LECTURE XVI.

THE SEVERAL CLASSES OF FOREST CONSTITUTED; AND LANDS MADE SUBJECT TO THE PROVISIONS OF THE FOREST LAW.

THE last Lecture may perhaps have seemed to lead us away from the direct subject of Forest law; but it was necessary, not only to explain how the State became owner of waste lands, forests and jungles, but also to describe what other properties Government possesses, and in particular to notice the law under which Government can acquire, for public purposes, such property as it declares to be so required. This latter subject indeed is specially mentioned in the Forest Act; for Government sometimes expropriates parcels of land in order to complete and consolidate Forest areas. At any rate this examination of the origin of Government property in general, has put us in a position to understand the broad statement, that *the right of Government to all uncultivated, unappropriated land is the basis on which the Indian Forest Law proceeds.* We have now to go a step further, and take note of the fact that the waste land available for Forest purposes was not found in a uniform condition; it had been so long neglected, that the rights of Government had not always remained intact; and more especially, numerous rights of user or easement had grown up. Consequently the Forest law had to be prepared with provisions which would meet the different states or stages in which the lands it dealt with, were found. Not only so, but the law had (on grounds of convenience) to contemplate certain differences in the treatment of areas which, legally speaking, were on the same footing as regards rights. It had also to take some notice of Forests which were not State or Public Forests. In short, the Forest law deals with *several classes or kinds of Forest Estates;* and we must proceed to examine what these are.

While speaking in the last Lecture of the Government right in the waste, I indicated the fact that for many years "the waste"

had remained quite uncared for; and that a still longer time elapsed before Government thought of utilizing it on the large scale for Forest purposes. The consequences of this delay were, that the inhabitants of the villages (some of which were ancient, others of later growth) became accustomed to go into the neighbouring waste, and to graze in it, cut wood and even break up plots for tillage, without the slightest notice or interference. These customary enjoyments continued for many years,[1] and were very convenient, if not actually indispensable, to the villagers; in the course of time they were held (as I shall hereafter explain) to constitute what are, practically, 'prescriptive rights,' (p. 87). Hence, when the State came to exercise its right in the waste for (public) Forest purposes, it was found that the land was, in many cases, no longer a free property, but was burdened with various opposing rights and claims. Not only so, but in some cases, special arrangements made at land-revenue settlements, had created another modification: the right in the soil itself was found to have been granted away, and only certain produce-rights retained for Government.

For example, in the Kángra valley (a submontane Panjab district), the action of the first Settlement authorities resulted in this, that the waste and Forest was all given over to the village estates, not entirely (as was so generally done in the N.W. Provinces) but partly: the right to the trees and the use of the soil for tree-growing (as long as trees grew or *could be produced*), was retained to the State.

There are also other more or less exceptional cases in which Government has now only partial rights in certain lands. For example, there are cases in which, owing to the law of escheat (p. 205) and sometimes by agreement, the State has become possessed of a *share* in a Forest, or some other limited interest in it. These limited rights and interests may nevertheless be such as give the State a *locus standi* for undertaking at least the working control of the Forests.

When therefore the Forest Acts had to open their subject *by describing in general terms what lands the Government could proceed to take in hand or deal with, with a view to Forest Conservancy*, it was not enough to refer to "all unoccupied waste

[1] In the case of many of the older villages, they had gone on for generations.

land;" it was desirable to embody in legal phraseology, the result of the various stages and conditions above alluded to. These conditions may be summed up by saying, that the land is:—

(1) Either the property of Government alone, or held in shares with other co-owners (whether burdened by rights of easement or not).

(2) The Government right only extends to the growing produce or part of it.

Hence sec. 8 of the Indian Forest Act (VII. of 1878) provides that—

"**The Local Government may from time to time constitute any Forest or waste land which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a Reserved Forest in the manner hereinafter provided.**" (The same words apply also to "Protected" Forests.)

In the BURMA Act it was found possible to express the same idea in a simpler way: the words used are "any land at the disposal of Government." This term is defined (in the Act) to mean any land to which, under the Local Land Law (Act II. of 1876), "no one has acquired the title of landholder, and to which no one has a right by lease or grant from Government." There were no cases in Burma in which Government held only the produce-right, or only a share in the property.

So in MADRAS. This Presidency is, speaking generally, a country where there are a certain (not inconsiderable) number of large (and moderate-sized) landlord estates (Zamíndáris, *polliams*, &c.), and in these the Forest belongs to the landlords. The rest of the Presidency is held (in village groups) by landholders, each having his own holding (raiyatwári, as it is called); and the waste all belongs to Government, whether or not villagers are allowed to use it for grazing, &c. So the Madras Forest Act (V. of 1882) also speaks "of land at the disposal of Government," which is declared to mean "land not already held by any landholder, as defined in Madras Act VIII. of 1865" (an Act for realizing the land revenue).

Land is defined to be "held by a landholder" when it is held as—

(1) Zamíndárí (with a title-deed of perpetual ownership); or,

(2) Under a grant of ownership of any kind,
(3) Under certain special revenue-farming arrangements,
(4) Paying revenue as ordinary raiyatwári land, or held in a similar manner and shown on the Government register.

This preliminary declaration of the Acts, it will be observed, does not give Government any right it did not otherwise possess; nor does it deprive any one else of whatever right he may legally possess; for the law goes on immediately to require that a notice of the *proposal to make* a Reserved or other Forest shall be published, inviting any one who has any kind of claim to put it forward (sec. 4). It will then very soon appear whether Government can proceed with the further steps necessary, or whether the position of affairs, or the nature and extent of claims, is such that Government will abandon its proposal.[1]

So much for the general description of the condition of the lands available to form Forests. We have further to notice, that the Indian Act contemplates more than one form of (legal) Forest; it speaks, in fact, of two kinds of State or Public Forests. But besides that, it contemplates Village Forests; and also makes provision for certain cases in which Government has only a certain share or interest in Forest lands. It also contemplates a limited control over Private Forests, which can only be exercised under certain conditions.

The following is an abstract of the classes of Forest which the Act contemplates—giving first those under the Indian Act (A), and then those under the Burma and Madras Acts (B):—

(A) (1) The first is the State Forest regularly constituted, which the Act, in deference to usage—but not very conveniently—calls "Reserved" Forest. I distinguish these as State

[1] At the time when the law was under discussion, some people were found to object that those sections entitled Government to 'constitute as "Reserved Forest," *i.e.*, to seize on and place under Forest law, land in which it might merely have the right to a part of the produce and nothing else.' But the sec. 3 read with sec. 4, obviously does not entitle Government to do anything beyond notifying a proposal. It was therefore necessary to state in sufficiently wide terms, the sphere of possible operation. In the extreme case quoted, if the notice were issued and the examination of claims commenced, as the law requires, it would be found that private rights were so extensive (and the State rights so limited) that it would be impossible to comply with the subsequent provisions of the Act: therefore the private rights would be absolutely secure. Government would give up the attempt; unless it were so important to secure the Forest, that it was worth while to incur the cost of expropriating the whole. It is perhaps to be regretted that, by a slight modification of the wording (which could easily have been made), this opportunity for objection was not forestalled.

Forests *par excellence*, because they alone are properly and fully secured: *i.e.*, all the essentials of Forest constitution are observed; the boundaries are legally and strictly determined and demarcated on the ground; all rights (of every kind) are inquired into, recorded and authoritatively defined and provided for, in a manner to be presently described; all other rights not recorded, are declared extinguished; and no new rights are allowed to grow up by prescription.

(2) The second class consists of what are called "Protected Forests," which are also made out of the same kind of lands as the "Reserved" Forests (sec. 3): they are however only provided for as regards the settlement of rights, in an imperfect manner (of which presently).

[No interference is contemplated with waste lands that are not made either Reserved or Protected Forest; but it should be remembered that a large area remains as "District" Forest, and what not (p. 217). This area is *not under the Act*, though of course capable of a certain protection against encroachment and unlawful occupation, under the Land Laws and the general law of property; and it remains the property of Government.]

(3) The Act contemplates the formation of "Village" Forests which, as the provisions now stand, are only Forests of the first class (above), assigned on certain terms, for the benefit of the village.

(4) The Act provides for the control of forests in which Government is interested along with private persons (*forêts indivises* of the French law).

(5) The Act contemplates the protection of *trees* belonging to Government on private lands (see p. 207, as to Royal trees).

(6) And a certain control over Private Forests and waste lands, in special cases only.

(B) The Burma and Madras Acts are different.

(1.) They acknowledged the State or Reserved Forests (with the above-noted characteristics) as the only class of State Forests (fully owned by the Government).

(2) The Burma Act contemplates the formation of Village Forests *directly*,—out of available Government waste or forest land. The Madras Act does not contemplate "Village" Forests at all.

(3) Both Acts contemplate extending a general protection by means of rules (for utilization of produce and general safety of the area) for all waste and forest lands at the disposal of Government, which are not formally constituted Forest Estates.

The other heads are also provided for as usual; but Private Forests do not exist in Burma, and are therefore not mentioned in the Act for that province.

(1 & 2.) "*Reserved*" *and* "*Protected*" *Forests.*

I must now devote some few paragraphs to explaining how the Indian distinction of "Protected" and "Reserved" (State) Forests arose.

I must first call your attention to a principle fully acknowledged in Europe, and not, as far as I am aware, ever questioned by any experienced Forest officer: that in all cases *where rights of user exist*, and where, if they do not, the policy of Government causes a liberal grant of "*licences*" or "*concessions*" for the convenience of villagers, it is absolutely essential to secure the continued and prosperous enjoyment of these rights or concessions —if for no other purpose—that the Forest should be properly cared for and be under legal protection. And this proper care involves the existence of conditions already indicated, viz.:—

(1) Clear and defined boundaries—

(2) A settlement of rights—an authoritative decision, that is —as to exactly (or as exactly as circumstances permit) what rights have to be exercised and to what extent; and—

(3) A prohibition against all unauthorised diminution of area; and abuse of the soil and growth; as well as against the gradual growth of new prescriptive rights.

It may be said without any qualification, that any forest really permanently wanted—any forest which is expected to go on (in a healthy and successful condition for generations to come)

supplying *any class of material*, whether it be teak, sál, or deodar trees, for public works and railways, or (no less) small timber, fuel, grass, and other requirements of villagers—must have these operations carried out in it.

It is inconsistent with all experience to assert that forests required chiefly for the ordinary grazing and wood-cutting of villagers, need no care, no settlement of rights, and no closing and no regular plan of working (however simple and untechnical).

It is quite true that *degrees* of cultivation may vary. Valuable forests of "gigantic teak trees" may require a higher degree of cultivation than others; but it is not true that other forests can go uncared for and with no restriction on their use.

Demarcation and settlement of rights, are not luxuries, to be applied only to valuable forests destined to one kind of high class production: they are essentials. There is not the least doubt that, *in the process of time, every forest area* (whether called "Protected Forest" or not) *in which various undetermined rights of user exist, and in which the matters above specified are not arranged, will, in time, disappear off the face of the country.* It may take a century to do it, but the deterioration, and ultimately complete destruction, of such places, is as certain as anything can be.[1]

The original framers of the Forest Bill or Draft Act, while not doubting this general truth (based as it is on scientific grounds, and illustrated as it has been in the past by painful experience), were nevertheless aware that, in India, it was not possible to apply a *perfect Forest organisation* to every acre of land that was available as Government waste or Forest land,—even to all that was fully available. In the first place, we have no *data* for determining that Indian provinces require 17 per cent., or 10 per cent., or any other proportion, of forest to other land; we have to look to the practical possibility of action with reference to the time, money, and strength of working staff available, as well as to local conditions. In the next place, it is always an economic question, how far *forest* is better (in a given locality) than *cultivation*. It may be the nature of the soil

[1] Unsettled and vague claims are always found to grow and grow with the lapse of time, till a fair settlement becomes impossible: then the whole area is given up in despair, and of course (being left to itself) gets worse and worse, till neither grass nor wood remains.

(suited for trees, but not for corn or rice), or the situation (hill-country tracts removed from the general lines of agricultural export, or thinly inhabited), determine in favour of forest. But in Indian districts, large areas of existing "jungle" or Forest land are also perfectly cultivable. Therefore, under the circumstances, it is wiser to *secure first*, those tracts which a careful inspection shows to be obviously valuable as forest, and to be capable of profitable working, or likely to be so in the near future; and to leave the areas about which it is uncertain what the future will declare. Conditions must there be allowed to develope. The construction of a railway, the discovery of coal, and such like events, will often produce an entire change in the economic position; and then it may be found that the greater part of the "jungle" had much better be turned into fields; it would accordingly be folly to apply an expensive or troublesome procedure of demarcation and settlement, which might in a few years' time (or at some future time) require to be cancelled.

Under such circumstances it was considered best to propose the application of a *regular Forest procedure* of complete demarcation and settlement, to the area which (on a review of existing conditions and probable future requirements) it appeared *certainly* desirable to retain,—whether for growing timber for the market and for public works, or (equally) for the supply of grazing and wood for the every-day wants of the population. Those areas it was proposed should be the "State" Forests (or "Reserved" Forests) under regular departmental control.

On the other hand, it would have been very unwise, at once and entirely to give up, and throw open to cultivation, or to abusive grazing and woodcutting, all the lands that could not at once be decided on as suitable to form "Reserved Forest." Some of them might afterwards prove to be wanted as permanent forest.

Moreover it was contemplated that, as time went on and the importance of well-managed Forests was better appreciated *by the people* a desire would grow up, to have *real* "Village" Forests—not merely tracts of waste given over to the village owners, (for grazing and wood-cutting indeed) but wholly free to them to partition and plough up if they preferred it,—but tracts to be kept (under a limited State supervision and control) as *Forests*, whether coppice, or coppice

with standards, or as mixed grazing and woodland, or in any other form of forest.

Hence, the original proposal was to extend to these jungle tracts and forests, such a limited protection as would be sufficient to save them from being cleared away and devastated, at any rate for the years during which conditions were developing themselves. It was judged sufficient for this purpose :—

(*a*) To provide a general and inexpensive demarcation ;
(*b*) To prohibit the conversion of the forest into cultivated land ; except on special permission ;
(*c*) To reserve a limited class of valuable trees, to which no one would have a right ;
(*d*) To periodically close portions of the area that might need it ; and—
(*e*) Generally, to provide for the making of simple rules which would only aim at preventing any *abusive* acts and would facilitate orderly working generally.

Under such restrictions, it was not intended (nor was it thought in any way desirable) to interfere with existing equitable rights of user ; consequently it was not proposed to enquire into, define, or record, them. If right were pleaded as a defence when any Forest officer objected to an act as contrary to the rules, it was intended that this should be entirely sufficient. For obviously the plea of right could not be set up against a prosecution for a destructive act or an abuse of the Forest :— rights are always to use, not to abuse.

It might indeed be theoretically an advantage to have *all* rights over *all* waste land in India, settled ; but it would be impracticable, owing to the cost, and demand for time.

Unfortunately, however, when these ideas as embodied in the Draft were submitted to the Legislature, they did not find acceptance.

At first probably it was feared, that over-zealous Forest officers might ignore rights, if they were not recorded ; and that in any case disputes might occur and prosecutions be started, which would never have been begun if the *right was known ;* and so forth.

Consequently a provision was added in the Act as passed, to

the effect that the area might be made "Protected Forest," only after forest rights had been recorded. At the same time it was felt that, if any regular provision for *enquiry and decision* as to such rights were made, it would be necessary to provide for special officers, and for an appeal and so forth; in which case there would be virtually no difference between the "Reserved Forest" of Chapter II. and the "Protected Forest" of Chapter IV. And so only the existing general provisos on the subject (see sec. 28) were added.[1]

That is briefly the history of the provisions of Act VII. of 1878 about the separate class of "Protected" Forests; which, as the Act stands, legally speaking constitute a separate *class of forests*. They are however *imperfectly* organized; and, as I shall presently point out, the provision made for the record of rights in these forests, cannot be made sufficient for real forest purposes.[2]

As regards the Indian Act then, Government waste lands may be made into either "Reserved" or "Protected" Forests. As the Act stands, Chapter II. prescribes the procedure to be followed where regularly "Reserved" (or State) Forests are to be made, and Chapter IV. where a less complete procedure is supposed to be sufficient for "Protected" Forests. The Act does not contain the slightest indication that one or the other is preferable.[3] Nor is there any question of interpretation. It is solely a matter of policy and of the orders of Government, which procedure shall be adopted. Fortunately, the Government of India has never endorsed the idea that Chapter IV. should be the one generally applied; and therefore it has, in practice, been made use of

[1] In the debate in Council as reported in the *Gazette*, it appears that a new argument was put forward. It was suggested that the procedure for "Protected" Forests would be found sufficient for the great bulk of Forests—those wanted for the supply of ordinary material to the population; and that the procedure of Chapter II. would only be exceptionally needed for very valuable Forests growing large timber. This view, however, has never been adopted by the Government of India. In itself it is absolutely fallacious (p. 231), and simply shows the effects of the half-acknowledged belief, against which I have warned you, that forests whose chief object is to yield grazing and small-wood for the people, need no settlement nor any special management, but will go on for ever supplying this humble class of materials.

[2] It was not intended to be: the object was to secure at least the principal rights, against any (possible) encroachment of the Forest officers; not at all to secure the estate or facilitate Forest Conservancy. It was supposed that the *Rules* would do all that was needed in that direction.

[3] Nor of course does the mere order, Chapter II. coming before Chapter IV., in itself indicate any preference.

chiefly where there were difficulties in the way of carrying out a better procedure, or where there were so few rights (or none at all) that no serious question was likely to arise.

It will be the duty of well-educated Foresters to bring all their skill to bear against the employment of Chapter IV. *when* it is clear that rights of user are claimed, and that a *permanent regular* forest is wanted.

For there is this danger, that, when, in any case, officials fear the expenditure of time and money or the complication of interests that may exist, they may be tempted to resort to Chapter IV. instead of proceeding under Chapter II. This, in the end, would be poor policy; because if there are numerous demands (in the shape of rights) on the Forest in any locality, it is an indication that Forest is *very much wanted*, and therefore that its preservation and increased productiveness are of great importance *for the satisfaction* of the wants of local right-holders. To put the Forest on an unstable or unsatisfactory footing in such a case, is the surest way (in the long run) to cause ultimate injury to the rights, because the Forest will in time cease to satisfy them. This is only doubtful to those (if such still exist) who do not believe in the necessity of Forest Conservancy.

I do not doubt myself, that those responsible for sec. 28 as it stands, always contemplated some record which would *not* go into any vexed questions, but was by them regarded as sufficient, without such power. But it has of late years been attempted to maintain that under Chapter IV., a tolerably practical settlement can be made. It is advisable therefore to state briefly, why this is not the case. All minor difficulties may be ignored; and it may be conceded (at any rate for the argument) that an officer might be appointed under the Act to make an enquiry into rights;[1] still he would have no power to *decide* about—that is to say to define—the rights. In nine cases out of ten, rights in Indian Forests are claimed in the vaguest and most general terms, and the really important duty of the enquiring officer is to bring the vague rights into a definite form, and that authoritatively: he must settle (for example) what sort and what

[1] The officer appointed generally to record rights (see the definition clause *s.v.* "Forest Officer") would be appointed to exercise certain functions under the Act, and therefore be (legally) a "Forest Officer." The Act supposes also that an enquiry and record may have already been made at a Land Revenue Settlement or Survey; but in practice this is rarely if ever the case, and if rights are mentioned at all in Settlement records, they will be sure to be *undefined* rights.

I take this opportunity of mentioning that under sec. 71 (India Act), a Forest Officer can be empowered to summon witnesses, &c., and take evidence; but cannot be vested with power to hear argument, *decide* claims, or do anything in the nature of authoritatively defining or determining the limits of rights.

number of cattle are to be grazed, and the like. No one who has had the slightest practical acquaintance with the work of settling rights, will doubt, that fixing their limits and their reasonable mode of exercise, is *the* essential work: merely to record vague or general claims is of very little use, as far as the safety of the forest is concerned; and very little advantage to the right-holder.

In short, what is wanted is a power of equitable *decision*; but it requires an authority given by law to pronounce such a decision; and obviously it is further desirable that there should be an *appeal* when either the right-holder is not satisfied, or when the person appearing on behalf of the Forest, thinks that some excessive or ill-founded right has been declared. This authority could not, I submit, under any fair reading of the Act, be created or conferred merely by a Rule made under sec. 75 (see p. 193). When it is added, that the Act does not make any provision for requiring claimants to come forward; or for the extinction of rights which, after due effort to find them out, are not brought to record; when it contains no prohibition against the growth of new rights;—and no prohibition to the sale or barter of produce obtained by exercising the rights, or even of the sale of the right itself; it will be obvious (without going into several other matters of minor difficulty) that rights can never be satisfactorily and permanently settled under Chapter IV. Indeed, as I have already said, though the provisions may secure certain *rights*, they do nothing to secure the *Forest*; and were not intended to do so.

There are, however, circumstances under which it may be advisable to constitute "Protected" Forest instead of regular Forest, and these are:—

(1) As a measure adopted in the uncertainty whether permanent Forest will be required, or whether it will not be better at a future time, to give up the area to the plough or to the tea or coffee planter.

(2) As a measure adopted when the right of Government is imperfect; or when altogether, the legal or other local conditions are such that the practical difficulty of applying the procedure of Chapter II. would be too great; and it is better to adopt Chapter IV. than to do nothing.

(3) It would suffice in cases where it is known that the rights claimable are few or simple, and such as cannot seriously threaten the conservation of the forest. The objections stated to the policy of constituting "Protected Forests"

instead of "Reserved," obviously apply when there is a question of many rights; if an area has no rights burdening it, then no obstacle to management arises: as long as clear demarcation takes place, no difficulty will be found.

It will be observed that neither the Burma Act (or Regulation), nor the Madras Act, acknowledges any such class of Forest estate as "Protected Forest." The corresponding chapter (IV.) in the Burma Act, deals with the general protection of teak and other trees notified as valuable, outside Forests; and with prohibiting the use of the grazing, and of any natural produce of Government waste lands, except according to Rules to be made: and the Rules (sec. 38) do not prohibit any act which is done by permission or in pursuance of a right. This is as it should be. Here you observe a general care and protection given, which will prevent any gross acts of abuse, and any loss of area by squatting and clearing; this is sufficient, not perhaps for permanent Forest Conservancy, but for a time, while conditions are developing themselves. In the end, such areas will either be given up to cultivation, or, if the rights are found pressing (and therefore proper arrangements for their continued supply become desirable), the area will be made into State or Village Forest.

The Madras Act has followed the Burma Act. Under Chapter III., rules may be made (and sec. 27 contains a useful provision about *closing* places that have been unlawfully burnt): these rules are "subject to all rights now legally vested in individuals and communities."[1]

(3) *Village Forests.*

In the India Act, Chapter III. makes mention of another class of Forests, which are real and fully constituted; but then they are only *some of the State Forests* (of Chapter II.) allowed by the Act to be dealt with by "assigning the rights of Govern-

[1] The insertion of the word "*now*" was intended to indicate that existing rights were respected, and not such as might be conceived as growing up *after* rules have been made and notified. I have some difficulty in understanding why rights *legally vested*, are spoken of, unless it is intended really only to save those that [illegible]ly under sec. 15 of the Easements Act, *i.e.* are strictly prescriptive (compare pp. 27 of This would be rare: in dealing with Reserved Forests, the prescribed jurisd of the Settlement Officer leaves it open to him to admit what he *equitably* th[illegible]nly are rights; but here apparently, only rights *legally* vested are allowed: I [illegible] use that these, under the analysis of an instructed lawyer, would prove to be [illegible]

ment" therein, to certain village communities (*i.e.*, groups of landholders occupying the locally known village areas). I am not aware that this has ever been done in India.

I believe, however, I am right in saying that the idea of the framers of the Act was to *familiarize* the public mind with the idea of *Village Forests*. Because really, the constitution of these is a matter which will one day very likely come to be important. One of the great reasons why so much Forest is wanted in India, is the enormous demand there is for grass and grazing, for fuel and for the smaller class of building timber, for the population, whether right-holders' or ordinary purchasers. And just as in Europe we find Forests made over (or otherwise belonging) to Cantons, Communes, and Institutions, so in time we may hope to see villages or groups of villages regularly owning well-managed forest. They will probably adopt some form of *petite culture*,—coppice, with a number of standards, for example; and the villagers, enjoying their share in grazing, fuel and timber cutting, will *not* be servitude or easement holders, because they will be realizing the produce of their own (jointly owned) forest. Really, the constitution of such forests —in which the rights of different (adjacent) villages could be separated, and each fixed on an appropriate area of Village Forest, would in many cases be a good way of satisfying the great question of popular demand for forest produce—far better than the idea of having forest areas nominally Protected Forests but open —under a vague and general control, and without definition of rights and interests.[1] But at the time of passing the Indian Act there were no *such* Village Forests in existence. The waste (even where it was wooded) that was given to villages at settlement, was not subject to any condition for its preservation as Village Forest. To constitute Village Forests under a guarantee that forest management would be duly main-

[1] At present the condition of Indian Forests is practically this:—there is a certain area of regular State Forest—which (as a whole) is not seriously or onerously subject to rights; there is a certain area of imperfectly constituted Forest, in which rights and concessions (or privileges) are largely exercised; and a still larger area of Government waste—under very lax control as "District" Forest and the like (not under the Forest Act at all). In this way the Government Treasury is credited with the proceeds of its State Forests, and with a small portion of the proceeds of the "Open," "Protected" or "Unreserved" Forests; and an enormous value in produce is annually given away without account. Would not be much better to have but two classes — State Forests, and real *Village Forest* (the produce value of which could always be estimated) frankly (b to the villages? This of course is a question of policy; the Madras Govern- for example, has declared against Village Forests, holding that *State* Forests ged by State officers *so* as to provide for the wants of villages, are more likely ceed, than Forests (to be managed as such) given over to villages under a State supervision. The Madras plan, if more efficient and possibly neces- present, is however much more costly to the State.

tained, and therefore under a measure of *State supervision*, a new departure would have to be made by assigning fresh tracts. But it was thought that if a general provision was inserted, it would end in forest areas being hastily made over—areas which the general economic conditions of the province would rather require to be kept under full State management; and, what is worse, would invite the making over of such areas without a careful settlement of boundaries and of rights, and without any adequate security for simple but effective management. Therefore it was provided that *first* Government Officers should *settle* the areas under the regular procedure, and then hand them over to villages, not as private property to be broken up or dealt with at pleasure, but to be *kept and managed as forest and grazing ground*. It will be quite possible still to do this; and it should be observed, that really in such cases, the procedure under Chapter II.,—being undertaken with the direct object of constituting Village Forest,—will be a simple business; because the area would be so selected that it did not contain any rights *except* those of the village (or union or group of villages) to which it was going to be assigned; hence it would be a comparatively short and easy matter to find out what the requirements of the villages were, and arrange an area free of all outside or foreign rights—expressly to satisfy those wants.

When the Burma Act was prepared in 1881, it was considered possible, with reference to the large areas of waste or forest land in Burma, the general absence of rights, the sparseness of the population, and the prospect that a large number of villages would come into existence in the future, to go further. Section 31 of the Act, therefore contemplates that any area of available waste may be made a *Village Forest*, though any teak trees (always a royal tree (p. 207) in Burma) should still be reserved to Government.[1] The limits of the forest would be made clear by notification: State control is provided for,—

(*a*) By the power to make rules for management, and for the distribution of the benefits of the forest (sec. 33); and,

(*b*) By the power to declare *any* of the provisions of Chapter II. applicable.

In this case (sec. 34) all existing rights (which would rarely exist) would be saved. Those of the village (or group of

[1] In time, of course Government would, when the Village Forest was firmly established, grant these trees to the villages under proper conditions for their use and reproduction.

villages) to which the Forest was being assigned would become provided for by the assignment; and in the rare case of *outsiders* possessing (easement) rights, these would be settled (sec. 34, cl. 2) under the procedure of Chapter II.

The Madras Act contains no allusion to Village Forests of any kind.[1]

This is a convenient point at which to refer to the special case of the Ájmer Forests. In this small State (ceded in 1818) there are low hills which are known to be capable of bearing a very useful, if humble, class of wood and other material. And they have a two-fold utility:—

(1) They regulate the flow of water and the supply of water in tanks and wells.

(2) They furnish a resource for cattle fodder of immense value in periods of drought—if not of absolute famine,—which so frequently recur.

For the country is dry and rainfall precarious; occasionally falling with violent abundance, and often failing altogether. Cultivation is only possible with the aid of wells and "tanks" or embanked reservoirs. The former are dependent on the maintenance of moisture in the valleys, the latter are filled by rain-fed streams flowing from the uplands. It is obvious then that a clothing of any kind of forest vegetation on the hills, is of first-rate importance. At the same time, when famine occurs, the boughs of trees can be lopped, and grass collected; and thus many cattle be saved which would otherwise inevitably perish. When Ájmer was settled under the North Western Provinces Land Revenue system, the whole of the waste was divided up and given over absolutely to one or other of the villages, which were treated as if they were the joint villages of the North West. (In Rájputáná really, this tenure is unknown; the villages are mere groups of separate cultivators under a headman.) When the evil effects of this abandonment of the Government waste or forest became apparent, it was

[1] I have already alluded to the fact (p. 238, *ante*) that the Government of Madras consider it better to let the Forests under full management of Government officers be the source for supplying the wants of villages. There is no doubt much to be said for this view, though sound arguments are not wanting on the other side. The Government Resolution on the subject will be found reprinted in the *Indian Forester* for *August*, 1891, and some remarks on the subject in the number for *April*, 1892 (Vol. XVIII. p. 150).

determined, in the public interest, to *resume* by law, a suitable portion of the waste and place it under Forest control as the property of the State. Compensation had of course to be given. Regulation VI. of 1874 explains the whole matter. The compensation consisted in,—

(1) Giving a right to cut grass. (Cf. pp. 335, 359.)

(2) A right to cut such wood as is reasonably necessary for household requirements[1] and agricultural implements.

(3) A share in the net profits of the Forests (after deducting all costs of working and management)—viz., two-thirds of Forest proceeds, and one-half of those from mines and quarries in the resumed lands.

The *rights* are to be exercised subject to *rules* made to prevent abuses such as cutting grass at certain seasons; for keeping certain areas closed as liable to injury by the grass cutting (sec. 5*a*); requiring written *passes* for cutting wood, specifying the *season* and the *place* (sec. 5*b*). There are also certain provisions (as usual) about pathways through the Forest. A share in the profits (as determined by the Commissioner, sec. 6) may be *forfeited* in case of certain acts of obstruction to Forest Conservancy, or neglect to render assistance lawfully required by the Forest Officer (sec. 7).

In the HAZÁRA hills on the N.-W. frontier of the Panjáb, the waste lands made over to villages at the time of the Land Revenue Settlement, most commonly included a good proportion of pine and other forest. Accordingly, in Reg. II. of 1879 (so far as it relates to Village Forests) the attempt was made to require the preservation and proper management of the *wooded* area—saving, *i.e.*, rights in land already broken up and brought under cultivation (sec. 8). The chief object was to secure forest growth, or at any rate grass land (or part grass and part wood), in dangerous places,—catchment areas of torrents, steep slopes, crests of hills, banks of streams, &c.

The village forest is to be immediately managed by Village Forest Officers subject to the control of the District Officer (Collector): the Government Forest Officers (in charge of the State or Reserved Forests) are to inspect and give assistance as

[1] It would include both building wood for principal and accessory buildings, and fuel.

directed by the Local Government. The Regulation proposes that for village forest, simple orders as to tree-cutting, &c., for the *year*, should be drawn up and adhered to. It must be admitted that these provisions represent rather an ideal, to be gradually realized, than rules which can all at once be enforced.

(4) *Forests in which Government has certain rights.*

Under the Indian Act, brief mention is made in sec. 79, of the few cases in which Government has a certain *share* in a forest property. I know of one case where a half share in a forest property passed to the Government by escheat, on the death of the owner without heirs; and sec. 79 also contemplates the case where Government is "interested jointly" in the produce. In these cases Government is empowered, (a) To undertake the management, accounting to the other party for his interest; or (b) to leave the management in the hands of the other party, subject to regulation.

In the Konkan districts (sea coast of Bombay), the Khot's estates[1] come under this head; it was decided that forest land in the estate did not belong to the Khot; and sec. 41 of the Khot Act entitles Government to constitute Reserved forests (subject of course to any express terms of the Khots' *sanad* or title deed); but to render this palatable—for the Khots (as usual with proprietors of this class) had extravagant notions about their rights—a third share in the net income of the forest is allowed to them.

(5) *Control of Royal trees.*

Lastly I may allude to 'royal' trees, or other trees the property of Government, standing in private lands; these may be protected by rules under sec. 75*c*, wherever they may be found growing.

(6) *Private Forests.*

The conditions of Indian life have not yet produced any of those forests belonging to Institutions and Associations, which are known in Europe. Private forests however exist. In

[1] The Khots were originally officers who farmed the revenues, and grew into the position of proprietors in which they are now legally recognised. The Khot Estates Act is (Bombay) I. of 1880.

Bengal for example, the Permanent Settlement often allowed the landlords to include a large (and wholly undetermined) extent of waste or forest land as part of their estates. Sometimes this was all brought under the plough as years went on; but in some parts it was real forest land, and still remains as such, though not subject to any public control. In other places there are landlords who own large extents of Forest; these landlords are subjects, though very little differing in class, from some of the petty chiefs which are regarded as ruling feudal or dependent States. In the Central Provinces, the forests of such "Zamíndárs," though private property, are, by condition of their grant and express provisions of the Land Revenue Act,[1] subject to a certain general control. In the Madras Presidency, certain of the landlords (Zamíndárs, Polygars, &c.) have large forest areas in their estates, but not subject to any State control. In the Himalayan regions (where forests have a protective character more frequently perhaps than elsewhere), the forests are often in the territories of Native Chiefs: some have been leased to the British Government: otherwise, being in foreign territory, they are beyond control.[2]

The circumstances therefore under which we can require to interfere with private forests (in the hands of subjects) are very limited. The law only allows such an interference where the 'forest or waste land' (see p. 200) ought to be clothed with forest vegetation or at least under turf, *as a protection* against torrents, landslips and the other well-known dangers, as defined in sec. 35.

If the Government assumes management (as it will do where works of 'reboisement,' &c., are necessary—or where the proprietor neglects, or wilfully disobeys, the protective orders issued), it will pay the net profits of management, to the owner. This is not a very burdensome provision; as obviously, if the land is in a bad state, and restorative treatment is needed, there will be no *net* profits for many years.

[1] See my Land Systems of B. India, Vol. II. pp. 397—400. Act XVIII. of 1881, sec. 124A.

[2] Except so far as by agreement and the influence of the Political officer, the Chiefs can be induced to allow, or undertake, a certain conservancy. This result has been attained in the Native States near Simla, and notably in the case of Kashmir.

The Government may also proceed by expropriation if it prefers this; unfortunately also a power has been given to an owner, to whom an order to observe certain precautions, has been issued under sec. 35, to require the Government to proceed to expropriation (after three years have elapsed and before the expiry of 12 years).[1]

It will be observed that *Private* owners of forest, cannot apply the Forest law to their estates, and must rely on the general Criminal and Civil law for their protection; but sec. 38 of the Indin Act permits the owner (or a two-third majority of joint owners) to apply to have their land managed, under the Act, *by a Forest officer*, as a 'reserved' or 'protected' forest; and then all or any of the provisions of the Act may be enforced. Nothing is said about the *time* for which such arrangements are to last, but simply that the notification enforcing the Act may be cancelled (when the parties agree on this course).

In the next lecture we shall proceed to consider in detail, the steps necessary for constituting Forest Estates under the Act.

[1] I do not know of any case in which these provisions have been applied. In the case of the denuded forest lands on the low hills of the Hushyárpur district (Panjáb) in which operations are urgently called for, the lands belong to the villages; and yet it has been felt that the Chapter VI. could not be brought into operation.