LECTURE XXIV.

The Legal Protection of Forests and their Produce in Transit.—(*Continued.*)

(II.) Of Timber and other Produce in Transit.

We now come to the fourth head of the topics with which Forest law is concerned (p. 198). Owing to the peculiar character of the timber and other material taken from a forest, it is more than usually likely to be made away with and fraudulently dealt with; and it has been found a practical advantage to the trade (and often the means of preventing serious breaches of the peace) that the Forest law should follow material of this kind, and protect it while in transit to the market or other destination.

Transit is either by land or water: a good deal of produce, not excluding poles and sawn timber (and in rarer cases timber in log), is taken by carts; and the smaller stuff, in head-loads, or on mules, asses and oxen. In this case especially, fraud is to be apprehended. People may steal material, or, oftener still, take a larger quantity than they are entitled to. Accordingly the examination of packages, the inspection of passes and invoices, the provision of certain routes by which transport is allowed (and the prohibition of others), so as to facilitate supervision, these are the obvious subjects on which *rules* are needed for *land* transit. It is also sometimes convenient to levy the price of the material, not in the forest, but on its way out, or at the examining station; or there may be certain tolls or duties to pay, other than the royalty or direct selling-value of the material.

Produce is also largely exported by boats. The most important and frequently used means of transport for timber, however, is river floating. It is universal in Burma and the Himalayan Forests, where indeed it is, in many cases, the only possible way of getting timber from the forests to the market; but there is hardly a province in the Indian Empire in which it is not more or less used. And when we reflect on the nature of this form of

transit it is obvious that many matters for regulation, arise. Ordinarily sawn sleepers and scantling (or whole logs) are launched from the timber slides into the upper portion of rivers where they are still in the stage of hill (torrential) streams, flowing (with many rocks and obstructions) at a rapid rate and with a comparatively sharp incline. The logs and pieces have to be entrusted singly to the water, and float along to the point where the river leaves the hill barriers and begins to assume its gentler course through the alluvial plains. At this point, the logs and beams are caught and formed into rafts, which thenceforward are *under control;* and then it is possible to make them stop for examination, or for paying royalty or duty or toll, as the case may be; there is also the question of the use of the banks of rivers in connection with tying rafts during the night, &c., and the question of preventing the obstruction of floating streams.

And then, again, notwithstanding all care, some logs and pieces will go past the catching places, sometimes before they are marked; or rafts break, and then pieces go astray; in this stage, as well as before the pieces are first brought under control, we have timber in the condition of *drift;* and rules are needed for the collection and proper disposal of such timber. Very often, too, drift timber is not caught or brought ashore under supervision, but it becomes stranded—and sometimes left high and dry by a fall in the flood: in this case it is peculiarly liable to be concealed and cut up by the peasantry, or "supermarked" by fraudulent owners and contractors. Sometimes, too, drift timber gets right out to the river mouth and even to sea, and the *salving* of it is a regular business; and people feel entitled to claim a reward for recovering the timber before they will give it up. This also is a matter to be regulated. Then, too, there are always questions about *waif* timber, consisting of broken bits bearing no mark, and especially of pieces (and sometimes whole stems) that have fallen into the water, when broken or uprooted by heavy rainfall and storms: such pieces of course have no marks, and the place of origin often cannot be ascertained. There is often some local custom or question of right, about appropriating waif pieces.

Lastly there are the depôts and stations at which timber is

stored, sometimes for months together; and a variety of rules may be required about putting timber in, and taking it out, determining disputes as to ownership of "supermarked" timber, and the like.[1]

The transit both by land and water are included in Chapter VIII. of the Indian Act (Burma Act, Chapter VI.; Madras Act, Chapter V.).

In the Indian Act, sec. 41 provides that the control of all timber (which term includes bamboos, dug-out canoes or timber fashioned), and all forest produce,[2] in transit by land as well as by water, is vested in the Local Government. In Burma, it has been thought sufficient to control the transit of timber only (sec. 48); but timber includes bamboos.

Such a wide power needs to be exercised with great discretion; on the other hand, it is absolutely necessary to leave it wide, since no exception is practicable without virtually destroying the provision itself. If some persons could, under any pretence or colour of legal exception, get some defined class of forest produce exempted from the control imposed by the Acts, it would be like a small hole in a cistern, which would effectually prevent its retaining any water at all. The Government forests would be gradually robbed, and the stolen produce

[1] The great timber station at Kado near Montmain is an instance. I visited it some years ago, and found an immense business going on; the "teinzá" or certificates of the timber in the depot, were passed from hand to hand like negociable securities, and the timber was only taken out when actually wanted. Here too all "salved" timber was brought in and registered; and periodically proceedings were held for determining who was the real owner of the timber, in the frequent case in which ownership was disputed as the timber bore the marks of more than one owner. This was a matter of the greatest benefit and security to the timber traders.

[2] "Timber," as already explained, can be controlled, no matter where it comes from—it may be out in a field or a private forest or anywhere; the term involves no question as to the place of origin. But the various articles included by definition (sec. 2, under the term "forest produce") are divided into two groups or classes, and those in class (*b*) must come *from a forest*: so that it may sometimes be a question whether the land from which a given batch of produce stopped for examination, came, was a "forest" or not. If it was, the produce comes under the section; if not, it is free and cannot be subjected to control. And as the term "forest" has no special or legal meaning assigned to it in the Act, it is a question of fact and of the ordinary use of the terms (see pp. 199, 200). Practically, the possibility of such a question does not give rise to any difficulty. In the case of water-transit this is especially the case, because timber (and bamboos are included) is the chief thing controlled; and charcoal, caoutchouc, resin, varnish, lac, bark, &c., which are really valuable, are in class (*a*) of the definition, and no question as to their origin arises. If any considerable traffic existed, or came to exist, in any locality, and it became desirable to have the power of checking the transit of loads of fibre, or thatching-grass, or any other article not included in class (*a*) of the definition, an amendment would be necessary.

safely passed out under the pretence that the loads were not liable to stoppage, since there is not (as a rule) any external or immediately recognisable indication that timber or other material has come from one place or another. In the same way, owners of forest produce would get it stolen and safely conveyed away, without risk of detection, if only a loophole for escape were provided on the ground that the Act did not apply to *them*. But the safeguards against abuse are ample:—

(1) The control itself is not of an irksome or burdensome character.

(2) The exact local circumstances can be taken into account, since the precise *extent* of control is not laid down in the Act, but is dependent on rules to be made under sec. 41; and Government, as the guardian of the public rights, and of the safety and comfort of the people, would not allow rules to be made which were really oppressive.[1]

Transit by Land.

The control of transit *by land* is effected under rules devoted to the following points:[2]—

(1) The transit may be confined to certain lines or routes, and the use of others may consequently be prohibited.[3]

This provision, as it stands in the Act, applies both to transit by land and water, although here I am considering these two

[1] Under the Indian Act, rules under sec. 41 require the sanction of the Government of India. The provision has been omitted in the Burma Act. Sec. 8 of Act V. of 1890 has introduced a further safeguard, enabling the Local Government to exempt certain localities, or certain classes of produce, from the rules.

[2] The Madras Act (also the Burma Act) has brought *under this head*, the question of *Government* extracting timber from public forests, across private land and paying for any damage it may cause (sec. 35 *f.*). I have noticed the subject under *right of way* (see p. 317).

[3] It will be observed that when the India Act gives power to the Local Government by rule to authorize routes for export, or to levy fees on passes, &c., the rule must specify the routes and fees. But the rule is often drafted so as to declare that an authorized route is one on which the Conservator has established depots for the examination of timber, and which he has duly notified, or the fees for passes are such as the Conservator shall, with approval of so and so, notify. This is illegal: it is held to amount to the *delegation* to the Conservator, &c., of an authority which the Act says is to be exercised by the Local Government itself, subject to the sanction of the Governor-General in Council. And so with regulating payments by rule under sec. 31 *d*. The rule must specify this, not say, that the payment is such as the Conservator of Forests in consultation with the Deputy Commissioner, publishes in the bazaar, or such like. In the Burma Act, it will be observed (sec. 86 *h*, &c.) it is said, that the rules may "prescribe *or authorize some specified officer to prescribe*" the fees, &c.; this obviates the difficulty.

kinds of transit, for convenience, separately. In the case of rivers, or rivers which have several branches, it is easy to apply such a provision, and prevent floating of logs on other streams, or on other than certain channels. But by land it is obviously a question of the local configuration of the country, whether such a provision can be applied. In some places, the export lines will be few, and no others will be practicable; in others, besides main roads, there may be other byepaths, or even the possibility of traversing the open country at any point. Here, without the (altogether impracticable) aid of a hedge, or a cordon of forest guards, it would be impossible to apply such a provision.[1] When, however, circumstances render the rule desirable and applicable, the export or other "moving" of timber, &c., on unauthorised routes, would be illicit and constitute a forest offence.

(2) The rules may require that all produce in transit shall be covered by a "pass."

This pass will be conditional that the produce must stop and be examined, at certain convenient depots or timber stations; otherwise of course the pass would be of no use, since the material actually in the cart, or cattle load, might not in the least correspond with it.[2] Fees may be prescribed for the passes; they are usually of small amount, sufficient to cover the cost of printing the forms, and the pay of timber station establishments. The amount is prescribed in the rule itself, by the Local Government. Under some systems, the passes are paid for at higher rates, in which case the fee represents the royalty, or a price of the produce taken from the forest in virtue of the pass, which operates as a "permit" to go into the forest and collect, cut, or take what the pass specifies, the produce being checked on

[1] In such cases the best plan would probably be to say nothing about particular routes, but merely (under sec. 41 *c*) to provide for the establishment of depots for the examination of timber and produce on the most important and commonly used lines. If then people avoided them and found out an alternative line, it would be easy to establish another depot or set of depots on that, and so on, till all the really frequented routes were occupied, which under the circumstances, is as much as it is possible to do.

[2] It should be borne in mind that in practice, this passage of material along certain routes, with pass in hand, soon becomes a matter of well-understood custom, and gives no more trouble than getting a railway ticket and selecting the proper line and the right carriage, does on an ordinary journey. Exporters of forest produce are always "habitués"; they understand the routine, and if they are only honest and do not attempt to smuggle or conceal illicitly obtained produce, they are not really troubled by it in the least.

leaving the forest by comparing it with the pass on reaching an examination post.[1] This system is common in the lower hill forests of the North-Western Provinces, in the Central Provinces hills, and in the Melghát of Berar.

It is easy to see that the evasion of any rule as to getting a pass, producing it, giving it up when done with, and so forth, becomes a forest offence and is liable to punishment.

Transit by Water.

Transit *by water* is regulated also by rules (usually called "River Rules") made pursuant to sec. 41 (B. 48) (M. 35). In the Panjáb and in British Burma, this is by far the most important means of transport; but it is also of great importance in parts of Bengal (the Sundarban and Chittagong for example), in Assam, and in the North-Western Provinces, as regards the produce of the Himalayan forests, and in Oudh. It involves a much more numerous set of rules, as there are many subsidiary points to be provided for.

The Government is vested by law with the control of rivers[2] *and their banks*, as far as the transport of timber and forest produce is concerned. (For the sake of brevity I shall hereafter speak of "timber" only—that is the principal article: the transport of produce other than wood, bamboos, firewood and hollowed-out or fashioned timber, being hardly cared for at all—see note at p. 408.)

It will be observed that this section does not claim any special right of property in the banks or any interest in or over the soil; any such right or interest may or may not exist, according to the ordinary law of land tenure and interests in land. A riparian owner may prevent timber being hauled up on his land or may have a legal right to levy fees for timber so landed: with that the Act has nothing to do. But the Government officers have the control of the timber, and may prevent it being stored so as to interfere with the passage of other rafts, and so forth; and may examine the timber (if the rules so require) or otherwise deal

[1] Called "naka" and by other local names.

[2] "River" includes creeks, canals, streams, and generally all water-channels, *natural* or *artificial*. (Definition.)

with it. The fact of the banks of the river being private property does not give the proprietor or any one else any "sanctuary" against the control of the river officer.

In the same way, where power is given by rule (sec. 41 *f*) (B. 43 *j*) to prevent obstructions of the banks, this will be understood to refer to the actual navigating way, and to interference with the customary and lawful use of the river and its banks as a public highway; not to any special interference with the proprietary rights of riparian owners.

The general power given by the section to make rules against obstructions in the river, is a very necessary one. Such obstruction is, however, most likely to occur in narrow creeks or arms, and especially in the upper branches and feeders of rivers, where sometimes the felling of a tree across them, or the throwing in of a mass of "toungyá refuse"—bamboos, vegetation and smaller trees from land cleared for cultivation—may prevent the floating of logs, and may cause a "jam" or barrier of logs to be formed, which may be not only very troublesome and even dangerous, but also very expensive, to clear.

The same power which has been noticed under the head of land transport, to fix certain routes and confine the transport to them, may also be applied in the case of rivers.[1] And here also the system of appointing certain "depots" or "timber stations," and requiring the timber to be covered by "passes" which are produced, and checked, when the timber reaches those stations, finds its most useful application.[2]

In some cases, these timber stations at or near the chief timber markets, forming as it were the "terminini" of river transit, are of great importance.

Another very important feature in the business of controlling timber in transit, is alluded to in sec. 41 *h* (B. 43 *l*). This is a good example of the *preventive* action of the law which has already been noticed when speaking of the protection of the forest itself (p. 399). The presence of a number of logs floating about in a stream and often getting stranded for a time, when

[1] This power may be especially needed where the river divides into several channels, and which ultimately lead down to the same place. Those familiar with the Kado rules (Burma) will at once recognize the illustration of this which those rules afford.

[2] Sec. 41 *i*. (Burma Act, sec. 43 *h*.)

the water-level falls, or getting into a backwater; or the fact that a raft has been left at night moored against a bank, and may easily be set adrift,—these circumstances and many others, make river-timber a tempting subject for thieves and dishonest traders. Either the log can be got out of the river, concealed for a time in the sand, or in the long grass that so often fringes the river bank, and then sawn up and made away with; or the mark can be burned out (in which case the mark of fire is easily attributed to the action of jungle fires); or it can be cut out, the grain being artificially restored; or a mark can be altered, so that when the log reaches a depot, it is claimed by the holder of the new mark, and the true owner loses his property, supposing it to have gone adrift, or perhaps to have sunk.

The rules therefore have to aim at diminishing the facility with which timber can be *quickly disposed of by cutting up*, and hence it is made lawful to regulate, or wholly prevent within certain limits, the establishment of sawpits in localities where it is known that timber is, or easily can be, landed and cut up.

This provision is chiefly requisite in connection with river transit, but the rules could equally be applied to the establishment of sawpits anywhere, where there is the same risk of facilitating timber theft; and they might be applied, for example, to prohibit sawpits being set up in the vicinity of a forest.[1]

Tending to the same object as the regulation of sawpits, are also rules which may be made, prohibiting and rendering penal, the sawing-up (anywhere), the burning and concealing[2] of timber, without proper leave or authority.

[1] The French law has similar, and sometimes stricter, provisions. (See Code Forest: Art. 154, 155, and Curasson, II., p. 19–22, and *Puton*, p. 215.) These indeed existed originally in the Law of 1669. No sawpit (without machinery), Art. 154, or mill or establishment for sawing (*usine à scier*) Art. 155, can be set up without special authority of the "Government" (since officially interpreted to mean the order of the Préfet) on the borders (*enceinte*) of a forest, or within two kilometres distant from it. This rule does not apply to establishments forming part of regular towns or villages, which may happen to lie within the proscribed distance; but in such cases (as in *any* case where a "usine" is specially authorised) the timber conveyed into the factory or its yards, must be "passed" and marked by a Forest Officer (Art. 158). The Italian law also regulates the establishment of such places ("magazines and depots for timber and workshops (*opifizi*) for cutting up and converting timber") by Art. 45 of the law of June 1877. The Prussian law (Eding, p. 185) allows also the restriction of sawpits.

[2] This of course can only be done with a dishonest intention. What motive otherwise has a man for burying a log in the sand or covering it with a pile of thatching grass?

Then again there is the risk of *tampering with the property marks* on timber to which I have alluded. The rules may meet this form of river piracy, by making it penal to possess or carry marking hammers or tools for altering marks,[1] except under certain conditions.[2]

Such rules could not, however, work, unless supplemented by a system of *registering* timber marks; this ensures it being known what mark really indicates the property of one man or another.

For the expense and trouble of such registration, *fees* are charged; and thus the tendency to register more than one mark is checked, while at the same time men of straw are deterred from registering marks, having no timber really, but hoping to steal some from time to time and put their mark on it.[3]

Disputes at law are avoided, since the certificate can be sworn to as evidence that such and such a mark really belongs to such a person and indicates his ownership. Moreover, confusion is avoided, since the registering officer will refuse to allow a private person to register a mark already registered in favour of another person, or in use by Government officers for Government timber, or which is so like some one else's mark that a few cuts of a chisel, or other implement, will readily convert one mark into the other.

The registration also diminishes the facilities for using false marks. Supposing, for example, that a timber thief has, *en route*, cut out the marks on several logs and supermarked them with a spurious hammer, it would be found on reaching depot, that the logs bore a mark not to be found in the register, and such logs

[1] In Burma, they use (among other implements) small combs of metal, so that when the original marks have been pared off the surface of the log, the striated appearance or grain of the log may be restored by drawing the metal teeth over the smooth surface of the cut, and then applying a new hammer-mark.

[2] Nor is there any hardship in this. No honest timber owner can require to wander about the banks of a river with a marking hammer, still less with tools of which the very reason of existence, is a dishonest purpose. The proper marks indicating property, are necessarily put on the logs in the forest before launching, or on forming the timber into rafts, where the work is done specially and under supervision. If a trader has (exceptionally) reason to fear that a number of his logs have got adrift unmarked, so that he needs to follow them and mark *en route*, he must explain the special circumstances to a Forest Officer and justify the issue of a written permission to him to mark in transit.

[3] For at the time of registration, if such a person were suspected, enquiry might be ordered as to whether he really had timber; and if not, registration might be refused.

would be at once detained and delivery refused. This, it is true, would not prevent a trader who had registered his mark, from cutting off another man's mark and putting on his own, but to prevent such offences, the heavy penalty for tampering with marks, and the vigilance of the forest staff as River Police, must be relied on.[1]

The student will perceive that in all these cases, the infringement of the rules involves either wilful evasion for which there is no excuse, or fraud in some shape; therefore the law attaches to the offences the liability to double punishment in the case of second conviction, or if the offence is done at night, or after preparation for resistance.

To this chapter of the Forest Act, certain provisions are attached, the object of which is that Government should be saved from liability for loss of timber in case a flood or other accident, causes damage, while the timber is necessarily (or for the owner's convenience, as it may be in some cases) stored at or detained at, a timber station. (Sect. 43, and so in the Burma Act also.) At the same time, such loss may often be prevented if timely assistance can be procured, and so a further section (sec. 44) gives power to Police and Forest Officers to require the aid of certain persons in these cases. A person refusing to help would be liable to punishment under sec. 187 of the Indian Penal Code, therefore it is only necessary to impose the duty, but not to specify a penalty, in the Forest Act (see also at p. 430).

Drift Timber and Salving

There is another branch of the subject of "timber in transit" to which the Forest Act devotes a separate chapter. I allude to the subject of drift timber.

Ordinarily speaking, timber in transit is under control while it is going along with some one in charge of the raft or in the boat to which it is attached. But timber may get *out of* control and go adrift. It often happens that, from the effect of a sudden rising of the river, or from some other accidental cause, rafts get

[1] Besides prohibiting, marking, altering and effacing marks on timber in transit (sec. 41 *h*), the secs. 483 & 485 of the Indian Penal Code would be fully applicable to fraudulent marking of timber or having die-plates or for imitating forest "hammers," or private marking devices. As timber is "moveable property" no question would arise about the application of the sections.

broken up; they strike a bank or an island and go to pieces; in either case, the single logs float away without control, or, being deprived of the support of bamboos or lighter logs to which they are attached, sink in the water either at once, or after a time when they have become water-logged. Sometimes they get stranded on islands, and the water subsides and leaves them out of reach, or they may get caught in "snags" in the river bed.

In many rivers, as I have said, the logs are at first launched singly and left to take their chance till they reach some point where the stream debouches on to the plains and becomes a steady flowing river. At this point only the logs can be caught and formed into rafts. Above this point the timber is "drift," and in many places is subject to great risk of theft. Fortunately, in some rivers, the precipitous banks and torrential character of the stream make interference with the timber impossible, except at a few points, at which a look-out can be kept.

But it will often happen, too, that, when the logs reach the catching-places, some of them will, in spite of all care, go past them, and then they escape control and again become drift, so as to require protection under the rules. As logs so stranded or left floating without control, if marked, can ultimately be recovered and their owners found, *if some one undertakes the charge of them meanwhile*, it is obviously necessary that rules should be made to protect such property from being made away with, or from being further carried away, perhaps out to sea, and lost.

Moreover, all logs that are *not* marked and so become unidentifiable or "waif," are by the law of the land, the property of *some one*, whether the "Lord of the Manor," the Crown, or some one else: it is equally desirable that these should not be left to waste and destruction. Hence under the Forest Act, the Government assumes the *primâ facie* right of property in all unmarked timber within certain limits, and a right to *collect* and *manage* all *drift* timber, *i.e.*, both unmarked waif, and marked timber got loose; and the law provides a procedure, by which the collection of such timber is regulated and by which its ultimate disposal is arranged for.

Although, in British territory, the Government may, under sec. 45, declare the *primâ facie* right of the State to all unmarked

timber in certain limits, it is nevertheless necessary to understand what is meant by waif, for the right of the British Government to claim waif on its own shores is derived from the right of the former Native Governments. It seems to have been a long standing and well-understood custom among the Native States in the old days, that the Ruler is entitled to the waif timber within his boundaries; but this did not prevent the customary appropriation by local villagers, of scraps and fragments of small value. Consequently, though the British Government has succeeded to this right in its own territory, the Native States that have river frontage, still retain it in their own territories. As in some provinces, and notably in the Panjáb, many of the rivers which are the regular routes for timber transit, are so situated that one or both of the banks lie in foreign territory for some part of the river course, it is important to understand what "waif" timber, which either Government is entitled to claim, really is.

"Waif" depends on the principle which I alluded to in Lecture V. (p. 68). Logs become waif when every one "waives" a claim to them because individual ownership cannot be established.[1]

In the Panjáb, the Ruler of the State whose territory forms the bank, is entitled to the waif, and I have little doubt that the same rule would be held in other provinces.

Several of the Panjáb rivers run through foreign territory, as I said, or have one of their banks foreign. On the Sutlej, the Panjáb Government, as the paramount power over the Protected States, laid down (in 1871) the true rule on the subject. It is not the mere absence of a device, or mark in that sense, that makes a log "waif." For example, on the Sutlej it is believed (and this of course is a question of fact) that from no forests but Government forests, could timber in *log* get into the river at all. Consequently all logs, even though they have no Government mark or device, are identified as Government property (especially this is the case with logs cut by the cross-cut saw), and they are not "waif" and cannot be claimed by the Chief on whose shore they may happen to be stranded, or within whose boundary they may happen to float.

[1] Originally in the barbarous law-Latin of the time, "*bona waiviata*" were goods abandoned, "waived" or thrown away in flight by a thief who was pursued. Where the owner of such goods was not traceable, they became the right of the Crown, or by grant of the Crown, of the Lord of the Manor

I presume the same principle would hold good if there were certain forests from which alone certain kinds of wood were obtainable, and it was known who owned those forests: logs of this kind of wood would not be held to be waif or unidentifiable.

It is true that on the Sutlej, unmarked logs, showing root ends or being broken (not cut), and apparently the result, not of forest fellings but of storms or other accident, are allowed to be waif. Such logs are spoken of as "windfall." In these cases the chiefs are allowed to take the logs as waif,[1] but this is rather a matter of concession than of strict principle. They are given up because, though the wood may be the property of Government, they have not been appropriated or prepared at the expense of Government, and Government does not wish to press the principle of identification too far.

The State claims all waif on its own shores, but usually allows people to take smaller bits for their own use; the limit commonly being what one man can himself lift or carry away without assistance, and *sawn timber being not included* in the permission (or obviously many metre-gauge sleepers, and other such small scantling, would be carried off).

Under sec. 45, Government is empowered to exempt any class of timber from the effect of the sections declaring a *primâ facie* right of ownership.

It will probably be asked why the Government should confine its right to "waif" within "certain limits" (by sec. 45). The answer is, that as regards timber, waif by custom arises in connection with rivers and their banks; but in India river-banks are very uncertain things; in time of high flood, logs may be taken far inland, and when the water subsides, they may be left one or two miles or more, from the edge of the water. The Government therefore will desire to put a reasonable limit to the area within which it will claim to interfere with timber. It is usual under this section, to notify the chief rivers as under control down to a certain point in their course, and also to a certain distance on either side of the water line at its cold-weather level.

[1] The question is sometimes asked, must waif be wood actually cast upon a shore or island, or may the States entitled to waif, send out men on floats, &c., to swim after and catch, waif logs? There can be no doubt that waif depends on the condition of the log, not on the fact of its being in the water or on dry land. As long as the collection of such waif is made *within the boundary of the State*, that is the only question that can be raised. The boundary may be in the middle of the stream.

Salving of Drift Logs.

Chapter IX. of the Forest Act (B. Chapter VII.), regulates the collection of drift timber in the first instance, and provides the procedure for its disposal when it is collected. It is customary to speak of "salving" timber when it is adrift without control and floating on its way to the sea where it would be sure to be lost. In some cases it may be convenient for Government officers only, to undertake the work; but in most cases it would be a pity that private persons who see logs going past, should not be allowed to stop or salve them, and get a reward, provided precautions are taken that misappropriation is not encouraged under the name of salving. All this is provided for by rules made under sec. 51 (B sec. 51).[1] It will depend on the rules whether any given individual is or is not justified in salving timber. For it must be remembered that, as a general rule,[2] it is no offence in a person to take charge of apparently ownerless property, with the *bonâ fide* intention of securing it and restoring it to the owner; this, however, may be affected by the existence of rules having the force of law, which, in certain cases, prescribe that only certain licensed or authorized persons should interfere with it.

It will be borne in mind that drift timber is still "in transit," and therefore any cutting off of marks, burying, concealing, &c., is punishable as an offence against the rules previously described as made under sec. 41 (or in some cases against the Forest Act, sec. 62, or the Indian Penal Code).

Under whatever plan the drift timber is secured, it has to be determined what is to be done with it when salved. This will depend on circumstances. If the logs are salved in the water, they are easily taken in tow by a boat, or rafted up to a *drift, timber station* or depôt appointed by the (properly authorized)

[1] I would advise students to procure the rules in force on the Salween in Burma as a good illustration of the practical drafting of rules about salving. If the former practice is still maintained, it will be found that there is a certain part of the river where anyone may salve, provided he takes out a licence, registers the mark he uses to denote that logs are of his salving, &c. At another part, salving is only done by authorised "Government salvers;" or the collection is undertaken by official agency. In Burma, steamers often pick up valuable logs and take them in tow. They then give them up at a drift timber station, and receive the salvage reward.

[2] Indian Penal Code, Section 403, Explanation II.

Forest Officer under sec. 45. But there are many cases where this cannot be done.

The section therefore says that timber "*may*" be brought to such depôts. There are cases in which floods have left large heavy logs far inland; or where single logs, of perhaps great weight or size, have been carried singly or together, below the lowest timber stations, so that it would be inconvenient or costly to do more than secure the timber in some safe place. The rules under sec. 51 will arrange this, so that the salver may be bound to give notice to the Forest Officer; indeed in any case a landowner on whose land a log was washed, would run the risk of being charged with misappropriating the timber [1] if he did not make an attempt to find out the owner or give him the chance of recovering his property. The rules also would enable the logs lying singly where they are, to be treated just as if they had been taken to a drift timber station, and the same procedure regarding claims, &c., to be observed.

When the timber is brought to a station, or is deposited, as just described, the further procedure is so clearly laid down in the Forest Act, that it is only necessary to read the sections. But I may mention, with reference to the right of Government to unidentified timber in the last resort, that claimants should be allowed every chance of identifying their property before it is finally taken possession of as "waif."

Timber while it is awaiting a decision as to its ownership, or while it is retained pending the settlement, in a court of law, of a dispute between rival claimants, is not liable to any seizure or process of a civil, criminal, or revenue court [2] till it has gone through the legal procedure under this chapter. (Sec. 47 (B), sec. 48.) This obviates the chance of a collision of authority.[3] After the forest procedure is complete, there is nothing to prevent

[1] See section 403, I. P. C., and explanations. It is quite possible to commit the offence of criminal misappropriation for a time only; whence the necessity of communicating with the proper official. Of course it would be a question of fact whether a person had kept the timber so long or under such circumstances, that misappropriation could be concluded.

[2] In the Burma Act the Civil Court only is mentioned, because practically that is all that is required; no Revenue Court will practically require to attach timber, and if a Criminal Court does, it will be in connection with some offence, and under such circumstances, that there is no object in excepting it.

[3] I believe that such a difficulty did occur some years ago in Burma. While the Forest Officer was dealing with the timber under rules then in force, the Civil Court interfered, awarded the timber and took it under process of Court.

any Court issuing its order or injunction, or taking the timber under its own process.

In deciding claims, it will be observed, the Forest Officer makes the timber over to the person he thinks best entitled. This, of course, has no effect whatever as a binding decision that such person is really the owner.[1] Any other person might bring a civil suit and claim against the person who got delivery on the *primâ facie* appearance of his title.

If the Forest Officer cannot decide who is entitled, and so does not think proper to make it over at once to either claimant, he may refer the parties to the Civil Court, and retain the timber meanwhile. In either case, the suit must be brought within three months; if not, under sec. 48, the timber will finally vest in Government, or in the person to whom the timber has been made over, as the case may be. If the timber will vest in Government, the Forest Officer must take his own steps to ascertain the fact of a suit having been brought or not, before he takes possession.

Nothing is said in the Act about the Forest Officer arbitrating by consent of the parties.[2] There would, however, be nothing to prevent their agreeing to his arbitration, and the best plan would be to proceed under sec. 523 of the Civil Procedure Code. The Forest Officer is, however, in no way responsible for this; all that he need see to is that the parties agree in writing to his arbitration, and he may give his decision, leaving it to them to pursue the steps necessary to enforce it. Nor would he be responsible if he made over the timber in accordance with such a decision, because the Act authorises him, in any case, to make it over to the party whom "he deems" entitled to it.

Nor is the Forest Officer liable for anything he does in good faith under the section, nor is Government liable for any loss that may happen during the detention of the timber. (Sec. 49 (B) 48, 79.)

[1] Nor in a subsequent civil suit could a person appeal to the fact that the Forest Officer had made the timber over to him, as a proof that in fact it belonged to him rather than to the other party. But the Forest Officer might be examined as a witness, as to any technical or other knowledge he possessed, which might throw light on the question of ownership.

[2] In which case the ordinary law would apply. It is quite likely that if the Forest Officer is known to have experience, the parties will agree to abide by his arbitration.

When timber is made over to a claimant, there will usually be a "salvage" fee (provided under rules made pursuant to sec. 51) due, and possibly other expenses also. No person can claim to take away his timber till he has paid these charges. But no expenses can be so charged (sec. 50), but such as are distinctly provided by the rules to be levied.[1]

If such fees and charges are not paid, secs. 81 and 82 of the Act must be brought into play: the Forest Officer may sell the timber and recover the money due.

Offences against salvage and drift timber rules are punished by such penalties as the rules themselves provide.

[1] "Salvage fees" consist of a sum which is purely in the nature of a reward for the risk and exertion undergone in saving the timber, whether by Government or private agency. "Other expenses" will be the actual cost of moving, rafting, or storing timber, and may include a charge the object of which is to defray the cost of any special establishment necessarily entertained.