LECTURE XXVII.

THE LEGAL ORGANISATION OF THE FOREST SERVICE—(*Concluded*)

(IV.)—The Protection extended by law to Forest Officers.

UNDER the preceding head we considered the obligations that Forest Officers were under, and the care necessary on their part to avoid every suspicion that might arise from their being concerned in trading transactions, or from their receiving gifts of any kind in their official character. But the very existence of the necessary legal provisions in these matters, may also render Forest Officers (and public servants generally) liable to unjust comment, and even to malicious accusation; since those officers have often to discharge a duty which is displeasing to individuals or curtails their liberty, and so may give rise to feelings of enmity and an unworthy desire of revenge. Forest Officers, therefore, are protected by law, both as regards civil suits and criminal prosecutions. By sec. 73 of the Indian Act (Burma 72, Madras 61), no civil suit will lie against any public servant for anything done by him in good faith *under the Act*.[1] Nor can a Forest Officer be held liable for loss of timber taken charge of under sec. 45 of the Act, or stored at a depot under sec. 41; unless there is fraud or malice.[2] (See secs. 48 and 49; and Burma, sec. 79.)

This does not mean, that a suit cannot be brought against the

[1] Or under Rules which are made pursuant to the Act and are therefore (so to speak) part of it. (See Burma Act, sec. 72.) A similar provision ought to be added to the Forest Regulations of Hazára and Ajmer.

[2] It may be useful here to refer to the English law, as explained in Broom's Constitutional Law (ed. 1866, pages 618–9. The author says that an action will not lie against a public agent for anything done by him in his public character or employment, though alleged to be, in the particular instance, a breach of such employment and constituting a particular and personal liability. And no such person is understood personally to contract.

On principles of public policy an action will not lie against a person acting in a public character and situation which from its very nature might expose him to an infinite multiplicity of actions, at the instance of any person who might suppose himself aggrieved. The very liability to such suits would in all proba-

Government (see p. 31) or against a public officer, on a matter of breach of a (Government) contract, or some claim or question of right to money, or to land, &c.: it relates to *official Acts, under the Forest Law.*

If any person is aggrieved, he must bring the officer's conduct to the notice of his superiors, and if there is anything wrong he can be departmentally reprimanded or punished, or if it amounts to a criminal breach of duty, a prosecution can be sanctioned.

The Burma and Madras Acts, besides mentioning civil suits, also specifically mention a criminal prosecution, which the Indian Act does not. But the same result is practically attained by the provisions of the General Criminal Law (Indian Penal Code), which declares (secs. 76–79) that nothing is an offence which is done by a person who is justified by law in doing it, or who, by reason of a mistake of *fact* (not a mistake of *law*), in good faith believed himself to be justified in doing it.

I may here mention that a subordinate officer, if ordered by his superior to do an act which was criminal or clearly illegal, would not be justified in doing it. If he obeyed the order he would nevertheless be subject to trial and conviction; though the circumstances might be such as would make it only just for the Government to exercise its prerogative of pardon. Even the orders of Government would not be a protection, unless the

bility prevent any prudent person from accepting any public situation at such hazard or peril to himself. But he might be liable for an act or tort, wrongful in itself and injurious to another. If such an act was done under orders, or in the belief that it was authorized and lawful, the principle was laid down in the case *Rogers* versus *Dutt*, quoted by the author I am alluding to. "But let us assume," said the Court in that case, "that the particular act complained of is to be viewed as the act of Government, and that in the part which the defendant (the public servant) took, he acted merely as the officer of Government, intending to discharge his duty as a public servant in perfect good faith and without malice, general or particular, against the plaintiff. Even on this assumption, if the act complained of was wrongful as against plaintiff and produced damage to him, he (the plaintiff) must have the same remedy by action against the doer, whether the act was his own, spontaneous and unauthorized, or whether it was done by order of the superior power. The civil irresponsibility of the supreme power for tortious acts could not be theoretically maintained with any show of justice if its agents were not personally responsible for them: in such cases the Government is morally bound to indemnify its agent . . . . . . but the right to compensation to the party injured is paramount to this consideration, that is to say, special circumstances may render even a public servant personally responsible for acts *bonâ fide* done by him on behalf of the public, which in the contemplation of the law injuriously affect another." (*Op. cit.*, pp. 619–20.)

The head of the department cannot be made liable for the remissness of his subordinates (Broom, p. 244).

circumstances were such that the whole transaction was "an act of State" (as for example during war, &c.) and beyond the cognizance of the Courts.[1]

But even supposing a public servant has actually committed an offence, taken a bribe, or what not, *as such* public servant, it is not lawful for everyone to institute a prosecution as he might against a private person.[4] By sec. 197 of the Crim. Pro. Code, a public servant of such a rank that he is not removeable from his office without the sanction of Government (which is a matter either determined by some Act, or by departmental rules), can only be prosecuted for an offence[2] committed by him *in his capacity* of public servant, "with the sanction or under the direction of the Government having power to order his removal or of some officer empowered on this behalf by such Government or of some . . . . authority to which such public servant is subordinate, and whose power to give such sanction has not been limited by such Government."[3]

It will be observed that this protection is given to the superior orders of public servants. Those removeable by any authority without the sanction of Government, may be prosecuted without sanction.

It will also be observed that this sanction only refers to cases where the public servant is accused *as such*: thus, if a Forest Officer were to commit a theft, he could be prosecuted like any one else, for the offence has nothing to do with his being a public servant; but if, as a Forest Ranger, he took a bribe to allow cattle to graze (for example), here, his being a public servant is the essence of the offence: so if he forged a public document; but not if he forged a bond or a relation's will, which had only reference to his private personality.

It may happen that a Forest Officer, prosecuted and convicted of an offence as a private individual, will be so affected in cha-

[1] For further particulars see notes in Mayne's Ind. Penal Code (9th ed.), p. 55, and Broom's Constitutional Law (ed. of 1866), p. 621.

[2] An offence against the Indian Penal Code *or any* other law: "offence" has not a restricted meaning in the Criminal Procedure Code as it has in the Indian Penal Code.

[3] The words omitted refer to Courts and Judges and do not affect the point we are considering.

[4] Though such persons may be prosecuted by private parties without any sanction, if it is intended to prosecute them departmentally, there may be service rules regarding a report to be made to the Conservator of Forests. (See Forest Department Code, para. 46.)

racter and in public estimation, by the result, that he would be unfit for retention in the public service, and so the fact of his prosecution would come under official cognizance; but that is obviously a different matter, and has nothing to do with the prosecution itself.[1]

(V.) The Legal Powers of Forest Officers.

Arrest and Seizure.

By the Indian Forest Act (sec. 63) any Forest Officer (or Police Officer) may without orders from a Magistrate, and without a warrant, "arrest any person against whom a reasonable suspicion exists of his having been concerned (*i.e.*, as a principal or abettor) in any forest offence, provided that the offence was punishable with at least one month's imprisonment. This power does not extend to offences against rules made for the management of "Protected Forests" except in the case of offences against a prohibition notified under sec. 29.

There must be no "unnecessary" delay in sending the person arrested before a Magistrate having jurisdiction.

The Burma Act (sec. 63) has somewhat restricted this power. Here the arrest can only take place if the offender refuses to give his name and residence, or gives one that is false, or if there is reason to believe that he will abscond. The Madras Act (sec. 51), has adopted the same restriction.

Forest Officers are (under all the Acts) entitled to seize all forest produce in respect of which there is reason to believe a forest offence has been committed, as well as all cattle, tools, boats, carts, &c., used in committing it (Ind., sec. 52; B., *id.*; M. 41). This subject has been dealt with in the Lecture on Forest Protection (p. 436) so that further notice is not here needed. A mark has to be put on the property seized, and a report made at once to the Magistrate having jurisdiction: where

[1] The Continental law usually contains provisions requiring sanction before prosecuting a Forest Officer. In France, for example, Forest Officers can only be prosecuted for acts done in their public character (*faits relatifs à leurs fonctions*) with previous sanction. (Curasson, I., page 123.) This sanction is prescribed in detail by the Ordonnance Réglem: Art. 39. To prosecute a Garde Général the Director-General's sanction is needed; for that of an Inspector, the sanction of the Minister of Finance, and for a Conservator, that of the Conseil d'État.

property is seized and no offender is found, then a report to the seizing officer's superior is alone necessary.[1]

Preventive Powers—Aid and Information.

Forest Officers (and Police Officers) are bound to prevent, and may interpose for the purpose of preventing, forest offences.[2] This would naturally include the right of warning people, and of taking cognizance of persons wandering about in the forest armed with axes, saws, &c. This latter is, in the French law, in itself an offence; in India it might be (sec. 25*d*) an offence under circumstances which the Magistrate held to amount to a "trespass" within the meaning of the section.

Forest Officers, properly empowered, are also entitled to guard against fire, by notifying certain seasons *during which only* the carrying of fire in Reserved Forests is permitted (see p. 398).

In certain cases, Forest Officers are empowered to demand aid in the execution of their functions. All that is necessary under this head has been said in speaking of "Protection" (see p. 430).

The foregoing paragraphs have indicated that Police Officers have the same powers as Forest Officers in some cases, as in arrest, prevention, &c. But as to the general question of police aid when requested by a Forest Officer, nothing is said in the Act about Forest Officers having a right to demand the aid of the public force (Police) in searching for stolen property, or in preventing offences, or arresting offenders, or in cases of fire. But as in such cases the Police are themselves empowered to act, it is presumed that they would be bound to give aid to Forest Officers acting in the same way.[3] And of course a Forest Officer can call on any other Forest Officer to help him.

[1] The French law also recognizes a similar "*saisie*;" and there is also the "*séquestre*" (Puton, 135). The *saisie* simply leaves the property where it is but makes it inalienable—no attempt to do anything with it has any legal effect—it is "*frappé d'indisponibilité*." Cattle can be so seized, and stolen wood (C. F., 161, also C. F., 81, 84, 146, 152). *Séquestre* is when the property needs to be moved and taken care of and deposited with some one (Puton, 140); the cases in which this process is adopted are expressly defined by the law; and it is not made use of in other cases.

[2] See p. 399. The French Code (Art. 163) gives power to arrest persons only when caught in the act of committing a forest offence. This applies to guards, &c. (*préposés* not *agents*, see Puton, p. 114; see also p. 145).

[3] See also sec. 150 of the Criminal Procedure Code: this shows that the Police would be bound to give information to the Forest Officer. The French Code (Art. 164) provides: "The officers and guards of the Forest administration have the right to require directly the aid of the public force in the repression of

Under the Criminal Procedure Code, if it is a case of an offence of the graver kind (*e.g.*, theft), cognizable by the Police, the Police would be bound to take up the case on the information of a Forest Officer. Under the Forest Act also, all offences (except those minor ones above alluded to—p. 470, sec. 68, Indian Forest Act) are "cognizable" by the Police; hence, according to sec. 156 of the Criminal Procedure Code, the Police Officer has power to investigate any such case, and is bound to do so (sec. 157) if it occurred within his jurisdiction, unless the proviso to the section applies.

Use of Force.

I may also give a passing notice to a question which may arise, *viz.*, whether a Forest Officer is justified in using his weapons in preventing offences, &c. As to necessary force used in effecting an arrest (see p. 151). But in other cases, no special rule is laid down; and of course the usual law of the right of private defence applies to Forest Officers as to any others (p. 105).[1] Forest Officers are exempted (Act XI., 1878, sec. 1.) from the Arms Act as far as relates to any arms they may be directed by service rules to carry *as Forest Officers*.

The powers incidental to an arrest, such as the power of entering a house, breaking a door and so forth, have been already described (p. 151). And the "search warrant" has also been alluded to (p. 156). Forest Officers may be invested with power themselves to issue search warrants (Indian Act, sec. 71; Burma 70; Madras 59 c). This power as before remarked would be

forest offences (both *délits*—graver offences, and '*contraventions*' or minor ones) as well as in search for and seizure of wood illegally cut or fraudulently sold or bought." Forest Officers of all ranks form part of the military force of the country (Puton, page 158). Forest Officers can therefore demand the aid of other Forest Officers. In a few Indian Acts (*e.g.*, Customs Act, VIII. of 1875, sec. 25), officers are expressly empowered to demand police aid. I take this opportunity of stating that the Forest force is in its turn bound to aid the Police or Magistracy in the cases mentioned in secs. 42–5, Criminal Procedure Code; these sections the student should read.

[1] I may usefully refer here to the continental law by way of illustration:—

By the Prussian law (*Eding*, p. 182), Forest Officers (who must be in uniform, or with distinctive marks of office, in order to be justified in so doing) may use their weapons against forest offenders—

(1) When an attack (*Angriff*) on the officer's person is made or threatened,
(2) When resistance is actually offered, or threatened so as to cause apprehension of danger (*gefährliche Drohung*).

This use of weapons may only be made as far as is necessary for defence. the Austrian law (Forstgesetz of 1852, Art. 53).

chiefly desirable where there is a very large timber trade, and the locality is such that timber thieves have opportunities for concealing and making away with timber.

Power to Compound Offences.

Officers specially empowered by the Local Government under sec. 67 of the Indian F. Act (Burma, sec. 66:—both as amended by sec. 18, Act V. of 1890; see also Madras, secs. 55, 59 *d*), have the right to "compound" all forest offences (except those grave ones specified in sec. 62 of the Act). The composition consists in accepting a sum of money: if this is paid, the person is set free, and any property or cattle seized is let go.[1] The India and Burma Acts limit the amount to Rs. 50. Madras does not fix a limit.

It will be observed that the Act makes it sufficient that there should be a "reasonable suspicion" that the person has committed the offence. The person accused is perfectly free to decline to pay the sum required. If he thinks the sum too high, or that he has committed no offence, or can show a valid excuse, he may refuse to pay and submit to be tried for the alleged offence before a Magistrate.[2]

The powers under this section, cannot (under the India and Burma Acts) be conferred on an officer of lower rank than that of Forest Ranger, or one drawing a salary less than Rs. 100 *per mensem*. (The salary marks a certain degree of rank and standing.) In Madras (sec. 55) any officer may be specially empowered. It is perhaps hardly necessary to add that when the power is exercised, a formal (if brief) order or proceeding should be recorded, stating the facts and the sum demanded. Probably there are Departmental rules about this.

Powers under Sec. 71 *I. F. A.*

Lastly, Forest Officers may be invested with certain special powers under sec. 71, Indian Forest Act (Burma, sec. 70;

[1] I have discussed this matter at page 436 ff.

[2] This is so also in France (Code Forest: Art. 159); it is spoken of as "transaction" (*transiger* is the verb). The forest "Agent" (not *Préposé*) can compound any Forest offence or claim for reparation, at any time before judgment; and even after judgment, but only in respect of money penalties or compensation. This is clearly explained in Puton, *Manuel*, pp. 150–1.

Madras, sec. 59). Those under (*a*) relate to the survey of land; those under (*b*) to cases where witnesses require to be summoned or documents produced. Powers under (*a*) may be required when a Forest Officer is sent on survey duty, preliminary to a settlement or otherwise; those under (*b*) refer to powers which may be required in enquiries into rights in a Protected Forest,[1] or that might perhaps be conferred on an ordinary Forest Officer (of competent grade) when he is working with a Forest Settlement Officer (sec. 8) without being actually appointed Joint Settlement Officer; (in which case he would be vested with the powers of the office).

The power to issue a search warrant (*c*) relates to the detection of offences, especially those connected with concealing timber, &c., and to this I have already alluded.

Under sec. 71 (*d*) (Burma 70 (*d*); Madras 59 (*c*)) power may be given, which is analogous to, but not at all the same as that exercised by Forest Officers under the French Code.[2]

[1] But the powers under this section do not include the decision of any dispute, or the record of anything in the nature of a judgment or order.

[2] The student will find a very clear and precise account of the Forest Officer's *procès verbal* under the French Law, in M. Puton's *Manuel* (pages 120–130). The *procès* must be (1) *written* (in the absence of express legal excuse) by the *officer himself*; must be (2) *signed* (not merely marked) by him, (3) *dated*, (4) "*affirmed*," that is stated on oath before a proper authority to be entirely true; which oath is recorded and duly signed; and it must (5) be *registered* (see Code For., 165–170). The registration is a mere fiscal act and of no real importance except as regards certain fees which may be leviable for delay. The *procès verbal* must also (Code, Inst. Crim., Art. 16) state the nature of the offence, the circumstances, the time and the place of occurrence, the proofs of it, and the local or other indications of its occurrence *e.g.*, a freshly cut stump of such and such a girth; ground disturbed, &c., &c.)

The *procès verbal* so drawn up may be of two kinds. (1) If it is prepared by *two officers concurrently*, no matter what the gravity of offence or amount of fine, &c., it is positive proof (of all *material facts* directly asserted) and cannot be contradicted, except (1) by plea of formal defect in legal requirements, and (2) by a process called "*inscription de faux*," that is by a formal plea to the Court that the *procès verbal* contains statements which are false and contrary to the facts. This issue is then solemnly tried as an incidental or side-trial by itself; if the objector succeeds, the *procès verbal* goes for nothing and cannot be amended, or supported in any way. If the objector fails, he is liable to be fined at least 300 francs and may be prosecuted for calumny, &c. The reader may think this a tremendous power to put in the hands of the officers; but it should be borne in mind, that the severity of the rule is very largely tempered by the fact that the slightest disobedience to the precise rules of preparation, is fatal; and not only so, but the proof only extends to *material* facts directly asserted, that is, (as M. Puton explains, *Manuel*, p. 125) to "those facts which fall directly within the cognizance of the senses of the deponents, and which are not matter of inference or of supposition or estimate, on their part." The result naturally is, that the *procès verbal* to be successful must be prepared with the utmost intelligence, and the most scrupulous care and accuracy; while, for anything like false or

The Forest Officer empowered, may hold a preliminary enquiry into a forest offence just as the police do, only with this important difference, that he may *record evidence*; and this, *provided it has been* taken in the *presence* of the *accused*, is admissible in a subsequent trial before a Magistrate, but may, of course, be disproved or contradicted.[1] How officers should record evidence in such cases, has been stated in the Lectures on the Criminal Procedure Law (p. 170).

The use of this power is a limited one; it is not intended to be exercised as a matter of course in every forest case; but only where the Forest Officer comes across some case in which the witnesses are at hand, and the accused is either arrested on the spot or can at once be brought there; also where the facts are such that the evidence of them is likely to disappear by lapse of time and influence of weather, &c., unless they be proved, and the record of them secured at once. It would not be applied where no offender was found, or where none could properly be brought up at or near the spot; nor would it be, where the witnesses were not on the spot or close by and could be questioned at once; in such cases a police investigation must be sought, or a complaint made to a Magistrate.

Conduct of Prosecutions.

It will naturally be asked what powers Forest Officers of any grade, have, to conduct prosecutions, or to appear as

careless statement in it, the penalty is very severe, and few officers would dare to run the risk.

(2) If the *procès verbal* has been prepared only by one guard or agent, then it carries the previously described degree of authenticity only in minor cases (below a certain amount of penalty); in cases above that grade, it affords *primâ facie proof only*, which may be contradicted.

If a *procès verbal* is annulled for *defects of form* the officer may be called as a witness, but not if the *procès* is set aside on the "inscription de faux."

By the Prussian law, which is simpler (Eding, 180), "public faith" is given to a formal record of fact (like the *procès verbal*), as well as to the *valuation of damage* done, as made by the recording officer; but the record is only *primâ facie* proof till the contrary is proved. Eding justifies the force thus reasonably attached to the official act, by observing that for the management and protection of State Forests, a carefully selected service is organized, and the employes are schooled to their duty during a long course of almost military discipline and experience. Consequently the formal deposition of an enrolled and sworn Forest Officer, regarding facts which come under his official cognizance, ought justly to be allowed a special degree of weight before the public tribunals.

[1] The Madras Act (59 last clause) adds that the evidence must have been recorded as provided in the Criminal Procedure Code (secs. 355-6-7). Practically this would *always* be done in the other provinces also.

complainants in a Criminal Court, on behalf of the State, to procure a summons against an offender, and conduct the case. It is to be regretted that nothing definite is laid down about this. Most certainly Forest Officers ought to have a definite standing before the Magistrates' Courts in this respect.[1] At present everything is matter of inference, or at best of the permission of the Magistrate. A Forest Officer can take cognizance of an offence and arrest an offender and take him before a Magistrate. It follows, therefore, that he may appear on the trial (if one follows) as complainant; but to be complainant is not the same thing as being allowed to conduct the case, to examine or cross-examine witnesses, or address argument to the Court. By the Police Act, sec. 24, it is expressly provided that any Police Officer may lay information, act, investigate, and prosecute, any case before a Magistrate. By the Criminal Procedure Code, sec. 495, the Magistrate may in any trial before him (or preliminary enquiry) *permit* any person to conduct the prosecution. So the Forest Officer might get *leave* to prosecute. Government might also appoint Forest Officers "public prosecutors" for their own class of cases, under sec. 492. In any grave case the Government would appoint a public prosecutor or send a Government Advocate; but this does not remove the daily inconvenience of wanting a recognized *locus standi* for Forest Officers in the Magistrates' Courts, or the need of some section in the Forest law like the sec. 24 of the Police Act, or, better still, like the French Code.

[1] As in the French Law, Art. 159 (an addition made to the original Code in 1859), where it is expressly provided that "agents,"—that is "administrative" or controlling and executive officers of the rank of Garde Général and upwards (but not préposés, *i.e.*, guards of cantons or beats, brigades, &c.) can conduct suits and prosecutions on behalf of the Administration, both in cases of *délit and contravention* (major and minor offences) and in all cases for compensation. And here I may again refer to the distinction made by the Forest law between the *agent* and the *préposé* in the matter of criminal prosecutions: the officers who can arrest, make a seizure, or execute a search (*visite domiciliare*) and make formal "*constatation*" of what has come under their notice (and préposés can do all this) are not the officers who conduct the prosecution (*poursuite*). The "agents" can never make an arrest nor apparently a search (Puton, p. 114), nor can the préposé ever conduct a case, (id. and *Code d'Instr. Crim. Art.*, 182). The "agents," it is true, can make an official record (*constatation*) of what they see, but that is only a secondary function, because it would be inconvenient if they could not; otherwise they are kept free and impartial to prosecute, &c. They are entitled to be heard in argument (Code, For. 174) and to appeal (Code, For. 183–4). It is also conveniently provided that forest guards, though they may not prosecute, may serve and *execute Court processes* (Code, For. 173) except warrants of execution by seizure of property.

Receipt of Revenue—Expenditure, Etc.

Forest Officers have also certain powers in connection with collection and receipt of revenues, and expenditure of Government money.

There are departmental rules about the power to expend money provided in the divisional budget, and also rules about keeping accounts, dealing with revenue received, supplying subordinates with funds by imprest advances, and so forth, which are laid down in the Departmental Code, and which are not matters of law.

Forest Officers may also receive revenue from sales of forest produce and so forth, but they have no functions in effecting its actual recovery.[1] Generally payments are made before delivery, but where this is not so, or where otherwise there are outstandings to be recovered, all the Forest Officer has to do is to report (in a form prescribed by order) to the Collector, who can recover as if it were an arrear of land revenue (Ind. Act, sec. 81; Burma, 77; Madras, 66):—

(*a*) All money payable to Government under the Act or rules;[2]

(*b*) All money payable on account of any forest produce;

(*c*) All money as expenses incurred in the execution of the Act in respect of such produce.

In India and Burma the *penalty* on bonds can also be so recovered in certain cases (p. 400).

But a Forest Officer may so far himself act in the matter of recovering revenue that, under sec. 82 (Burma, 78; Madras, 67) if the forest produce is on the spot and money is found to be due on it,[3] the Forest Officer may detain the produce till the money is paid; and if the money is already due, or otherwise is not paid when it becomes due, the Forest Officer may sell the produce, and the sums payable to Government on account of it are first to be paid out of the proceeds before any other lien (if any) is satisfied.

[1] And so in France (Puton, *Manuel*, p. 94). The "agents" send "*titres de recouvrement*,"—lists of revenue due, to the "Director of domains," who takes steps to recover. In many cases they can be got in by summary process, as in India.

[2] Except *fines*, which are recovered under the Criminal Procedure Law.

[3] Either as the price of it, or as a charge or fee or duty leviable in respect of it.

Duty in making Contracts.

It will be sufficient briefly to allude to the fact that Forest Officers (but of the higher grades only) may have to "execute," in their official capacity, contracts or other legal instruments, required for Departmental work, supplies or material.

Theoretically, all such contracts are made by the Secretary of State for India in Council.[1] In 1859, the Act 22 & 23 Vict. cap. XLI. provided that in India, such contracts might be executed (on behalf of the Secretary of State) by the Governor General, or the head of the Government in any Province (Governor, Lieut.-Governor, Chief Commissioner, or Resident) and that the "execution" has to be indicated in the usual way: (*i.e.*, the Governor &c., does not sign with his own hand, but one of his Secretaries or head of a Department does,—"by order"; and the Office Seal is also usually affixed). But in all cases, the contract so executed, must express that it was done "on behalf of the Secretary of State for India in Council." The *form* of execution (which is a matter of official usage) may be varied by the Governor General (sec. 2). Under this law, the Government of India has issued Resolutions, directing what classes of Forest Officers are to be empowered by their respective Local Governments, to make contracts binding on Government.[2] The precise powers of any of the superior grades of Forest Officers, and the nature (and amount in value) of the contracts he can execute, must be gathered from the Orders in force in each Province. Unless any special order is issued to 'vary the form' of execution, every Government contract must state that is made by "so and so, Conservator of Forests (or whatever his grade), *by order* of the Lieut.-Governor (or Chief Commissioner, &c.), *on behalf* of the Secretary of State for India in Council."

Such contracts may be enforced against, or by, the Government; but "neither the Secretary of State nor any member of his Council, nor any person executing such deed, contract, or

[1] Act for the better Government of India (21 & 22 Vict. cap. 106), sec. 40; which specifies contracts of purchase of land, stores, mortgages, and "any contracts whatsoever" for the purposes of Government.

[2] See Resolution, Government of India, No. 089, 23rd June 1877, and No. 23, 15th October, 1878 (Home Department). I am not aware whether any later orders have been issued.

other instrument, shall be personally liable in respect thereof." All liabilities, costs, damages, &c., are payable out of the revenues of India.

I need hardly remark that no officer would draw up any important agreement, without getting advice from the Government Legal advisers.

(VI.)—Offences against the Authority of Public Servants.

In order that the legal powers given to Forest Officers, no less than other public servants, may be exercised to any purpose, it is obviously necessary that a corresponding liability should be imposed on private persons, in case they resist the execution of those legal powers. If Forest Officers, for example, can demand the aid of certain persons in putting out a forest fire, it must be made penal in those persons to neglect or refuse to give such aid. If a Forest Officer can arrest an offender, it is penal for the offender to resist a *primâ facie* lawful arrest.

I shall therefore, in concluding this lecture, notice the chief cases in which, as far as the Forest administration is concerned. the public officer's power is upheld by law.

These cases are almost all of them included in one chapter (X.) of the Indian Penal Code, headed "Of contempts of the lawful authority of public servants." But many of the sections in this chapter refer to Courts of Justice and judicial proceedings, and these I entirely omit. There are also a few provisions applicable to my subject which the Code gives in other parts, not in Chap. X.

Under secs. 172–3 are punishable those cases where a *legal notice, summons*, or *order*, is to be served, and the person *absconds* in order to avoid, or *resist* service. The latter sec. includes also the intentional *tearing down* of notices, &c., legally *posted*, as, *e.g.*, in cases where a summons which cannot be served personally, is attached to the door of the house where the person resides.

Under sec. 174 is punishable the intentional refusal to *attend* in obedience to a summons, order, &c., lawfully issued and served. Sec. 175 punishes a similar *refusal* to *produce documents*.

Secs. 178–79 and 180–81, refer to refusal to take oath, or answer questions, or to sign depositions and statements, and to making false statements on oath.[1]

Sec. 182 may sometimes come within the practice of a Forest Officer. Here the offence is that of a person giving *false information* to a public officer, so that the officer may *use his power* (of arrest, search, seizure, &c.) to the *injury* or *annoyance* of any person, with whom, but for the false information, the officer would never have thought of interfering.

Forest Officers have in certain cases the power to seize *property* liable to confiscation, or cattle in the act of trespassing. *Resistance to seizure* in such cases is punishable under sec. 183.

Resistance to lawful *arrest of the person* comes under sec. 224, and resistance offered to the arrest *of another person*, under sec. 225.

More directly important to Forest Officers are secs. 176–7, which punish the *intentional omission* to give *information* of a fire, a forest offence, &c., or the giving of *false information* by persons under legal obligation to give information, and of course *true* information, as far as they know (p. 430).

Sec. 187 further makes it penal to refuse, or neglect intentionally, to give *assistance* in cases (which I have before explained), in which the public servant is empowered by law to require assistance (see p. 430).

The general case of *obstruction* of a Forest Officer in the *execution of his duty*, is punishable under sec. 186.[2]

Sec. 189 punishes *threats of injury* to a public servant, with the object of inducing him to do, or forbear from doing, any official act; the threat is punishable whether it imports injury directly to the public servant, or indirectly to some one in whom the offender believes the public servant to be interested.

In another part of the Code will be found similar provisions applying to cases where the offender goes beyond *threats*, and

[1] "Oath" is spoken of, but under the "Oaths Act, No. X., of 1873," a "solemn affirmation" can also be administered, and always is, in the case of natives of the country.

[2] Section 188 can also apply to forest cases. Disobedience of an order under sec. 25 of the Forest Act, regarding carrying fire, regarding removal of obstructions in streams, orders regarding disposition of rafts in transit, or of timber in a depot, are instances of "orders lawfully promulgated;" but they are better dealt with under the Forest Act, as offences against the Act or rules, as the case may be.

actually uses force, or causes hurt, or grievous hurt, in the attempt to deter the public servant from his duty. (Secs. 332, 333, and 353, Indian Penal Code.)

Sec. 184 punishes obstruction to a *lawful sale* conducted by a public servant as such: and sec. 185 refers to *illegal bids* at such auctions.[1]

These are sections which I alluded to as not contained in Chapter X. of the Penal Code, and there are a few others which may be mentioned.

Sects. 170–1 punish the personating of a public officer or wearing a garb or carrying a token similar to that used (as a matter of fact) by any class of public servants. Ill-disposed persons might resort to this device, either to escape detection in committing offences or to impose on the ignorant.

I should, perhaps, repeat under this head, that an offence is committed by *offering* a bribe to a public servant: this being an *abetment* of the offence of *taking* (p. 468).

[1] As "illegal" means not only what is punishable, but what gives rise to a civil claim, a Forest Officer who is bound by his service rules not to trade in timber, *might* come under this provision.

I may here mention that Forest Officers are sometimes much hampered in public sales by *combinations* among merchants. This, however annoying, is not criminal, nor does it come under the sections quoted. We have nothing analogous to the French law (Code Forest: Art. 22), which prohibits secret combinations, and "*manœuvres*" to spoil auctions—"*les troubler ou à obtenir les bois à plus bas prix*," &c., such acts involve penalties besides damages and the nullity of the "*adjudication.*"