

APPENDIX A.

EUROPEAN LAW REGARDING THE CONTROL BY THE STATE OF COMMUNAL FORESTS, AND FORESTS BELONGING TO CORPORATE BODIES AND INSTITUTIONS.

A brief description of the European laws regarding the State control of forests, belonging to Villages, Towns, Communes, Corporations and Public Institutions, will probably be useful, as such provisions may in time to come afford practical suggestions for guidance in Indian and other Forests.

It may be remarked that all these laws make provision that the Government should control the management of such forests to a greater or less extent; and it will probably be felt that if this is found necessary in countries which are completely civilised, it will be even more so where the peasantry are as ignorant as they are in India. Private owners, and even Communal Councils, are prone to look only to the present, and desire to make an immediate profit, without thinking of the future: the State, being imperishable, is free to a large extent, from this temptation. It is obvious that this and other considerations, forcible as they are in any country, are more usually applicable to India, where there is so much ignorance and backwardness in all matters relating to general economy.

In FRANCE, communal forests and those belonging to public institutions, are, equally with State forests, under regular conservancy and subject to the Forest law (Code For., Art. 90). This refers, not to little patches of woodland, but to lands of sufficient extent to be manageable as forests. Whenever the question arose, whether a particular piece of woodland was suitable for forest management or not, it was determined on the basis of a proposal of the Forest Department, which was discussed with the Municipal authorities, or the guardians of the public institution, concerned. When the "forest" has once been recognized as such, it must be worked methodically. All proposals for change in the plan of working or in the method of disposing of the material, all proposals to manage some of the lands as pasture, or to put others under wood, must come from the Forest Department and be submitted to the Municipal authorities as before. If they cannot agree, reference is made to the "Conseil d'Etat." No clearing of the forest (completely) is allowed, without

the express approval of Government (Code For., Art. 91). Nor can partition be allowed, except where two or more communes may have shares in one forest and desire to separate them.

Both these provisions should most certainly be applied in India. It would defeat the object for which village forests were constituted, if the forest were broken up, and each headman (or the holders of a "patti" or section of the village), were allowed to regard a specific portion of the forest as exclusively his or theirs; nor would any forest management be possible.

All cuttings have to be made according to a plan of operations by the regular agency. No irregular cuttings on the part of the community are allowed (Code For., Arts. 100-103). The produce in building timber as well as the firewood in stacks, has to be cut, prepared, and handed over to each person entitled, in the proper quantity. Sales of the produce of the forest (not required by the inhabitants for their own use) are conducted, just as in a Government forest, in the presence of the Mayor.¹

A useful provision is also made for *keeping in reserve, to meet unforeseen contingencies*, a certain portion of the wood that might otherwise be cut. Such a plan could only be applied in detail, in India, with reference to local conditions.

As regards *establishments*, the Forest guards are appointed by the Mayor and Municipal Council, but the nominees must be approved (*agréé*) by the Forest Department. If there is a difference of opinion, the 'préfet' decides. The same guard may have charge of a 'canton' of a State forest and of one in a communal forest; but in that case he is appointed by the State.

Communal forest guards are in all respects under the same rules as State Forest guards (Code For., Art. 99). They take the same oath and have the same powers as regards making written reports (*procès verbal*) of offences, and other matters transacted under their own observation; and these reports have the same value as *prima facie* evidence in court. The Communal guards are under the orders of the superior staff of the State Forest Department. As this supervision costs the State something, Article 106 of the Code provides that the State is to be recompensed by a payment of one-twentieth (or five centimes in the franc) of the sale value of all forest produce, principal and accessory. Products delivered or used in kind, are valued, and one-twentieth of the value is paid into the treasury.

¹ In *Mémoire*, Vol. II., §§ 497-588, an elaborate *exposé* of Art. 105 of the Code is given, regarding the method of distributing firewood to the inhabitants—so much for each hearth (unless there is an express right otherwise)—the method of giving timber for repairs and building, and so forth. It would not be useful, in our present stage in India, to go into any detail regarding these provisions.

Besides this, the commune pays the salaries of the guards. But beyond these two items, the State makes no other charge for supervision, for survey, &c.; nor any charge for conducting cases and prosecutions in court, since if fines and compensation are recovered, these go to the State.¹ The salaries of the guards and the payments to the treasury, form a first charge on the income from the sales of the yearly fellings (Art. 109). When all the material is used by the commune, and the commune has no other resources, a portion of the yield (sufficient to meet the charges), must first of all be deducted and sold by auction before the rest is distributed.

All the provisions of the Code relating to the regulation of rights, their commutation, the prohibition against grazing goats and sheep, and so forth, that are prescribed for State Forests, apply equally to Communal Forests (Arts. 110-112).

I have dwelt at this length on the provisions of the French law because many of these rules may in time, come to be adopted in Indian practice, and are indeed admissible under the Act. It is also certain that we shall have to maintain the principle of State control, in whatever form, though the nomination of the guards may be left to the villages, subject to the approval of the Government officers.

The GERMAN STATES do not all follow the same plan. In some, the State manages as in France; in others it only exercises a general supervision. In Bavaria, for example, the supervision (*curatel*) extends to the following matters²—

- (1) To requiring the consent of the Government, before such Forests are sold, leased, mortgaged, or otherwise alienated, or a partition takes place.
- (2) Forests cannot be cleared or converted into meadow or arable lands either wholly or partly.
- (3) To seeing that the Forests are worked properly, not wasted; that blank places are stocked and restored; that extraordinary fellings do not take place without special sanction.
- (4) To the audit of accounts.

Under the third head is included the duty of seeing that there is a suitable plan of operations on record³ and that it is properly carried out; that proper precautions are taken to protect the Forest against natural calamities as well as Forest offences.

¹ See Code For., Articles 107—8.

² Roth, par. 83, p. 68. The Saxon law is similar; the State has only "certain supervision" (*sine gewisse überwachung*): Qvenzel (p. 7).

³ Which also involves seeing that rights are properly settled and regulated, that attention has been given to making the yield continuous and perpetual, and such as is most in conformity with the wants of the community or institution.

In all laws, as in France, partition is forbidden.

The commune has to provide the protective Forest staff. It also appoints those who manage the local Forest operations, but must select persons who have passed the necessary Forest examinations.

The superior Forest inspection and control are supplied by the State officials. The Government bears the cost of this, but the commune pays all expenses of local management, working, and protection.

APPENDIX B.

NOTE ON THE EUROPEAN LAW REGARDING FORESTS WHICH HAVE A PROTECTIVE CHARACTER IN MOUNTAIN DISTRICTS, &c.

In Europe, the subject of the Conservation of Forests in mountain countries and other places of danger, and where the existence of forest is a protection against landslips, torrents, avalanches and the like, has a great importance; because a large number of such forests are either private property, or belong to Cantons or communes. There is no hesitation in subjecting these to legal control, in the interests of the public.

The French law at the outset states, 'that private forest-owners will enjoy their property fully, subject only to the provisions of the Code.' Those provisions will be found in Articles 117-124 and Articles 136 and 219. The last is the really important one. Under it, the clearance of forest (*défrichement*) is not allowed without the proprietors giving four months' previous notice at the office of the Sous-préfet. For under certain circumstances, the Forest Department may record an *objection* to the clearance. Article 220 states the circumstances under which the Forest Department can file this objection; it is when the preservation of the forest "is recognised as necessary";—

- (1) For the maintenance of the soil on mountains and slopes.
- (2) For the defence of the soil against erosion and being flooded and overborne (*envahissement*) by streams, rivers, or torrents.
- (3) For the maintenance of the water supply in springs and streams.

¹ So in Austria (Law of 1852, Art. 21).