

LECTURE XXIII.

THE LEGAL PROTECTION OF FORESTS AND THEIR PRODUCE IN
TRANSIT.

(I.) OF FORESTS.

HAVING explained how the vast area of waste and forest land is dealt with from the point of view of Forest law (Lect. XVI.), and further explained the steps taken to constitute legal forests (Lect. XVII.), I have now to proceed to the consideration of the manner in which the law provides a legal protection for Forest Estates. This will really resolve itself into the consideration of the law of the *Reserved Forest*, and, under the Indian Act, of that of the *Protected Forest* in Chapter IV. No other class of lands calls for any special explanation, for when the Forest Act is applied to them, it is always the provisions of Chapter II. or IV. in whole or part.

In Madras and Burma, where Protected Forests are not recognized, the protection, as regards soil, trees and natural produce, of lands not regularly taken up as Forests, is effected by Rules, the breach of which involves a penalty: about such local rules nothing need be said.

Where *Village* forests are recognized by the Indian Act, it is as subject to the same protective provisions as State Forests under Chapter II. In Burma such forests are simply protected by Rules.

Private Forests, where they are interfered with, are primarily subjected to special orders, and if the orders are not obeyed the result will be that the area will be taken under State control as a regular forest.

Voluntary submission of Private Forests to conservancy, also entails their being managed either as Reserved or Protected Forests.

The "protection of forests" is the third of the five main topics of Forest law already enumerated (pp. 197, 198).

A great deal of the *protective work*—perhaps the most important part of it—by which forests are secured as to their soil and

upper growth, depends not on laws or rules, or the imposition of legal duties, but on various operations of forest management; and you will remember that "forest protection" forms a distinct head of your study of Forest Science in general.¹

Here we are concerned only with protection *as far as it is effected by law*. This protection is given both indirectly and directly. It is an indirect protection, when the law orders the *regulation* of forest rights and requires right-holders to act in such a way as to *spare* the forest. I have before mentioned that I considered the provisions about demarcation of boundaries to be more conveniently treated under the head of "Protection" (p. 274).

Direct legal protection is effected:—

1. By provisions which tend to *prevent* offences and also calamities by fire, &c.
2. Provisions which impose duties of helping when called on, and giving information; and
3. Provisions which declare or define offences, and award penalties for the commission of such offences.

Indirect Protection—Boundaries.

With regard to the *indirect* means of legal protection, I have elsewhere so fully dealt with regulation of the exercise of rights (which really embraces the greater part of the subject) that I have only here to speak of demarcation. I have already noticed that it is a *final stage* of the process of constituting State Forests under Chapter II. After all claims are settled and the period of appeal has gone by, the boundaries are finally adjusted, are clearly marked on the ground, and are publicly notified (Chap. II. secs. 19, 20).

As a matter of fact, in the midst of a fairly reasonable and law-abiding population, the mere act of putting as it were a girdle round a certain territory—setting up marks and publishing the fact, is itself enough, to some extent, to secure the forest. The area is at once regarded as a Government territory which must be respected. Not only so, but clear demarcation is

¹ For this reason I have nothing to say about *fencing*, or where it should be adopted, if the whole area cannot be fenced; nor about fire-tracing, nor about protection from insects and injurious animals. I may only add with regard to the destruction of insects by *birds*, that the rules which can be made under the Forest law about hunting and shooting, may be made use of to protect birds which are useful in keeping down insect-pests.

essential to success in dealing with offences. For the acts which the Forest law prohibits and makes penal, are often acts which *outside* the forest would be of little consequence; hence it is of the first-importance that no one should be able to make the excuse, "I was not aware that I was inside a forest."

There is nothing in the Act which requires that any particular form or method of demarcation should be adopted. A forest may be clearly "meted and bounded" by natural marks, such as a steep cliff, a river, a distinctly marked ravine or glen, or the crest of a ridge. A permanent metalled road, a railway or a canal may also sometimes serve as a line of boundary; all depends on whether the natural features made use of, are permanent, and are such as the most ignorant could perceive to be boundaries as notified. Boundary pillars may then be only required at intervals, to carry serial numbers. Trenches, continuous or interrupted, are often used as boundary-lines. And in dense jungle countries, cleared lines are often the most efficient and satisfactory.

In any case, the boundaries *must be easy to ascertain*. It is not right to punish people for trespass when they cannot really tell whether they are inside the State Forest or not; when pillars or marks are so far apart, or so badly placed that, given one pillar, it is only possible for a Forest Official, or an expert, to tell in which direction to find the next.

Pillars or marks should always be made to carry serial numbers;¹ hence some marks of the kind are necessary even when the boundary line is also indicated otherwise.

Unmetalled roads liable to deviate or be obliterated, trees which may be blown down or cut down, should not be adopted as permanent boundary marks.² This is of course speaking generally and on principle. There may be localities, as in Burma, where in our present stage of management, boards

¹ A most essential practice. The pillars can then be identified on the maps; and guards going on their rounds and discovering a broken pillar, or the fact of some encroachment, can at once report the fact with reference to the boundary numbers. So fires and other offences can often be at once localised by aid of the numbered pillars.

² This is prescribed also in the Prussian practice (Eding, p. 38, *et seq.*) and in Saxony (Qvenzel, p. 181). The Prussian law objects to all tracks, footpaths, and small streams, as they are liable to change their courses and are uncertain.

In India it is the practice, in case of a disputed boundary, to bury charcoal, fragments of pottery, etc., under the pillars, so that, if the pillar is destroyed the site can be afterwards established beyond doubt.

painted white and fixed to trees at intervals along cleared lines, are very efficient marks.

The Land Revenue Law of each province contains provisions for the maintenance of boundary marks of revenue-paying land; and it may be that there will also be forest boundaries where the forest adjoins revenue-paying land.

Forest boundary pillars often stand entirely in the forest, or between it and Government waste land, so that the cost of erecting them and of repairing them afterwards, is borne by Government. But it may be in some cases that the pillar is between a revenue-paying estate and Government land, and then it may come under the Land Revenue Law (or the Bengal Survey Act), and the District Collector may have jurisdiction to apportion the cost of the marks.

Wilful damage to boundary marks, can in *any* case be punished under the Indian Penal Code; but any wilful offence against forest boundaries had best be prosecuted under the special provisions of the Forest Act, sec. 62 (Burma, *id.*) for reasons which will be found explained in the closing pages of this Lecture.

The Continental laws all contain rules for the determination of boundary lines and their indication by marks.

In these countries, however, the forest property of the State is nearly always contiguous to some private property, because the whole area of the country is occupied, and not as in India, partly waste. The provisions of the law are therefore different.

In France either the State (forest proprietor) or the neighbours, may demand that the boundary be determined and laid down. Disputes about it are carried to the Civil Court. A written record of the proceeding (*procès verbal de la délimitation*) is prepared and deposited,¹ much in the same way as the record of a boundary case is in Indian Land-Settlements.

The Italian law applies to all forests (no matter whom they belong to) when found on mountain slopes up to the limit of the growth of the chestnut; and above that, if they are of a "protective character." All forests under the law up to the limit mentioned, and all that in other positions are specially exempt, must be permanently demarcated (*siano segnati i confini con termini inalterabili*), and descriptive registers of the boundaries are prepared.²

¹ Code For. Arts. 8-14; Cyrasson, Vol. I. p. 149. There are some further details about laying down part of a boundary or proceeding to demarcating the whole estate, which I do not think it necessary to enter on.

² Law of June, 1877, Art. 1., and royal decree for its execution, Arts. 17-19

The German laws provide that either of two neighbouring estates can claim to have the boundaries fixed and indicated by permanent marks (*feste erkennbare zeichen*).¹ Under this rule the State Forests can be (and are) demarcated.

Direct Protection—Prevention of Fire.

The most important of the *directly* protective provisions relate to fire. Under this head are the Rules which are made, not only to punish acts of setting fire to the forest, but those which tend to prevent fire from reaching the forest.

Section 25 (*b*) (as amended by sec. 7, Act V. of 1890) empowers the Local Government to make rules regarding kindling fires, and to make people responsible not to leave camp fires, &c., burning so as to endanger the forest.²

Section 25c prohibits the *kindling, keeping or carrying* fire in a Reserved Forest except at such seasons (*e.g.* during the rains when there is no danger) as the Forest Officer notifies.³

In *Protected* Forests, rules (sec. 31*b*) may be made to protect timber lying in the forest, and also "reserved trees" (under sec. 29, *i.e.*, certain valuable kinds) from fire. And sec. 32*d* prohibits, not only setting fire to the forest, but also kindling a fire without reasonable precautions; and sec. 32c prohibits leaving a fire burning in dangerous neighbourhood to timber lying, to valuable trees, or a closed portion of the forest.⁴

Naturally it is fire that is the great enemy to forests, and it is not surprising a certain degree of detail has been devoted in the Acts to the subject of its prevention.

¹ Qvanzel, p. 167, and regarding record of the boundaries.

² The Burma Forest Act contains provisions similar to those of the Indian Act with regard to rules about *leaving fire burning* in the forest. It may be necessary to explain that in many cases the forest is large, and travellers require to halt for the night inside the forest, and light fires for cooking, etc. The rules would be made regarding the clearing of camping grounds and the lighting fires in such places; and the extinguishing of them when the traveller proceeds next day on his journey.

³ Under this head would come provision in connection with *shooting parties*, from which danger is apprehended by the fall of burning wads and the like. This provision would also prohibit smoking in a Reserved Forest, as the burning end of a cigar, or burning tobacco from a pipe, or a hot coal from the Indian "huka" might, in dry weather, set fire to the forest. In Europe the regulations sometimes prohibit pipes without covers; but the Indian law would prohibit the keeping or carrying of fire at all. The carrying of *torches* at night, it is perhaps hardly necessary to add, is just as much an offence as any other form of fire carrying. Persons must not travel at night through forests (unless at a season when the carrying of fire is allowed).

⁴ As an Appendix to the Lecture I have printed a brief summary of European law about forest-fires.

Prevention of Offences—Information and Help.

As to the prevention of other offences, the law is necessarily more general, and sec. 64 (and *id.* Burma Act) provides:—

“Every Forest Officer and Police Officer shall prevent and may interfere for the purpose of preventing, the commission of any forest offence, (*i.e.*—by definition—any offence punishable under the Act or a rule made pursuant to it).”

A second kind of protective assistance is obtained by laying on certain persons, the duty of giving *information* to the Forest or Police Officers, and obliging them to give *help* under certain circumstances. Sec. 78 of the Act here gives the law; the duty of every person of the class indicated is:—

1. Without unnecessary delay to furnish to the nearest *Forest* or *Police* officer, any information he may possess, respecting the commission, or the intention to commit, any forest offence.

The penalty for breach of this duty is noticed at p. 430.

2. To aid (when a Forest or Police Officer demands it)—
 - (a) In extinguishing a forest fire.
 - (b) Preventing fire in the vicinity from spreading to the forest.
 - (c) Preventing the commission of a forest offence.
 - (d) Discovering and arresting the offender when there is reason to believe that an offence has been committed.

(This provision for help partly deals with *prevention* and partly with the *remedy* for offences actually committed, but it would be inconvenient to separate it.)

As to the class of persons on whom this duty is imposed, it consists of—

1. Every right-holder (in either Reserved or Protected Forest).
2. Every one permitted to take produce or to pasture cattle, &c., *i.e.*, every one who has a license or concession, or who has a contract or other permission to cut wood, &c., &c.
3. Every servant or employe of such right-holder, license-holder, contractor, &c.
4. In villages *contiguous* to the forest (this of course is a question of fact for the Magistrate to decide if there is any dispute), every person paid by Government (*e.g.*, the head-

man, patwári, &c.) and every one in the village who receives any emolument from Government for services rendered to the village community.

Under this head may be mentioned sec. 80 of the India Act, which contemplates the case of persons being allowed a certain profit or share of the produce of a forest on certain *conditions of service*; the share may be confiscated on proof (in case of dispute) before an officer appointed to hold the enquiry, "that the service has not been rendered.

Under this head also I may mention sec. 84, added by the Amendment Act of 1890: this is of a protective character by rendering specially liable persons who (in pursuance of departmental rules) are required to enter into some bond for work or duty, carrying a penalty in case of breach (*e.g.*, contracts for timber-cutting, forest work and service, &c.). Notwithstanding the usual contract law regarding liquidated damages and penal sums entered in bonds (p. 31), the contractor is liable to the whole penalty specified, and that it be recovered from him directly, as if it were an arrear of land revenue.¹

Direct Protection—Forest Offences.

The remaining form of *protection* is punishment of *offences*, *i.e.* the declaration that certain acts are prohibited, and the provision of an appropriate penalty on conviction before a magistrate.

It will be observed that the acts which are punishable under the Forest law may sometimes be offences which would be punishable under the Indian Penal Code (the ordinary Criminal Law of the country, *i.e.*) even if no Forest Act existed; others are acts which become offences only with reference to forest conditions, and are therefore specially prohibited by the Forest law (and not by any other law). In some cases, the Indian Penal Code, being drafted with reference to *general* conditions of life and not to special circumstances, would not include the case. For example, *trespass* in the Code is only "criminal" when the entry is with the intention of committing an offence, &c. (pp. 93, 122),

¹ I presume that in case of a *real* dispute (one in which there was fair scope for argument) about the liability, either the Government would order the matter to be tried in Court, or the usual rule about land-revenue payments would apply. If a person is called on to pay land-revenue (on the proper order being issued) he must deposit the amount, but may bring a suit to get it back: *i.e.*, he takes the initiative and has to show why he is *not* liable to pay.

but in the forest, it is necessary to prohibit the aimless wandering about (off roads and pathways) which causes damage to seedlings and other risks of injury; especially as it is usually connected with the probability that the trespasser intends some theft or mischief.

But often the offence is one which has its general criminal aspect, besides its special aspect as destructive to the forest. In such cases, the Indian Penal Code will usually represent the graver aspect of the offence, and impose (or permit) a severer penalty. It is a matter of general principle that whenever two penal provisions are equally applicable, and the law gives no express indication that one or other is preferred, either may be followed. But to prevent any possible misunderstanding on the subject, sec. 66 of the Forest Act expressly provides that an act or omission, itself punishable under the Forest Act, may nevertheless be prosecuted under any other law, provided that the offender is not punished twice for the same offence. I have reserved my remarks on the application of the Indian Penal Code to the concluding pages, because many of these relate to timber in transit as well as to our present subject, and others relate to offences connected with forest work and administration, but not directly to the forest or to timber.

The offences against the forest¹ provided in the Forest Act itself, are different according to the class of forest—*i.e.*, according as they are under Chapter II. or Chapter IV.

(A.) *In Reserved Forests.*

Setting fire to the forest (sec. 25 *b*).

Kindling or keeping alight a fire in dangerous places contrary to rules (*id.*).

Kindling, carrying or keeping fire inside the Reserved Forest *except* at notified times (25 *c*).

Making a fresh clearing while the forest-settlement is in progress (25 *a*).

Clearing or breaking up land for cultivation or any other purpose, after the forest is established (25 *h*).

Cutting, lopping, burning, tapping (or notching) trees (young

¹ It will be observed that throughout this lecture I am speaking of the forest, and keeping the question of protecting *timber and produce in transit*, entirely separate, although of course the powers of prevention already noted apply also to them.

or old—and see definition of “tree”) also stripping bark or leaves, or damaging in any way (25*f*).

Negligently felling trees, or cutting and dragging the timber, so as to injure the forest (25*e*).

Quarrying stone, and digging holes for sand, limestone, &c.,—this being a case of “collecting forest produce” (25*g*).

Removing any forest produce, including unauthorized scraping of *humus* soil (*id.*).

Burning lime or charcoal and (generally) subjecting anything to a manufacturing process in the forest (*id.*).

Personal trespass; that is, wandering about off the authorized roads and paths, especially by suspicious persons with axes, tools &c.—of. the French Code For. Art. 146 (25*d*).

Trespass by cattle.

Unlawful pasturing of cattle.¹

(B.) *In Protected Forests.*

Observe first, the way in which the matter is arranged. The *general utilization* of the forest is to be regulated by the aid of Rules. These deal with the cutting, collecting, preparing and removing, the produce, including trees and timber (sec. 31*a*): the licences to be issued for cutting wood and gathering produce for use (31*b*) or for sale, (31*c*) and the payments, if any, (presumably rare in the one case, and usual in the other) (31*d*, *e*), and for the cutting of grass and pasturing cattle (31*i*), for the clearing and breaking up of land for cultivation or other purposes in the forest (31*g*); also for the protection of all *timber* lying, and only certain kinds of *trees*, against fire (31*h*); also for hunting, shooting and fishing (31*j*); and for the exercise of rights “referred to in sec. 28” (sec. 31*j*).

And sec. 29 contemplates that certain *special measures by way of prohibition* may be taken:—

1. “Any class” of trees may be declared permanently reserved, *i.e.* be exempted from the rules which speak of trees ordinarily cut and utilized.
2. A portion of the forest may be closed for any period not exceeding 20 years; suspending all private rights over the closed portion, provided that the remainder of the forest is sufficient (and so situated) as to provide for the excluded rights in a reasonably convenient manner.
3. The quarrying of stone and burning of lime or charcoal, or the

¹ In the Burma Act, these offences are divided into two groups, one the lesser offences, bearing a smaller penalty.

collection or removal of *any* forest produce, and the breaking up or clearing, (for cultivation, for building, for herding cattle or for any other purpose), of any land in such forest, may be *prohibited*.

Then the offences against the forest will consist, either of breaches of the special *prohibitions* of sec. 29, or of breaches of the general *rules* under sec. 31.

They are enumerated as follows:—

- Cutting, lopping, &c., “reserved” trees (32 a).
- Collecting, removing, preparing, forest produce, or lime and charcoal, when such has been prohibited (32 b).
- Breaking up land, &c., when prohibited (32 c).
- Setting fire to the forest, or kindling a fire without taking precautions to prevent its spreading to “reserved” trees or to a closed portion of the forest¹ (32 d).
- Leaving a fire burning so as to endanger trees (32 e).
- Damaging reserved trees by careless pulling and dragging of timber.
- Permitting cattle to injure them (32 f).
- Infringing any *rule* made under sec. 31.

No prohibition under sec. 29 (except as regards the portion of forest in which rights are suspended), no rule under sec. 31, and no penalty imposed, has any effect against “a right recorded under sec. 28.”²

I have only to add that in Burma and Madras, where there are no “Protected Forests,” the protection of waste lands which are not formally “forests” under the Act, but in which grazing and

¹ Kindling a fire so that it would easily spread to non-reserved trees or the ordinary forest, is apparently not an offence; for the rules under sec. 31 (above mentioned) do not provide directly for preserving the *forest generally* from fire, but only “reserved” trees and “closed portions.”

² What would happen if a right were pleaded, that is not “recorded under sec. 28,” I cannot say; for the right is not declared cancelled, and by the general principles of criminal law, a right legally existing is a complete defence. But I do not think any useful purpose could be served by detailing the various technical difficulties that might be raised about Chap. IV. (resulting from the fact that originally it was drafted for *one* purpose, and has been (imperfectly) adapted to *another*).

It is important however to observe (as has indeed been noted before, p. 194) that the *prohibitions* being issued, the *rules* must not nullify them; e.g., if trees are “reserved,” the rules must not contemplate that they are available to every one to cut on a “permit,” &c.

Fortunately in “Protected Forests,” the population concerned are not likely to be able to raise technical objections: and practically, as *rules* under sec. 31, and *prohibitions* under sec. 29, would be notified together; the public would have in their hands what is to them, a simple code of rules, prohibiting some acts, and allowing others to be done in a certain way, or subject to certain payments.

wood-cutting are possible, is effected by a power to make rules which prohibit breaking up land or abusing the natural growth, under suitable penalties. The rules also provide for the proper utilization of the produce, and for levying charges for its use. In such cases, a plea that an act complained of was done pursuant to an established right or custom, would be (and was intended to be) a complete defence. But such a plea is rarely, if ever needed, because no Forest Officer would start a prosecution except for some clear act of abuse, which he knew could not be so excused. The provisions of Chapter IV. of the Burma Act call for no comment. Exactly the same remark applies to Chapter III. of the Madras Act, except that the provisions of secs. 27 and 28 should be noted as a useful aid to the protection of such areas,—enabling the Government to close for restoration, areas that have been burnt. Grazing in such closed areas is made penal.

I must in conclusion, refer to two offences for which the Act has provided a special punishment, and which illustrate the remark that, though offences might be brought within the terms of the Penal Code, the provisions of that Code are sometimes less suitable, being drawn from a different point of view to that necessarily taken in the Special Forest Law.

I refer to the grave offences of—

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| (I.) | { | (a) Counterfeiting Government Forest marks (such as the “saw hammer” mark—indicating that a tree may lawfully be cut by some person, or the “Government mark” (indicating that the tree, &c., is Government property). |
| | | (b) Altering, defacing, or obliterating a Government mark. |
| | | |

(Observe that (a) the offence is making or using a *false* mark, and (b) it is cutting out or tampering with a *real* one.)

(II.) Altering, moving, destroying or defacing boundary marks.

As regards (I.) it is well to provide specifically for the offence—which has a widespread importance both as regards trees and timber in the forest, and timber in depôts or in transit—because the corresponding sections of the Indian Penal Code (secs. 488, 4, 5) though they would probably be held applicable by the

Courts, in the case of *timber*, they would not in the case of standing trees.¹ Or again though sec. 484, I. P. C. extends its terms to "any mark used by a public servant to denote that any property" has been dealt with in a certain manner, it might be questioned whether any one of the actions specified corresponded with that of a Forest Officer putting a mark on a tree or on timber to indicate that it had been sold and paid for, and that it might now be removed without any liability under the Forest Rules. Section 484 indeed speaks of a mark indicating that the property "had passed through a particular office"—but it might be thought rather a far-fetched interpretation to apply this to the case of the "sale hammer" (or similar mark).²

As to (II.) in the case of *boundaries*, sec. 484, I. P. Code, apparently only contemplates the act as one of mischief to the individual pillar or mark, and therefore imposes the comparatively light penalty of one year's imprisonment with or without fine, as a *maximum*; whereas in some forest cases, the destruction indicates a grave and wilful offence, and a design either to resist and defeat the settlement of the forest, or to encroach on the estate and defraud the Government of its land, in which case the heavier punishment (*maximum*) of two years' imprisonment with or without fine, is rightly provided.

¹ The "Property mark" of the I. P. Code refers to marks on "moveable property" only (sec. 479). I refer throughout to the sections as amended, and newly worded, by the "Indian Merchandise Marks Act" (IV. of 1889).

² As to I. P. C. sec. 485, see a note further on, on the subject of timber in transit (p. 415).