by the remaining inhabitants to have been reduced from a thriving town to a miserable hamlet by the oppression of the robbers.

21. If they could have timely notice of the occurrence of these crimes at

Imperfect control exercised by the hill authorities them

exercised by the Almorah, which is impossible, they have no establishments or appliances to cope with the criminals of this class, and therefore some other arrangement is indispensable to the restoration of order throughout this tract.

22. To transfer the portion opposite to each to the districts of Bijnour, Moradabad, Pilibheet, and Bareilly, seems to me insufficient. The stations of the Magistrates in all those district are comparatively remote; unity of effort and action would be with difficulty attained; and the Magistrates could not give to the particular duty the undivided attention which the suppression of crime so inveterate, and the restoration of confidence to a people so Jong hopeless of efficient protection, requires. Also, when the Magistrate is so distant, and obliged Lo depend so much on his Native police officers, the latter attain too much power. From the notorious insalubrity of the climate no persons who have any

chance of obtaining office elsewhere are willing to accept employment there. The choice, therefore, is limited to the very refuse of that class who seek police situations, never the most respectable; and the common pay of the police is so small, that, taking all the circumstances together-the distance of the Magistrate, the consequent chance of Jong evading detection, the scanty pay, the little inducement to energetic efforts against the dacoits, and the great risk with which such efforts must be attended-the police are apt to find it answer better to join the banditti. The ill-consequences of such a state of things in a forest country among ignorant people, Mr. H. S. Bouldersons' well-known report of the ills inflicted by the police in North Rohilkhund will evince.

23. The proper course seems to me to be to have a Magistrate appointed to a the special charge of that tract, with an for the establishment specially entertained on adequate pay, including a strong force of horse under his orders, and possessing joint jurisdiction with all the Magistrates of Rohilkhund, so that he may be able to track out and apprehend the dacoits to whatever district they may retire.

Proposal to appoint a magistrate for the Turai

24. This arrangement need not be attended with any great expense. About four years ago the appointment of a Joint Magistrate and Deputy Collector of Kasheepore was made by Government, principally with a view to police purposes. At least the abolition of the office would not, I apprehend, cause us any inconvenience whatever in the Revenue Department. I would apply the salary and establishment of that office to the purpose of forming a magistracy of the Turai.

To be provided by abolishing the Joint Magistracy of Kasheepore.

25. The officer appointed should be at liberty to choose his own residence in any one of the neighbouring districts which he might prefer from April to October, both inclusive; hut from November to March he should be always in the immediate vicinity of the forest, prepared to pursue and attack the bodies of armed dacoits wherever they

Police duties incumbent on such a Magistrate

may collect, and to afford protection to the trade passing; and repassing between the plains and the hills. If a British Magistrate properly supported by an armed force were on the spot, and the fear of consequences removed, he would speedily obtain from the herdsmen, who are well-acquainted with the intricacies of the forest, all requisite information.

26. Detachments of troops, both from the regular corps stationed in Kumaon

Troops of no use for police purposes.

and from the local corps, are now stationed at different posts in the Turai during the cold

weather; but regular troops are of no avail for such a service, and their protection extends no further than the range of their muskets.

27. The tract should, of course, be considered to belong to the plains and not to

Revenue management

the hills. Its revenue administration might be committed to the Collectors of the adjoining

districts. But there is in fact little to collect, and the great matter would be to induce men, if they can be induced by long leases and low terms, to clear the forest and bring it into cultivation.

28. The Commissioner of the 3rd Division and the Magistrates of Rohilkhund will be able to furnish Government with all necessary details on this subject. My only object has been to bring the matter to the notice of those who could remedy the evils complained of.

29. The system of criminal justice in Kumaon requires, also very great

Cases of injustice in criminal administration

reformation. I was credibly informed that persons are apprehended, retained in jail, and worked in

irons for years upon the roads, not only unsentenced and untried, but even without any recorded charge. I communicated on this subject unofficially after my return to Allahabad with the Judges of the Sudder Nizamut Adawlut, and at their request placed in the hands of their Registrar the means of testing the accuracy of my information. I think it, however, my duty to remark that it is essential to the due protection of the people that they should have an appellate authority to which they may resort in the immediate vicinity, and that the

Commissioner of Rohilkhund or the Senior Judge of that Division would appear the most proper selection.

30. The civil jurisprudence (?) appears to me not less faulty. Something in the 

Similar cases in civil administration
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 shape of a brief code should be drawn up, such as lately appeared in the newspaper for Assam, and the powers of the officers entrusted with the civil authority should be in some degree defined, and regular reports should be furnished to the Sudder Dewany Adawlut, as from all other places, accounting for every suit brought upon the file. It was stated to be a practice to avoid all arrears of suits by non-suiting the plaintiffs towards the close of the year in all that remained undecided.

31. A case was put into my hands, which I think it right to mention in detail, as proving to my judgment the inexpediency of the system under which it could arise.

32. A common suit for a bond-debt was brought, and tried by Mr. Thomas, and, 

Instance of a case in which a plaintiff and witnesses in a civil suit had been punished for forgery and perjury without any proceedings on the criminal side.
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 the bond being proved by witnesses, a decree was passed in favour of the plaintiff. The defendant appealed to the Commissioner of Kumaon. I could not from enquiry ascertain that any further evidence was taken; but the Commissioner took a different view of the case, and cast the plaintiff.

33. He then held a proceeding in the Foujdaree Department, and, as I am informed, without putting the parties on their defence, or taking any evidence for or against them, sentence the unfortunate plaintiff to five years' imprisonment with labour and irons, and the witnesses to two years' imprisonment in the same manner.

34. Now, to say nothing of all the remaining anomalies, there is this peculiarity in the case, that the claim was decreed by the Court of First Instance. But if the case was so gross that on a mere inspection the parties and witnesses could be



convicted of forgery and perjury, what are we to say to the inferior Judge who decreed the claim. He ought, if the latter order be right in justice, certainly to be removed for incompetence. As abstract of the petition is subjoined.

35. I do not know that it is necessary to go beyond this. I have, I think, stated

The remedy to be sought in the subjection of the local authorities to the Sudder board and Sudder Court
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enough to justify myself as a trusted servant of Government in bringing to notice matters not in my own department, and which, not having received any special authority for that purpose, I

was unable to investigate, so as distinctly to point out the errors and indicate for each its appropriate remedy. But the facts which I have recorded are sufficient to point out where knowledge is to be sought by those who may be employed to seek it. The general root of the evils which prevail is obvious- the committal of uncontrolled power to those whose fitness for its use has not been proved. The remedy is equally clear, namely, to bring the civil officers of Kumaon under the supervision of those experienced persons to whom the guidance of the other districts of the provinces has been committed, and to provide an appellate power sufficiently near to be available to the hill people.

## Appendix 8.2. Act X of 1838

ACT No. X. OF 1838.

Passed by the Honourable the President of the Council of India in Council on  
the 30th April 1838.

I. It is hereby enacted, that Regulation X. 1817, of the Bengal, code be repealed.

II. And it is hereby enacted, that the functionaries who are or may be appointed in the province of Kumaon be henceforth placed under the control and superintendence, in civil cases, of the court of Sudder Dewanny Adawlut at Allahabad, in criminal cases of the court of Nizamut Adawlut at Allahabad, and in revenue cases of the Sudder Board of Revenue at Allahabad; and that such control and superintendence shall be exercised in conformity with such instructions as the said functionaries may have received, or may hereafter receive, from the government of the north-western provinces of the presidency of Fort William



## Appendix 8.3. Rules for the administration of criminal justice in Kumaon of 1838

### REVISED RULES FOR THE ADMINISTRATION OF CRIMINAL JUSTICE IN KUMAON. (As amended)

*Passed by Government under Act X. of 1838*

SUPERSEDED BY ACT XXV. OF 1861.

#### SEC. I. – ON JURISDICTION

1. There are to be four grades of functionaries employed in the administration of criminal justice in Kumaon, viz:-

Number and description of functionaries to be employed in the administration of criminal justice.
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The Commissioner.  
Senior Assistants.  
Junior Assistants.  
Sudder Ameens.

2. The powers of the Sudder Ameens are restricted to the trial of cases referred

Sudder Ameens empowered to try cases referred to them, and to sentence to a fine of Rs. 50, or imprisonment for six months, with or without labour.
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to them by the Senior Assistant in charge of the district, and passing sentence of fine of Rs. 50, or exceeding Rs. 50, commutable to imprisonment, with or without labour for six

months or of imprisonment only for that period. In all cases calling for a severer sentence, they shall send up their proceedings to the Senior Assistant in charge of the district.

3. The ordinary powers of Junior Assistants, when not in charge of a district or

Junior Assistants, when not in charge of a district, empowered to try cases referred to them by their superior, and to pass sentence of fine of, Rs. 100 or imprisonment for twelve month, or imprisonment alone for that period.
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station are restricted to the trial of cases are restricted to cases referred to them by their immediate superior, and to pass sentence of which they are competent to pass sentence of fine not exceeding Rs. 100 commutable to imprisonment not exceeding twelve

months, or of imprisonment only not exceeding twelve months (in both instances with or without labour at-his discretion), in cases of misdemeanour,

assault, or other petty offences for which such punishment may appear adequate. Provided that in cases of theft it shall not be competent to the Junior Assistant to pass sentence of imprisonment without labour.

4. An appeal from all orders passed by a Junior Assistant or Sudder Ameen shall

Appeal from order of Junior Assistant lies to Senior Assistant.

lie to the Senior Assistant, if presented within one month from the date thereof.

5. The powers of the Senior Assistants in charge of districts shall include, with

Senior Assistant vested with the charge of the police, and the trial in the first instance of all persons charged with offences.

the general charge of the police of the trial in in the 1<sup>st</sup> instance, or committal, of all persons charged with offences.

6. In cases of burglary or theft unattended with aggravated personal violence, in

The Senior Assistant empowered in certain cases to pass sentence of imprisonment with labour for two years, and an additional period of one year in lieu of corporal punishment.

which the property Stolen may not exceed in or value the sum of Rs. 300, and also in cases of burkundazes or others employed in guarding prisoners who may be convicted of having wilfully permitted any

prisoner under their custody to escape, the Senior Assistant may pass sentence of imprisonment with labour for two years, and of imprisonment with labour for the additional term of one year in lieu of corporal punishment. In cases of bribery and extortion on the part of any Native officer in the Pay of Government, he may pass sentence of fine not exceeding Rs. 200, or of imprisonment not exceeding two years, with or without labour, whenever such sentence may appear to be adequate to the demands of justice. In cases of gross misconduct on the part of officers of police, as also in cases of burkundazes and others employed in guarding prisoners, who may be convicted of having by gross neglect permitted any prisoner under their custody to escape, the Senior Assistant may pass sentence of imprisonment, with or without labour, for a period not exceeding twelve Months.

7. In all cases of affray or assaults unattended with serious wounding and loss of

In cases of affrays, unaggravated misdemeanours and miscellaneous offences, the Senior Assistant may pass sentence of fine not exceeding Rs. 200.

life, as also of unaggravated misdemeanours including all miscellaneous offences detailed in the list published with the Circular Order of the Nizamut Adawlut No. 398, dated 11th

April, 1850, the Senior Assistant may pass sentence of fine not exceeding Rs. 200, commutable to imprisonment for a period not exceeding one year, or of imprisonment only for that period; in both instances with or without labour, at his discretion.

8. In all cases of more aggravated nature, as also in cases of perjury and forgery,

Cases of a more aggravated nature to be referred by Senior Assistant to the Commissioner.

the Senior Assistant shall refer his proceedings to the Commissioner in the manner hereinafter provided.

9. An appeal from all original orders passed by the Senior Assistant shall lie to

Appeal from Senior Assistant lies to Commissioner.

the Commissioner, if presented within two months.

10. The powers. of the Commissioner shall extend to the trial of all cases referred

Commissioner empowered to try all cases referred by him by a Senior Assistant, and to revise all proceedings of lower authorities within six months after sentence.

to revision of all cases referred by a Senior Assistant and to the revision of all proceedings which he may think fit to call for from any subordinate authority, within the term of six months from the date on

which a final order thereon may have been passed by such subordinate authority.

It is not intended by this provision to limit the power of the Commissioner to call for any proceedings that he may require for inspection. Provided, however, that if after the expiration of the term above indicated he shall see cause for setting aside the decision of a subordinate authority, he shall report the

particulars of the case, in an English letter, to the Nizamut Adawlut, and obtain the sanction of that court for proceeding to the revision of the case.

11. In all cases of theft, burglary, and dacoitee, unattended with murder and of wounding with intent to commit murder, the Commissioner shall be competent to pass sentence of imprisonment with labour, in banishment or not at his discretion, for a term not exceeding fourteen years. Trials for rape, in which the Commissioner may consider a period of imprisonment not exceeding fourteen years to be sufficient punishment for the offence, are also placed within his competency.

In heinous offences Commissioner may pass sentence of imprisonment for fourteen years with labour in irons in banishment.

12. In all cases of affrays, culpable homicide not amounting to murder, and other

In cases of affrays and other offences, Commissioner may pass a sentence of fine of Rs. 500, or of imprisonment with or without labour, for seven years.

offences which the Sessions Judges in the regulation provinces are competent to dispose of without reference to the Nizamut Adawlut it shall be lawful for the Commissioner to pass a sentence of fine not exceeding Rs. 500, or imprisonment, with or without labour, for a term not exceeding seven years.

Provided, however, that in cases of perjury, forgery, knowingly uttering forged documents, forging counterfeit coin, or counterfeit stamps, or counterfeit public securities or bank-notes, as also in cases of clipping, filing, drilling, or otherwise debasing the coin, it shall be competent to the Commissioner to pass sentence of imprisonment and fine; but it shall not be competent to him to pass sentence of fine only. Accessories to murder before and after the fact shall be similarly punishable by the Commissioner by imprisonment, or imprisonment and fine, whenever the case as it regards the principals, may not be referred to the Nizamut Adawlut, and the Commissioner may consider the punishment of seven years' imprisonment, with or without labour, adequate to the offence.

13. In cases of murder, and in all cases demanding a more severe sentence than

In cases of murder, and in all cases demanding a. severer sentence, he shall refer his proceedings to the Nizamut Adawlut.

the Commissioner is competent under the preceding clause to pass, he shall refer his proceedings in the manner provided for in the sequel to the Nizamut Adawlut.

14. It shall be competent to the Commissioner to invest any Junior Assistant,

Commissioner competent during the absence of Senior Assistants to invest any Junior Assistant with powers defined in Clauses 5, 6, 7, and 8 or simply with the power of trying cases within his competence without their being referred to him.

during the temporary absence either from the district or station of the Senior Assistant, with the powers defined in Clauses 5, 6, 7, and 8, of this section; or at any time should he see occasion to do so, to invest him merely with the power to receive

complaints and try cases within his competence without their being referred to him.

15. It shall be competent to the Commissioner to invest any experienced Junior

Also to invest a Junior Assistant with the above powers when the state of business renders such measure expedient.

Assistant with the powers defined in Clauses 5, 6, 7, and 8 of this section, whenever, from the state of the business in the district, he may deem such a measure

expedient; provided that an immediate report shall in every instance be made to the Nizamut Adawlut, by whom, if they disapprove of the arrangement, a recommendation that it may be set aside, will be submitted to Government.

16. The provisions of Clause 1, Section 3, Regulation II. of 1834, are hereby

Labour commutable to fine in certain cases.

declared to be in force in the province of Kumaon.

## SEC.II-RULES OF PROCEDURE.

1. In cases in which the Senior Assistant in charge of the district is not competent to pass a final sentence, or which he may consider to demand a more



severe sentence, or which he may consider to demand a more severe sentence than he is competent to pass, he shall refer his proceedings, accompanied by an English Calendar, to the Commissioner, who will proceed to the trial of the case in the manner provided for in the sequel.

2. Confessions, which in heinous cases ought always to be taken before either the

Confessions in heinous cases to be taken before the Senior Assistant or Junior Assistant, and attested by witnesses.

Senior Assistant or Junior Assistant, and never before the Sudder Ameen, must be attested by two or more competent witnesses, who shall in every instance be

made to stand within hearing of the prisoner as he delivers his statement. Each such confession shall be superscribed as follows, by the officer before whom it is made, in his own handwriting:-

I (A. B.), Senior Assistant (or Junior Assistant, as the case may be), hereby in

And to bear a certificate in the prescribed form.

certify that this confession

of \_\_\_\_\_ was made by the

said \_\_\_\_\_ and taken down in writing, and attested by the

subscribing witnesses, before me, and in my presence on

the \_\_\_\_\_ between the hours of; that to the best of my belief

the confession was voluntary, and that no interference directly or indirectly, on

the part of any person likely to influence or intimidate the prisoner, was

permitted.'

3. Should the Commissioner be of opinion, after the examination of the evidence

The Commissioner is empowered to release the defendant without proceeding to a regular trial if he consider the evidence insufficient.

recorded in any case referred to him by the

Senior Assistant, that the evidence is

insufficient for the conviction of the

accused, he is empowered, should such course seem to him expedient, to order

the discharge of the defendant without proceeding to a regular trial of the case,

and without summoning any of the parties concerned therein.

4. The Commissioner is empowered to return to the Senior Assistant any case for further investigation.

5. In cases in which the Commissioner may consider it necessary to proceed to trial, he shall immediately appoint a time and place for the attendance of the witnesses and parties; provided, however, that the date appointed for the trial shall be not more than three months, subsequent to the date of the order so appointing it. The trial shall be held with the assistance of a jury to consist of not less than three members, in whose presence the Commissioner will take the evidence for the prosecution and defence.

6. The decision of the case rests exclusively with the Commissioner whether he

The decision of the case rests entirely with the Commissioner.
If not competent to pass a final order, he shall refer the case to Nizamut Adawlut

concur in the verdict of the jury or not. If the case be one in which he is competent to pass a final order, the Commissioner shall sentence or discharge the prisoner as the

case may be; but in cases in which he is not competent to pass a final order, and in which he may consider the charge proved, he shall forward the case, with an English letter detailing the circumstances there of, and his own opinion, for the orders of the Nizamut Adawlut.

7. In all petty criminal cases (namely, misdemeanours, theft to the amount of fifty rupees, and offences for which Magistrates in the Regulation Provinces are empowered to pass sentences of imprisonment not exceeding six months) evidence may be taken *viva voce*, and the substance merely be recorded, either in the English or Hindee language, as the Commissioner may direct.

8. A register of all trials held before the Senior Assistant and his subordinates,

A register to be kept of trials held before the Senior Assistant and his subordinates.
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shall be kept in such form as the Commissioner may, in communication with the Nizamut Adawlut, direct.

9. Monthly returns of trials referred to the Commissioner, and disposed of by

Monthly returns of trials shall be made by the Commissioner Nizamut Adawlut.
--

him, shall be made to the Nizamut Adawlut to the according to the appointed forms.

10. An annual report on the administration of criminal justice, showing the

An annual report on the administration of Criminal Justice shall be made to the Nizamut Adawlut.

aggregate number of trials held, and prisoners punished in each division and such other particulars as that court may require, shall be

made to the Nizamut Adawlut.

### SEC III —PERJURY AND FORGERY.

3. The Magisterial authorities and all officers of police are restricted from

The Magisterial authorities not to receive or act on charges of perjury or forgery preferred by private parties.

receiving, or acting upon, charges of perjury or subornation of perjury preferred by private parties. They are similarly forbidden

to take cognizance of charges of forgery, or procuring forgery, or of forgery, or of fraudulently issuing forged deeds and papers, which may be preferred by parties to civil or criminal cases in respect to deeds and papers offered in evidence in such cases, And it is hereby declared that no individual shall be liable to any prosecution of the above descriptions, unless he shall be made over to the

In cases of perjury or forgery when the offence is proved, case to be committed for trial to Commissioner.

magisterial authorities by the officer presiding over the Court or office, in which the imputed offence may have been

committed, and no such case shall be made over to the criminal authorities unless the civil case in which the alleged forged document was filed, or the alleged perjury committed, shall at the time be pending. The proceedings held in the court or office in which the offence is alleged to have been committed shall, in all such cases, be transmitted to the officer in charge of the district in his capacity of Magistrate; and if, upon an inspection of the same or after making such further enquiry as he may deem necessary, he shall be of opinion that the offence is proved, the Magistrate shall commit the case for trial to the Commissioner.

### SEC. IV. -POLICE.

Regulation XX, of 1817, shall be considered the Police Law in Kumaon wherever the circumstances of the province may admit to the application of its provisions, and the Commissioner of Kumaon is hereby declared to be Superintendent of Police.

5. The local authorities are required to adhere to the *spirit* of the following enactments which have already been recognized in Kumaon:-

- Regulation VIII. of 1818.
  - I of 1824.
- Act V. of 1840.
  - XXI of 1841.
  - V. of 1843.
  - III of 1844.
  - V. of 1848.
  - XVI. of 1850.
  - XXVI of 1850.

## Appendix 8.4. Rules for the administration of civil justice in Kumaon of 1838

### RULES FOR THE ADMINISTRATION OF CIVIL JUSTICE IN KUMAON.

#### *SEC. I. — ON JURISDICTION.*

1. There is to be one class of Native judge in Kumaon, viz., Sudder Ameens with powers

Description of Native judges to be employed in Kumaon; powers to be exercised by them.

to try and decide cases of original suits referred to them for property, either movable or immovable, not exceeding in value the sum of one thousand rupees. The Sudder Ameens are to be appointed by the Commissioner, subject to the confirmation of

Sudder Ameens are to be appointed by the Commissioner, subject to the confirmation of Government.

the Lieutenant-Governor of the North-Western Provinces.

2. The European functionaries ordinarily employed in the administration of civil justice

The European functionaries are to be the Assistants in charge of the several districts into which Kumaon is divided and the Commissioner.

are to be the Assistants in charge of in charge of the several districts into which Kumaon is divided —the Junior Assistant and the Commissioner. The Assistant, to whom all petitions of plaint are in the first instance to be presented is to retain on his own file suits for property, movable or immovable, of a value of a value exceeding one thousand rupees, as

All petitions of plaint to be presented to the Assistants, who may refer suits for small amounts to Junior Assistant or Sudder Ameen.

well as all suits for land claimed as lakhiraj, but may refer suits for smaller amounts to the Sudder Ameen.

4. A special appeal shall lie from all decisions passed by the Commissioner of Kumaon

A Special appeal shall lie from all decisions passed by the Commissioner of Kumaon on suits originally tried by an Assistant to the Presidency Sudder Court.

on suits originally tried Assistant to the Court of Sudder Dewany Adawlut at Allahabad.

5. The Commissioner or Assistant, as the case may be, is competent to remove to his

Commissioner or Assistant competent to remove any cause pending in a lower court to his own or any other court.

own or any other court in the province, any cause that may be depending in a lower court recording

his reasons for so doing.

6. In suits for land, the value is to be calculated at the amount of its gross annual

In suits for land or houses, value how to be reckoned.

proceeds. If the suit be for gardens or houses, their value is to be reckoned at their estimated prices.

7. No civil suit shall be cognizable in any court in Kumaon in which the cause of action

Limitation of period for the institution of suits in Kumaon.

shall have originated at any period antecedent to the 2nd December, 1815. For suits arising subsequently

to the date, twelve years is to be the period of limitation within which, from the date of the transaction wherein it originates, a suit must be instituted, unless the complainant can show by clear and positive proof that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand or promised to pay the money; or that he directly preferred his claim within the period for the matters in dispute to a court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either, from minority or other good and sufficient cause, he has been precluded from obtaining redress.

8. A suit for money or personal property shall be instituted in the Court of the Assistant

Suit for money or personal property to be instituted in the Court of the assistant in charge of the district where the defendant resides; in the event of his having changed residence, either in the court of the district, where he may actually reside, or in that where the cause of action may have arisen.

in charge of the district within which the defendant resides as a fixed inhabitant. In the event of his having changed his residence the district within which the defendant resides as a fixed inhabitant. In

Suit for immovable property to be instituted in the Court of the district where such property is situated.

the event of his having changed his residence subsequently to the date on which the cause of action may have arisen, it shall be optional with the plaintiff to commence his action in the court of the

to personal character, in what court to be instituted.

district within which the defendant may actually reside, or in that of the district in which the cause of action may have arisen. Suits for damages on account of injury done to personal character are to be instituted'; at the discretion of the party complaining, either in the court of the district within which the defendant resides, or in that of the district in which the act complained of was committed. The amount of damages to be awarded is to be fixed by the officer presiding over the court in which such suit may be tried, who will, in all such cases, endeavour to obtain if possible the aid of a jury or of a few Native

assessors. A suit for land or other immovable property shall be instituted in the court of the district wherein such property is situated.

9. The civil authorities of one district are to cause all legal processes issued by those of

The civil authorities of one district, how to act when legal processes issued by those of another district may be sent to them for the purpose of being carried into effect.

another division, which may be sent to them for the purpose of being carried into effect within their jurisdiction, to be duly executed, and the returns

thereon are to be made and duly forwarded to the officer by whom the process was issued, within the term originally specified ~herein, or, in the event of that being impossible, a full statement of the cause of the delay, and of the probable time within which a full return may be expected, must be furnished by the authority receiving a process to the officer by whom it was issued. It is to be distinctly understood that in such cases it rests with the authority issuing a process to decide upon the admissibility of any excuses that may be urged against its being carried into execution.

10. Sudder Ameens guilty of any act of misconduct, may be fined by the Assistant in

Sudder Ameens guilty of any act of misconduct, by whom to be punished.

charge of the district in a sum not exceeding the amount of one month's salary. If the offence be of

a more serious nature, so as to require severer notice, the Assistant in charge of the district must report the case for the-consideration of the Commissioner, who may suspend him from the exercise of his judicial functions, appointing another person to fill his place temporarily, and submitting a report on the subject for the consideration and orders of the Lieutenant-Governor, North-Western Provinces.

11. Sudder Ameens are hereby declared competent to sentence any party guilty of a gross

Sudder Ameens competent to punish any party guilty of contempt of their authority, or their subordinates guilty of contumacy or disrespect; reporting particulars their immediate superior within twenty-four-hours.

contempt of their lawful authority or any of their subordinate officers guilty of gross contumacy or disrespect, to pay a fine not exceeding the amount of fifty rupees, commutable in the event of non-

payment to imprisonment without labour or the term of one month; reporting fully the particulars of the case to their immediate superior, within twenty-four hours from the time of such sentence being passed.

12. The Commissioner, the Assistants in charge of districts, and the Junior Assistant, are

European functionaries also competent to punish offences of the class above alluded to; reporting the cases to the Commissioner.

declared competent to punish offences of the class alluded to in the preceding clause by imposing a

fine not exceeding two hundred rupees, commutable to imprisonment without labour for a period not exceeding six months. Such cases must be reported to the Commissioner for reversal or confirmation.

## SEC. II. — ON ORIGINAL SUITS.

1. If the suit be for land, houses, or money due on a bond, agreement, or commercial

On the expiration of the second period; case is to be tried *ex-parte*

transaction (and the Assistant shall not see cause to reject the same as frivolous or vexatious, under the

If the suit be for land, houses or money, and the Assistant see cause to reject it, a notice must be issued to the defendant to file a reply within fifteen days.

discretion allowed in the sequel of this section), a written notice must, after numbering the petition of

In the event of the reply not being filed within fifteen days, proclamation to be affixed to the abode of the defendant, calling upon him to file one within fifteen days.

plaint according to its place in the yearly list, be issued, calling upon the defendant to file a written reply within fifteen days. In the event of the reply

not being filed within that period, a proclamation is to be affixed, if possible, to the abode of the defendant, and a copy of it to be affixed in the court room, calling upon the defendant to file a reply within fifteen days from its date. On the expiration of the second period, if no reply be filed, the case is to be tried *ex-parte*.

2. The parties are to be allowed an option of bringing up their own witnesses or of

Parties may bring up their own witnesses, or have subpoenas served upon them by pleaders.

having subpoenas served upon them by the pleaders. If the witnesses fail upon this process to

Witnesses failing to attend upon this process and proclamation, to be fined, and the fine levied by sale of their property.

attend, a proclamation fixing a term for their appearance is to be issued, at the expiration of which, if still absent, a fine is to be imposed to be levied by the attachment and the sale of their

property. Parties applying for a process to enforce the attendance of witnesses, shall on

Parties to indemnify witnesses for expenses incurred by them.

doing so, declare that they are ready to indemnify the said witnesses for any necessary expenses to be

incurred by them in attending before the court; and the court, in passing a final decision



upon the case, shall include whatever sum, not exceeding the rate of three annas per diem, may be proved to have been paid to witnesses for their subsistence among the costs of suit.

3. When the witnesses shall be in attendance, their depositions are to be taken down in

Depositions to be taken down in writing in the Hindee language in the presence of the Assistant in charge.

writing in the Hindee language, in the presence of the Assistant in charge of the district, if practicable;

but in the event of his other avocations rendering it impossible for him to attend to this duty, he is allowed to delegate it to a Junior Assistant or to the head ministerial officer of

Assistant allowed to delegate this duty to a Junior Assistant or the head ministerial officer of his court.

his court, who is to attest the deposition by his signature, and to be responsible for its authenticity.

Assistant to pass judgement in open court.

On the whole evidence, documentary and parole, being filed, the Assistant is to proceed to pass

judgment in open court, recording the substance of judgment in English; the decision must be translated into Hindee, and attested copies of it given to the parties.

4. If the petition of plaintiff in an original suit presented to an Assistant in charge of a

Assistant in charge of a district at liberty to reject a petition of plaintiff. Parties dissatisfied with the order of rejection may appeal to the Commissioner, who may direct the Assistant to admit and proceed upon the same in a regular suit.

district shall appear to him to be *prima facie* inadmissible, or shall prove to be so after a summary enquiry into its merits, he is at liberty to reject the same, without bringing it on to his regular file and

without calling upon the defendant to reply; but parties discontented with such order of rejection may appeal to the Commissioner, who may, after calling for the original petition and proceedings held upon it, direct the Assistant to admit and proceed upon the same as a regular suit.

5. If the subject-matter of the petition of plaintiff relate to a question of caste or marriage, it

If the petition of plaintiff relate to a question of caste or marriage, it shall not be incumbent on the Assistant to bring the case on his file, but he may summarily dispose of it.

shall not be incumbent on the Assistant to bring the case on his file of regular suits, or to hold more than a summary enquiry into its merits, the result of which alone shall be briefly recorded on the back of the petition. It shall however, be competent to the

Commissioner declared competent to direct that the case be tried as a regular suit.

Commissioner to direct that any case, thus summarily disposed of, shall be brought on the file and tried as a regular suit.

6. The Assistant may insist on the attendance, in person, both of the plaintiffs and

Assistant may insist on the on the attendance both of the plaintiff and defendant, and examine them on oath before bringing the suit on his file.

defendant in any original suit; and he is strongly enjoined, in all cases in which it shall be practicable, so to confront them as at once to elicit the truth,

and abridge the necessity of further legal proceedings; and he may take their examination

In all cases in which the meeting of the parties can be effected, their depositions shall be taken to be the plaint and reply.

on oath, if he judge it necessary, previously to bringing the suit on his regular file; and in all cases

in which such meeting of the parties can be effected, their depositions shall be recorded and taken to be the plaint and reply in the suit. But any party feeling aggrieved by such a requisition may appeal the Commissioner, who is hereby empowered to cause it to be withdrawn, recording his reasons for doing so at length in his proceedings. It is also to be understood that the filing of a petition of appeal by a plaintiff against such a requisition shall bar its enforcement pending the reference to the Commissioner.

7. The Sudder Ameens shall, in cases referred to them, be guided in their proceedings by

Sudder Ameens to be guided by the provisions contained in the first three clauses of this section.

the provisions contained in the first three clauses of this section; with this exception, that they are in all instances expected to cause the depositions of

witnesses to be taken in their own presence, and are not empowered to delegate that duty to any of their ministerial officers.

8. The Sudder Ameens are not to try cases in which their own amlah, near relations, or

Sudder Ameens not to try cases in which their amlah, near relations or spiritual instructors, are parties.

spiritual instructors, are parties concerned. Should any such case be inadvertently referred to them, they are hereby required to return it, with a suitable

representations, to the Assistant, who will either try it himself, or refer it to another Sudder Ameen, or, if he prefer that course, to the Junior or Sub-assistant, from whose decision thereon an appeal will lie, under the general rules regarding appeals from the decisions of a Sudder Ameen, to the Assistant in charge of the district.

9. Whenever a plaintiff may satisfy the Assistant within whose district he may have a suit

Assistant, on being satisfied that the defendant is about to abscond or withdraw himself, from the jurisdiction, may demand security from him, or attach his property, or commit him to jail.

pending, either in that officer's own court or in any of the inferior courts, that the defendant against whom a suit has been brought is about to abscond or withdraw himself from the jurisdiction of the district

courts, the Assistant may either demand security for the appearance of the said defendant or attach his property. If the defendant in such a case cannot produce security, or should not possess property, the Assistant may arrest and place him in the civil jail of his district, provided the plaintiff deposit money for his subsistence, according to the usual rates allowed to persons imprisoned in executing decrees. The Assistant in such cases is empowered to try the suit without reference to its order on the file, if it be pending in his own court, or to direct its speedy investigation if it be pending before a Sudder Ameen.

10. The several courts in Kumaon are hereby authorized to use every proper means for

The court authorized to use every proper means for inducing parties to refer their disputes to arbitration.

inducing the parties in suits to refer their dispute to arbitration, either with a view of settling some

particular issue, or of obtaining a complete and final adjustment of their differences. An agreement shall in such cases be taken from the parties, in which it shall be distinctly stated whether the award is to be partial, that is, confined to a particular issue, or final, as

Award of arbitrators, if open to no just cause of impeachment on the score of partiality, to be held by the courts of the same validity as a regular judgment.

embracing the whole merits of the case. In the former cases, the court will take the finding of the arbitrators as conclusive upon the particular point

referred to them; in the latter case, the award of the arbitrators shall, if open to no just cause of impeachment on the score of flagrant and palpable partiality, be confirmed by the courts, and held of the same force and validity as a regular judgment.

11. Any party desirous of instituting an original suit as a pauper must appear in person

Any party desirous of instituting an original suit as a pauper to appear in person and present his petition to the Assistant, who may, in special cases, receive it through an authorised agent.

before the Assistant in charge of the district, and present a petition containing a general statement of the nature and grounds of the demand of the value of the thing claimed the name of the person or persons to be sued, and a schedule of the whole real or personal property belonging to the

Assistant may admit the petitioner to sue as a pauper, or refuse to admit his suit in that form. Such orders declared open to revision by the Commissioner.

petitioner, with the estimated value of such property. In special cases, the Assistant in charge may receive such petitions through an authorized agent or mookhtar. On the receipt of such a petition, the Assistant shall institute a summary enquiry with a view of ascertaining the accuracy of the petitioner's allegations regarding his own circumstances. If satisfied of their accuracy, the Assistant is to admit the petitioner to sue as a pauper; but if the result of the enquiry shall not be satisfactory, the Assistant will at once refuse to admit his suit in that form, and will refer him to the general rules in force. All orders passed by an Assistant under the provisions of this clause are to be open to revision by the then Commissioner, if appealed, against within the term of three months from the date on which they are passed.

12. If a suit be instituted against a European or Native officer or soldier, a notice in the usual form shall be sent, with a copy of the plaint, to the commanding officer of the corps to which the said officer or soldier may belong. The commanding officer shall return such notice, with the written acknowledgment of the party endorsed thereon, or a statement of the cause which has prevented the service of it; and the court before whom the suit may be pending may then proceed to dispose of the case under the general rules. Provided always, that in such cases every process that may be issued is to be served through the commanding officer of the crops to which the party may belong, and that such processes, if issuing from any of the inferior courts, are to be sent in the first instance to the Assistant in charge of the district, to be by him forwarded to commanding officer.

Form of proceeding to be adopted on a suit being instituted against a European or Native officer or soldier.

### SEC.III. — APPEALS.

1. Parties discontented with the decision of a Sudder Ameen may, within one month from the date thereof, present a petition of appeal to the Assistant in charge of the district.

Petitions of appeals from the decisions of Sudder Ameens to be presented within one month to the Assistant.

2. [Appears to be missing from the record]

3. Parties discontented with the decision of an Assistant in any suit tried in the first instance before him, may, within the period of two months from the date of such decision, present a petition of appeal to the Commissioner of Kumaon,

Petitions of appeal from the decision of an Assistant to be presented, within two months, either to the Commissioner or to the Assistant.

or if they prefer it, to the Assistant himself, whose duty it will then be to forward, with the least possible loss of time, the said petition with the copy of the decision appealed from, to the Commissioner.

4. When it may appear necessary for the ends of justice, in consequence of a decision

Special appeals, if presented within three months from the date of the decision, may be received by the Assistant from the judgment of a Sudder Ameen.

being at variance with some existing law or established custom of the country, or in consequence of the subsequent discovery of new

evidence, or for any other good and sufficient reason to be fully detailed in the order for its admission, that a special appeal should be admitted, such appeal, if presented within

[Missing text] by the Commissioner from the decision of an Assistant on an appeal from the award of Sudder Ameen; and by the Sudder Dewany from the decision of the Commissioner.

three months from the date of the decision, may be received by the Assistant from the judgment of a Sudder Ameen, by the Commissioner from the judgment of an Assistant on an appeal from the

award of a Sudder Ameen, and by the Sudder Dewany Adawlut from the decision of the Commissioner. It is to be distinctly understood, also, that no second appeal is to be received on any but the special grounds alluded to in this section, whether the previous decisions of the two subordinate courts may have been concurrent, or the reverse. When, however, it shall appear that the judgement against which the appeal is preferred is clearly in opposition to, or inconsistent with, another decree of the same court, or another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, a second or special appeal shall in all cases be admitted.

5. Whenever an appeal shall be preferred to the Assistant from a Sudder Ameen's

On an appeal being preferred to the Assistant or Commissioner, they need not summon the respondent in the first instance, but may merely call for the proceedings; and, on perusal of them in the presence of the appellant or his agent, confirm the decision appealed from, or allow an appeal.

decision, or to the Commissioner from the Assistant's decision, it shall not be necessary to summon the respondent in the first instance, but merely to call for the original record of the

proceedings in the case; and if, after the perusal of the same in the presence of the appellant or his agent, the Commissioner or Assistant, as the case may be, shall see no reason to alter the decision appealed from it shall be competent to them to confirm the same communicating the order for confirmation, through the court from whose judgment the appeal was made to the respondent, with a view to enabling him to take

measures for carrying the decision in his favour into execution. Should an appeal be allowed, a notice must be issued to the respondent, at the expiration of the term assigned, in which the Sudder Ameen, Assistant, or Commissioner, as the case may be, shall, after receiving the respondent's reply to the petition of appeal, proceed to try and decide the merits of the appeal, and shall pass a decision confirming, modifying, or reversing the decision of the Moonsiff, Sudder Ameen, or Assistant. If the respondent fail to attend within the period fixed in the notice, the [appeal is to be tried *ex-parte*]

6. The Sudder Dewany Adawlut, Commissioner, Assistant, or Sudder Ameen, as the case may be, are empowered to call for further evidence in a case appealed or to refer the case back to the Sudder Ameen, Assistant, or Commissioner, for re-investigation, if it appears to have been imperfectly enquired into.

Appellate Courts empowered to call for further evidence in a case appealed, or refer it back for reinvestigation.

7. The Sudder Dewany Adawlut, Commissioner, or Assistant, may admit appeals after the expiration of the term above fixed for their presentation on its being clearly shown that the appellant was prevented by some insurmountable obstacle from presenting the same within the prescribed term.

Appellate Courts may admit appeals after the expiration of the term fixed for their presentation, on sufficient cause for the delay being shown.

8. The execution of a decree passed by a Sudder Ameen or Assistant shall not, excepting in the particular case provided for below, be stayed notwithstanding an appeal, unless the appellant give security for the due fulfilment of the decree. Should he fail in furnishing security, the respondent is at liberty to cause the decree to be carried into execution on giving security for performing the final order to be passed by the higher court.

The execution of a decree shall not be stayed except in the particular case provided for below.

9. It is, however, to be understood that the superior court by whom the appeal is admitted is competent to stay the execution of a decree pending the trial of such appeal, even without exacting security from the appellant. But the reasons for the exercise power are, in every instance, to be entered at large in the order issued by the inferior court.

The superior court admitting an appeal declared competent to stay the execution of a decree without exacting security.

Reasons for the exercise of this power to be recorded in the order issued in the inferior court.

SEC. IV. — VAKEELS, OR PLEADERS.

There are to be no regular Vakeels attached to any of the courts in Kumaon. Parties

Parties may plead in person or appoint any person to do so, making whatever terms they please with the Vakeel as to the amount or remuneration to be allowed to him.

preferring to plead in person are to be permitted to do so; but if any party chooses to appoint a Vakeel, he may employ any person whom he may select to

act for him in that capacity, and he and the Vakeel may make whatever terms they please as to the amount of remuneration to be allowed to the said amount of remuneration to

Commissioner empowered to declare any individual incompetent to act as Vakeel Sudder Dewany Adawlut may revise such order.

be allowed to the said Vakeel. Provided, however, that the Commissioner is to have the power to declare any individual incompetent to act in the

capacity of Vakeel in any court in the province of Kumaon, recording his reasons for so

Every court declared competent to reject any individual who a party may wish to employ as Vakeel.

doing in his proceedings, in order that, in the event of an appeal, the same may be revised by the Sudder Dewany Adawlut. It shall also be competent to

Superior court may cancel such order.

In awarding costs against a party cast, 5 percent to be charged on the value of the property litigated on account of the successful party's Vakeel's fees.

every court in the province to reject for reasons to be recorded on its proceedings, any individual whom a party may wish to employ as Vakeel in any particular suit. Such an order may be summarily appealed from and the superior court may cancel it,

and direct that the person affected by it be permitted to act as Vakeel for the party wishing to employ him. In awarding cost against a party cast in any action no larger sum shall be charged on account of fees of the Vakeel of the successful party than it been hitherto customary in Kumaon to allow on that score, *viz*, 5 per cent on the value of the property litigated. Any further sum to which the Vakeel may be entitled under the agreement concluded between him and his employer, must be recovered by him from his employer

SEC V. — EXECUTION OF DECREES.

1. Every petitioner praying for a warrant to enforce a decree, whether given in the Court

Petitions for the warrant to enforce a decree to be presented to the Commissioner or Assistant, who will be guided by the following rules.

of the Commissioner, the Assistant, or the Sudder Ameens is to present his petition to Commissioner (who may refer it to the Assistant for execution), or

else to the Assistant, who will be guided in his proceedings by the following rules:-

2. Petitions for the enforcement of decrees must be presented within the term of one

Petitions to be presented within one year from the date of decree

Exception.

year from the date on which such decree is passed. If it shall, however, appear to any Assistant to whom such a petition may be presented, after the expiration

of the term above prescribed, that good and sufficient reason is shown for the delay, he may state the case for the consideration of the Commissioner, who is competent to sanction such decree being, under such circumstances put in force. If a similar petition be presented to the Commissioner, regarding any decree passed in his own court, he must, in like manner apply by a letter, in the English language, to the Sudder Dewany Adawlut, for permission to execute it.

3. In cases not in the predicament of those specially provided for in Clauses 8 and 9 of

Dustuk to be issued for the arrest of the party cast in cases not in the predicament of those mentioned in Clauses 8 and 9 of Section. Should he absent himself, or fail to pay, his property to be attached and sold, and the proceeds applied to satisfying the demands of the claimant.

section 3, a dustuk for the arrest of the party cast, in the event of his not paying the, amount awarded against him is first to be issued. Should he absent himself, or fail to pay, the peada entrusted with the enforcement of the process shall attach all his

movable property of which he will take an inventory, and give it over in charge to some respectable person of the village, taking a receipt for the same, which is to be lodged in the Assistant's Court. The property shall be sold as hereafter provided, and its proceeds applied to satisfying the demands of the claimant.



4. Should the amount thus realized not satisfy the decree, all the immovable and landed

Or the landed property of the party cast is to be attached.

A communication to be made to the Collector, through whom landed property may be attached in all instances

List of attached property to be sent to Commissioner for authority to dispose of it.

Property to be sold in the presence of the Collector, who is to remit the proceeds to the Assistant.

property of the party cast is to be attached by the nazir in the presence of some of his neighbours, by the erection of a post or other mark that may be intelligible to the people; a communication being at the same time to the Collector of the district, through whom, if it be deemed preferable, the attachment of landed property may in all instances be made. The Assistant is to send up to the Court of

the Commissioner a list of all such property for authority to dispose of it. On the expiration of the period fixed by the Commissioner, the property is to be sold in the presence of the Collector, who will remit the proceeds to the Assistant, to be applied to discharge the balance of the decree.

5. Orders are to be given from the Court of the Assistant to the nazir to dispose of

Movable property to be disposed of by the nazir or a mohurir.

movable property attached, on receipt of which the nazir shall proclaim the sale which is to take place in

thirty days; at the expiration of which period, should the property be near to the sudder

Amount to be paid over claimant or deposited in Assistant's Court.

station of the district, it is to be sold in the nazir's presence; if at a distance, he is required to direct the

local officer to conduct the sale. If the claimant be present at the time, the amount of proceeds arising from the sale is to be paid over to him on his granting a receipt. If he be absent, the amount is to be deposited in the Court of the Assistant, and a deduction of five per cent, to be made from the proceeds, which the nazir is allowed to retain to cover the expenses to cover the expenses of the sale.

6. In the event of the proceeds arising from the sale of the debtor's movable as well as

Should the proceeds not satisfy the decree, and the claimant deposit cash for the subsistence of the debtor, he may be placed in jail.

immovable property not satisfying the amount of the decree, and the claimant petitioning for the arrest of the debtor, he is to be required, at the

He may in like manner be placed in jail if arrested by the peada entrusted with the dustuk issued in the first instance.

same time, to deposit money for his subsistence, when the debtor may be placed in jail. It is

understood that the debtor may, in like manner, be

placed in jail in the event of his arrest by the peada entrusted with the dustuk which is in the first instance to be issued provided the claimant lodge funds for his subsistence.

7. The party applying for the arrest of another for the amount of a decree, is required to

The party applying for the arrest of another required to lodge funds for his subsistence for two months.

At the expiration of the first, for two months more.

lodge with the nazir for his subsistence funds for two months. At the expiration of the first month, the claimant to be called on to lodge funds for two more months' subsistence. If he should fail to lodge the amount before the expiration of the first two

months, the nazir to report it to the Assistant who will before the expiration of the first

Should he fail to do so before the first two months expire, debtor to be released and not liable to any further process of arrest.

two month, the nazir to report to the Assistant, who will release the debtor, and no debtor so released is to be liable to any further process of

arrest of the same matter at the instance of the same party, unless it be proved that he was guilty of dishonest conduct in the fraudulent concealment or transfer of any property that would otherwise have been available for the satisfaction of the decree or other demand on account of which he may have been originally confined.

8. Rates for the subsistence of the debtors shall not exceed three annas or be lower than

Rates for debtor's subsistence not to exceed three annas or to be lower than one anna per diem.

one anna per diem, to be fixed by the Assistant according to the rank of the debtor.

9. The fraudulent concealment of property with a view to evading the execution of

Concealment of property to evade execution of a decree or to sue as a pauper as also an act of violent resistance to the enforcement of a decree, declared a misdemeanour punishable by a fine, or imprisonment, with or without labour for one year, or by imprisonment alone.

decrees or of obtaining permission to sue as a pauper as also any overt act of violent resistance to the enforcement of a decree or order of a civil court, is to be accounted a misdemeanour punishable on conviction by a fine not exceeding

two hundred rupees, commutable to to imprisonment, with or without labour, for a term

Roobukaree of the civil court to be held by the magistrate to be sufficient proof.

not exceeding one year, or by imprisonment alone for that period. The roobukaree of the civil court

before whom parties may be convicted of any of these offences is to be held by the Magistrate to be a sufficient proof of their guilt; and he is warranted to pass such

sentence, on the prisoners being transferred to his authority, as, under the circumstances set forth therein, he may deem adequate.

10. If the debtor or debtors in confinement shall give in a statement upon oath

The court enforcing a decree may order the release of debtors in confinement upon their surrendering their property in satisfaction of the judgment passed.

containing a full and fair disclosure of all property belonging to them, the court enforcing a decree may cause enquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto which may be offered by the party at whose instance the prisoner or prisoners may be in confinement; and if the result of such enquiry shall satisfy the court that the statement so delivered is true and faithful, the court may accept the surrender of the property included therein, and, upon surrender thereof in satisfaction of the judgment passed, order the release of the person or persons in confinement.

11. Should a claimant, after the release of a debtor, give in a petition setting forth that he

Should a claimant discover more of a debtor's property after his release, the same may be attached by the Assistant.

has discovered more of his property the same may be attached and disposed of as is already enjoined, to satisfy the balance of the decree.

12. If the Assistant should see special cause for the release of a debtor, thought the

If the Assistant sees cause for the release of debtor, although funds for his subsistence are lodged, he is required to report to the Commissioner, who may order the release of the debtor.

claimant may have lodged the funds for his subsistence he is required to send up to the Court of the Commissioner a detailed statement, on which the Commissioner, if he thinks proper, may order the release of the debtor.

13. No person shall be liable to personal confinement in satisfaction of a decree for any

Specification of period personal confinement in satisfaction of a decree.

sum not exceeding fifty rupees beyond a period of six months. If a decree be for a sum not exceeding three hundred rupees, the party cast may be detained for a term of six months on account of every hundred rupees demandable thereon, so that the whole term of imprisonment shall not exceed two years. If the decree be for a greater sum than three hundred rupees,

Liberation from personal restraint to be no bar to process against the property of a person discharged.

the Commissioner is competent, on the expiration of the two years, to liberate the party in

confinement. It is to be distinctly understood, however, that liberation from personal restraint under this clause is to be no bar to such further process against the property of a person so discharged as the party holding a decree against him may find occasion to resort to.

14. Should any person or persons report to the Assistant that part of their property has

Persons causing the property of others; to be attached along with that of the debtor, declared liable to be punished for a misdemeanour.

been attached along with that of the debtors, he is required to enquire into the case; and should it appear to him that the allegation is correct, and

that the act was committed from malicious motives, he is to make over the offenders to the Fouzdarry Court, to be there punished for a misdemeanour.

15. If at the time of passing or of executing a decree it shall be proved that no property

Court passing or enforcing a decree, declared competent, if no property can be pointed out, to take security for the liquidation of the amount due by instalments.

can be pointed out from which the judgment can be immediately enforced, it shall be competent to the Court passing, enforcing, or revising such decree, to accept an engagement from the party

against whom it is passed, on his surety (under sufficient malzaminee or hazir zaminee

If the party delivering the engagement be in custody, he shall be discharged, and not liable to further arrest unless he fails to perform the terms of it: interest to be charged only according to engagement.

security), for the liquidation of the amount due by instalments, and to cause execution of the decree in conformity therewith. In such cases, if the party executing or delivering the engagement shall have

been taken into custody, he shall be immediately discharged and shall not be liable to further arrest in execution of the judgement to which such engagement may refer, except on failure to perform the terms of it; nor shall any interest be chargeable in such instances beyond what may be provided for in the engagement.

16. The amount paid for subsistence is to be repaid by the party in confinement on his

No party shall be kept in confinement for the repayment of substance-money only.

release, when property may be forthcoming from which it may be realised; but when no property

can be so pointed out, a party shall not be kept in confinement for the repayment of such money only.

17. The Assistants are empowered to make over applications for the execution of decrees

Assistants empowered to make over applications for the execution of decrees to the Junior or Sub Assistants, or the Sudder Ameens.

to the Junior or Sub Assistants, or the Sudder Ameens, who, in acting upon the same, will be guided by the preceding rules

SEC. VI. — ON THE NAZIR AND HIS PEONS.

1. The Nazir of the Court of the Assistant is required to conduct the duties in the Courts

Nazir of the Assistant's Court to conduct the duties in those of the Sudder Ameen.

of the Sudder Ameen.

2. A register of all peadas and teeklahs who are to be employed in the Courts of the

Register to be kept of peadas and teeklahs.

Assistants and Sudder Ameen shall be kept in the

Court of the Assistants, and none other are to be employed. The allowance of those

Their allowance to be two annas per diem. Persons on whose business they are employed to furnish them with conveyance or pay two additional annas during rainy season.

employed in all the courts is to be two annas per

diem, and, during the rainy season, the persons

upon whose business they are employed to furnish

them with a conveyance, or two additional annas

per diem as compensation. The Nazir to be

remunerated with a fourth of allowance lodged for

peadas and teeklahs. The Commissioner may, if he

thinks proper, direct security for appearance, when required, to be furnished by each peada or teeklah on the establishment.

3. Prior to the employment of any peada or teeklah, the person on whose business they are to be employed is required to lodge the amount of their allowance with Nazir, who is

Allowance of peadas or teeklahs, to be lodged by the person on whose business they are to be employed.

required to endorse his receipt the same, specifying

the amount lodged on the back of the warrant

which the peada is to serve. The peada, on the

process being executed must sign a receipt on the reverse of the warrant for the amount of his allowance.

4. The period to be allowed for warrants to be served by the peadas must be regulated

Period for the service of the warrants to be regulated the by Assistant, in communication with the Commissioner.

hereafter by the Assistant, in communication with

the Commissioner.

SEC VII. — ON RECORDS.

1. A register of all original suits, as well as of appeals, shall be kept by the Assistant in

Registers of all original suits and appeals to be kept by the Assistant and Sudder Ameen.

which are to be distinctly set forth the date on which each case was referred, and on to what

Court. The Sudder Ameens shall also keep a register.

2. The Sudder Ameens shall furnish the Assistant with a monthly return or copy of their

A monthly return of suits disposed of, to be furnished by Sudder Ameens to the Assistant.

register of all suits disposed of in their courts during the preceding month.

3. All decisions in the courts in Kumaon are to be written in the Hindee language and

All decisions to be written in the Hindee language, to contain certain particulars.

character, and are to exhibit the and names of plaintiffs and defendants, the amount sued for, as

well as the number, date, and order of arrangement of the documents attached to the proceedings, with every other necessary particular.

4. The Sudder Dewany Adawlut are declared competent to fix the minimum number of

Sudder Dewany declared competent to fix the minimum number of suits to be decided monthly by the several courts

suits to be decided monthly by the several Courts in Kumaon.

SEC VIII. — ON MORTGAGES.

1. If the property mortgaged has been held from the date of the mortgage by the

Party who has mortgaged property declared entitled to recover possession of it on the expiration of mortgage, on tendering the amount due.

mortgagee, the party who has mortgaged the same shall, on paying, or tendering, or depositing of the term of mortgage, on court, the full amount due on

the said deed, be entitled, on the expiration of the term specified in the mortgage-deed to recover possession of the same.

2. Wherever it shall appear that the profits accruing from the usufruct of the property

When the usufruct of the property ought to be received in lieu of interest, the payment, tender or deposit of the principal sum shall entitle the mortgager to recover possession.

ought, under the condition of the transaction, to be received in lieu of interest, the payment, tender, payment, tender, or deposit of the principal sum

borrowed shall suffice to entitle the mortgager to recover possession of the property mortgaged.

3. In the event of any mortgagee refusing to receive the sum due to him, according to the

Should any mortgagee refuse to receive the amount due to him, it may be deposited in court, by which he will be called upon to receive it the court within a given period.

conditions of the transaction, the mortgager may deposit the sum thus due in the court, and the officer presiding over the same shall then cause a

notification to be issued to the mortgagee, calling upon him within a given period to attend, either in person or by representative, and receive the said money.

4. After the expiration of the period specified in the notification, the Assistant in charge

After expiration of the period specified in the notification, the complainant may be replaced in the possession of the property mortgaged

of the district may either proceed to conduct the further enquiry himself or may refer the case for trial to the Sudder Ameen; and on its being satisfactorily

established that the transaction was a *bona fide* mortgage, and that the party applying to the Court has deposited the full amount of what is thereon due to the mortgagee, the complainant may forthwith, and without further suit, be replaced in possession of the property mortgaged.

5. When any person holding a deed of mortgage shall be desirous of foreclosing the

Mortgage, how to be foreclosed.

same, he shall, after the expiration of the period specified in the deed, present, either in person or by representative, to the court a petition, with the original deed of mortgage appended to it, praying that the opposite party may be called upon to pay in the amount that may be due thereon.

6. The officer presiding over the court shall then cause a notice to be served on the

Mortgager to be called upon to pay the stipulated amount into court within one year from the date of notice.

mortgager, and, in the event of his not being found a proclamation shall be issued calling on the

mortgager to attend and pay the stipulated amount into court within the term of one year from the date on which such notice may be issued.



7. In the event of the mortgager failing when thus summoned, to attend to or pay in the

On the mortgager's failing to attend or to pay, the mortgage shall be held to have foreclosed.

No lapse of time shall suffice to foreclose a mortgage or convert a conditional into an absolute sale, until the provisions of Clauses 5 and 6 shall be complied with.

sum required of him on the expiration of the term above presented, the mortgage shall be held to have foreclosed. But it is hereby notified that no lapse of time shall suffice to foreclose a mortgage, or to convert a conditional in an absolute sale, until

the provisions of the Clauses 5 and 6 shall be complied with.

8. It is further necessary to explain that the mortgagee thus applying to have his mortgage

Mortgagee must bring a regular suit in order to acquire possession.

foreclosed is not, if he be not in possession before, to be put in possession in consequence of such

application by a summary process, but must bring a regular suit, in order to acquire possession, against the mortgager.

9. In every case of mortgage, the Court before which it may be tried shall enquire into the

Whenever it shall appear that sum lent, with legal interest, has been realized out of the profits derived from the possession of the property, the mortgage shall be held to have been redeemed, and the mortgagee liable to account to the mortgager for any surplus that he may thus have appropriated.

amount that may have accrued to the mortgagee from the proceeds of the estate, and make a corresponding deduction from the sum that must be paid in order to procure the redemption of the

same; and whenever it shall appear that the sum originally lent, with legal interest, has. Been realized out of the profits derived from the possession of the property, then the mortgage shall be held liable to account to the mortgager for any surplus that he may thus have appropriated.

10. In cases, such as obtain occasionally in Kumaon, in which no term is specified in the

In cases in which no term is specified in the deed, parties may take advantage of this regulation at any time.

deed, the parties therein concerned may at any period take advantage of the provisions of this

rule, either to redeem or foreclose the mortgage

11. To prevent the bad effects of a species of mortgage that has prevailed in Kumaon, in

No decree shall pass or be enforced against any individual not indicated by name in the petition of plaintiff, and the processes issued thereon.

which money is lent upon the implied security of persons not actually parties to the transaction, it is to be held as a general rule that a decree is never

to pass, or to be enforced, against any individual not actually and severally indicated by name in the petition of plaint and the processes thereon issued.

12. It being understood that many transactions partaking of the nature of a mortgage

Conditions of existing contracts, partaking of the nature of a mortgage on a verbal agreement, to be enforced. But no mortgage not supported by a written deed, is, after the promulgation of this rule, to be taken cognizance of.

have been concluded in Kumaon on the faith merely of a verbal agreement, it is hereby enacted, that the conditions of all existing contracts of that description are to be enforced as far as possible in

conformity with the provisions of this section; but that no mortgage not supported by a written deed is, after the promulgation of this rule, to be taken cognizance of by any Civil Court in the province.

SEC IX. — Not Found in Original Text

SEC X. — RETURNS.

Monthly returns, in such form as he shall direct, shall be made by the Assistants in charge

Monthly returns shall be made by the Assistants to the Commissioner.  
  
Annual reports by the latter to the Sudder Dewany Aduwlat.

of districts to the Commissioner, showing the number of cases instituted and disposed of in the various courts during the preceding month; and an

annual report on the administration of civil justice shall be made by the Commissioner to the Sudder Dewany Adawlut in such form as that Court shall direct.

SEC XI — REGISTRY OF DEEDS.

[1.] An office for the registry of deeds shall be established in the several districts of the

An office for the registry of deeds to be established in each district.

province of Kumaon under the immediate charge of the Junior Assistant. A single book, to be made of paper of English manufacture, will for the present suffice. The pages of this book are to be numbered, and each leaf is to be signed with his initials by the Senior Assistant in charge of the district, who is to certify at the end of the book how many pages it contains, and to affix his signature at full length, with the date, to the

A fee of one rupee to be paid on the registry of a deed, and of eight annas on a copy being taken from the registry book.

The fees to be the perquisite of the Junior Assistant who is to defray the expense attending their purchase and preservation. Registering of deeds left optional with parties.

certificate. A fee of one rupee is to be paid on the registry of any deed and a fee of eight annas on a copy being taken from the book. The fees are to be the perquisite of the Junior Assistant having charge of the books, who is to defray the expense attending their purchase and preservation. It shall for present be optional with parties to register deeds or not, as they think proper.

12. [2] In all cases not specially provided in the preceding rules, the Commissioner, his

In cases not provided for, the Commissioner and other functionaries to conform to the regulations in force in provinces subordinate to the Presidency of Fort William; applying in doubtful matters to the Sudder Dewany or Board of Revenue

Assistants, and Native functionaries, shall endeavour to conform, as nearly as the circumstances of the province of the of regulations in force in the provinces subordinate to the Presidency of Fort

William in all doubtful matters for instructions to the Court of Sudder Dewany Adawlut, or to the Sudder Board of Revenue, according as the question at issue may be of a judicial or of a fiscal nature.

*Supplementary Clause to Section I. of the Rules for the Administration of Civil Justice in Kumaon.*

*lst*, — Whenever from the state of business in the Court of the Native Judges, or from other causes, the Assistant in charge of a division shall consider it expedient to transfer to his Junior Assistant any of the suits on the files of the Native Judges, it shall be competent for the Commissioner, on the Assistant's report of the circumstances, to

invest the Junior Assistant with powers to try original cases for movable and immovable property not exceeding in value the sum of Rs. 1,000.

*2nd*, — Appeals from their decisions shall lie to the Assistant in charge of the division.

*3rd*, — It shall be competent to the Sudder Dewany, on report of the Commissioner, to invest a Junior Assistant with the powers conferred on Assistants in charge of divisions, by Clause 2, Section I., and subsequent provisions of the Civil Rules, whenever, from the state of business in the districts, such a measure may be deemed expedient.

*4th*, — Appeals from the decisions of Junior Assistants invested with the above powers shall lie to the Commissioner.