APPENDIX B.

Civil damages for Trespass.

Note on the Civil Law of Trespass.

An offence of trespass in a forest will in most cases be amply provided for by the punishment *and* award of compensation under sec. 25 of the Forest Act. There may, however, be exceptional cases in which the civil law of trespass may come into play.

The subject belongs to that branch of law called the Law of Torts, or the law under which remedies are provided by the Civil Court for wrongs to the individual, which are not crimes under the criminal law.

Under the civil law, *any* entry on the land in the occupation or possession of another constitutes a trespass, for which an action for damages is maintainable, unless the act can be justified. This is a very necessary principle, since if it were not so, trespasses might be committed and afterwards pleaded as acts of adverse possession, although nothing had been done but simply entering on the premises.

"If," says Addison,[1] "a man's land is not surrounded by any actual fence, the law encircles it with an imaginary enclosure, to pass which is to break or enter his close. The mere act of breaking through this imaginary boundary constitutes a cause of action, as being a violation of the right of property, although no actual damage may be done. If the entry is made after notice or warning not to trespass, or is a wilful or impertinent intrusion on a man's privacy, or an insulting invasion of his proprietary rights, a very serious cause of action will arise, and exemplary damages will be recoverable: but if there has been no insulting or wilful and persevering trespass, and no actual damage has been done, and no question of title is involved, the damages recoverable may be merely nominal.

"Every trespass upon land is, in legal parlance, an injury to the land, although it consists merely in the act of walking over it, and no damage is done to the soil or grass."

If, therefore, simple trespass, as a menace to proprietary right, is actionable, so also is every act of damage, whether it is cutting grass or trees, removing stones or discharging rubbish on the ground or

[1] Law of Torts (Cave's 6th edition), p. 330.

letting out water on to the land. And even if the wrong-doer has caused the damage unintentionally, he is still liable if damage actually occurs, unless the damage was beyond his control and he could not help it.

In any case, of course, the damages may be merely nominal; but it is a well-known principle of civil law that wherever there is an actual wrong, as such, there must be a remedy.

The question of actual value of damage done, is often one of difficulty. Take, for instance the case of a forest which, like so many in Burma, consists of a jungle of bamboos with teak scattered about it. As long as those teak trees stand, their seed may fall, and greatly increase the number of valuable trees in the forest, especially under proper management in keeping out fire and cutting the undergrowth so as to encourage the teak. Here, if a man unlawfully cuts out a large proportion of the teak, he not only deprives the Government of the value of the timber but also the reproductive power of the tree. It is somewhat analogous to the case of a wrong-doer who should kill a valuable bull kept for breeding purposes: it would be poor compensation to give the owner the value of the carcase as beef; what he values is the reproductive power which may give a progeny of useful animals.

The question of damages, however, is governed by principles similar to those which prevail under the Contract Law. The damage must be the direct consequence of the wrong, and "remote" or indirectly resulting damages will not be allowed. What is remote or indirect damage, is a question of fact under the circumstances.

In cases in which the wrong-doer has made away with some material, the rule is that the presumption is against the wrong-doer; where a teak tree is cut, if the timber is not forthcoming, it will legally be presumed that the stem was sound and well grown: "*omnia presumuntur contra spoliatorem.*" An instance of this may be cited from the French law, which draws a distinction between the offences of cutting a tree above two decimetres in girth, and cutting one below that size. The girth for the purposes of this distinction is taken at one metre above the ground (Arts. 192–3, Code For.) If the wrong-doer has removed the stem, the measurement of course cannot be taken at one metre, so the measurement is taken at the top of the stool which remains, although this is likely to be unfavourable. But this is on the principle of the presumption against the wrong-doer.