



PART - I
Indian Forest Act, 1927

Annexures
IA (1) and IA (2)

Annexure IA (1), (Vide Article - 1.04)



Act No. XVI of 1927

GOVERNMENT OF MAHARASHTRA
LAW AND JUDICIARY DEPARTMENT

The Indian Forest Act, 1927 (In its application to the State of Maharashtra)

(As modified up to the 27th April 1994)

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THE SCHEDULE –Repealed

ACT NO XVI OF 1927

THE INDIAN FOREST ACT, 1927

[21st September 1927]

(i) Amendments:-

Amended by Act 26 of 1930

“ “ “ 3 of 1933

Adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937

Repealed in part by Act 2 of 1948

Adapted and modified by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Amended by Bom. 62 of 1948

Adapted and modified by the Adaptation of Laws Order, 1950

Amended by Bom. 23 of 1951

“ “ “ 25 of 1953

“ “ “ 24 of 1955

“ “ “ 10 of 1956

“ “ “ 17 of 1956

Adapted and modified by the Adaptation of Laws (No. 3) Order, 1956

Amended by Bom. 26 of 1957

“ “ “ 6 of 1961

“ “ “ 15 of 1965

“ “ “ 27 of 1968

“ “ “ 29 of 1975 (30-8-1975)

“ “ “ 14 of 1978 (26-4-1978)

Amended by Mah. 23 of 1984 (22-6-1984)

Amended by Mah. 7 of 1985 (1-6-1985)

- (ii)** An Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce.
- (iii)** The Sections of the above referred Act include Notes containing Legal Rulings and Opinions and Government Orders explanatory of the meaning and scope of the sections.
- (iv)** The word “Provincial Government” wherever occurs may be read as “State Government”
- (v)** The references quoted in the notes pertains to the respective period of legal rulings and opinions and Government orders.

WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest produce ; It is hereby enacted as follows:-

Note 1:- Construction:- The Forest Act is one curtailing proprietary rights of individuals and so the Act and notifications under it must be construed strictly where rights of individuals are trampled upon.
(Chatar Singh, 2 Punj. L.R. 178)

CHAPTER I PRELIMINARY

1. *Short title and extent :-*

- (1) This Act may be called the Indian Forest Act, 1927.
- (2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States other than the Hyderabad area of the State of Maharashtra.
- (3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the states of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orrisa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force:

Provided that, on the commencement of the Indian Forest (Maharashtra Unification and Amendment) Act, 1960, this Act shall be in force in the Hyderabad area of the State of Maharashtra.

2. *Interpretation clause-*

In this Act, unless there is anything repugnant in the subject or context,

- (1) “Cattle” includes elephants, camels, buffaloes, horses, mares, gelding, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids;
- (2) “Forest-officer” means any person whom the State Government or any officer empowered by the State Government in this behalf may appoint to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;
- (3) “forest offence” means an offence punishable under this Act or under any rule made thereunder;
- (4) “forest-produce” includes
 - a) the following whether found in, or brought from, a forest or not, this is to say:-

timber, charcoal, caoutchouc, catechu, wood oil, resin, natural varnish bark, lac, mahua flowers, mahua seeds, kuth, apta and tembhurni leaves, rosha grass, including oil derived therefrom, rauwolfia serpentina and myrobolans, and
 - b) the following when found in, or brought from, a forest that is to say:

- i) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees,
 - ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
 - iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax and all other parts or produce of animals, and
 - iv) peat, surface, soil, rock, and minerals (including limestone, laterite mineral oils, and all products of mines or quarries);
- (4A) “owner” includes a Court of Wards in respect of property under the superintendence or charge of such court;
- (4B) “Police Officer” means a Police Officer as defined in the Bombay Police Act, 1951;
- (4C) “Revenue Officer” means a Revenue officer as defined in the Maharashtra Land Revenue Code, 1966;
- (5) “river” includes any stream, canal, creek or other channels natural or artificial;
- (6) “timber” includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hallowed out for any purpose or not ; and
- (7) “trees” include palms, bamboos, stumps, brush-wood and canes

2A. *Construction of certain reference to central or Bombay Acts :-* In the application of this Act to any area of the State of Maharashtra other than the Bombay area thereof, any reference to a provision of a Central or Bombay Act shall, where no such Act is in force in that area, be construed as a reference to the provision of the corresponding law, if any, in force in that area.

Note 2:- For notifications appointing certain officers to be Forest Officers under this Act and investing them with powers under the different sections and rules, see Article 3.01 (Powers of Forest Officers) in Part III *i.e.* “Statutory Orders” of this M.F.M. Volume II.

Note 3:- Stones and Bricks from ruins situated in Reserved forests :- What constitutes “Forest-produce” is clearly laid down in the definition of that term as given in s.2. Loose stones and the ruins of old buildings whether composed of cut stone or bricks clearly do not come within the category of articles included in the definition of forest produce. (R. 1802 of 28th March 1881)

Note 4:- Crops grown on cleared land in forests :- A person cleared and cultivated a piece of land situated in a forest reserve. He was convicted and punished under s.26. The crop, too, raised on the land was cut and attached. The question was raised whether the crop came within the definition of forest-produce as given in s.2 so as to allow of its disposal under section 56. The R.L.A. was of the opinion that the definition of the term "forest-produce" given in the Forest Act was not exhaustive, and reading the term in its ordinary sense it meant anything which was produced in a forest and therefore included a crop raised in a forest reserve (see clause (b) (ii) of the present definition of `forest-produce`); accordingly the crop was

the property of Government by accession and could, under S.56, be taken charge of by a Forest-Officer.

(R. 6910 of 28th August 1884)

Note 5:- Bamboos are “Forest-produce” whether grown in forest or not :- Upon the question whether bamboos removed from the jungles of a Khoti village should be held to be "forest-produce" so as to require, in transit, a pass from the Forest Department, the R.L.A. recorded the opinion that the term : "trees" by definition already includes bamboos, and bamboos "when they have fallen or have been felled" would (equally with other "trees") become "timber" and therefore “forest-produce” for the purposes of the Forest Act, whether they were grown in a forest or outside a forest; one of the main objects of amending the Act by Act V of 1890 was to give to Government the control of all "timber", whether grown in a forest or not; the Forest Department was therefore justified in requiring a Government pass for the removal of bamboos, etc., cut on malki land.

(R. 2008 of 19th March 1898)

CHAPTER II OF RESERVED FORESTS

3. *Power to reserve forests* :- The State Government may constitute any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Note 6:- As to the application of provisions relating to reserved forests

(a) to village forests see s. 28, last paragraph;

(b) to forests and lands not the property of the Government, see s. 36 and 38;

(c) to forests, waste lands or produce the joint property of the Government and other persons, see s.80.

Note 7:- Forest land and Waste Land : R.L.A's Memorandum:- The land which S.3 empowers Government to constitute a "reserved forest" is precisely the same as the land which under s.29 may be constituted a "protected forest", viz., "forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled."

Land which has been given out for cultivation, is certainly not "waste land". "Forest land" is not defined in the Act, and it is a term not easy of definition, but land which has been given out for agricultural purposes on the ordinary survey tenure, or land which the holder thereof has in any way acquired a right to hold for survey purposes on such a tenure, cannot, I think, properly be called "forest land", even though it was forest land before it was so given out, and even though Government have reserved their right to the trees, or to some of the trees growing therein. This was in effect the opinion in which Government concurred in their R.3112 of 31st May, 1881 (vide N. 9 under section 4), and it is equally valid whether the proposal is to constitute such land a reserved or a protected forest.

But where land which was originally waste and more or less overgrown with forest trees and jungle has been given out merely for grazing or for dalhi cultivation under conditions restraining the cutting of the forest trees, as is the case, I believe, with much warkas land in the Kolaba District, such land is, in my opinion, still forest land and may be dealt with by Government under either s.3 or s.29. But care would have to be taken not to include any such land as that described above in paragraph 2.

(R. 904 of 2nd February 1883)

Note 8:- Powers of Provincial Government to constitute a reserved forest; jurisdiction of Civil Courts in case of ultra vires order :- S.3 does not make the exercise of the power conferred dependent on the opinion or decision of the Provincial Government but upon a question of fact. It runs "the Provincial Government may constitute any forest land or waste land, which is the property of Government, etc." If the land actually fulfils that condition, Government can exercise the powers, not otherwise. The test is, not what appears to the Provincial Government, but what is the actual fact, and as the enabling section gives the Provincial Government no power to decide that fact, it can only be decided by recourse to the Courts, which have authority finally to decide on questions of law and fact wherever their jurisdiction is not expressly barred by the Legislature. The power in s.4 to appoint an officer to inquire and determine as to rights is limited to land, which it is proposed to constitute reserved forest and "to constitute a reserved forest" is a phrase defined in s.3. And under that definition, the constitution of a reserved forest connotes as the object forest or waste land only. The special character of the land is an essential part of the act defined. According to the definition the phrase "to constitute a reserved forest" means to convert land by notification from forest or waste. The land, therefore, to which a proposal under s.4 relates, must be forest or waste land, and it is only in respect of such land that the officer appointed has power to inquire and determine. When the land is forest or waste, the forest officer has the power to inquire into and determine as to rights of way or pasture, forest-produce or water courses, and he may admit or reject such claims with finality, because he is dealing with land in respect of which he has a duly delegated jurisdiction. It is possible there may be other rights in or over land which may render it desirable for Government to acquire full ownership, and for such cases s.11 provides, without, however, extending the application of the section to any land incapable of constitution as reserved forest. The provisions of the I.F.A. do not bar the jurisdiction of the Court to decide whether the land in suit is or is not forest or waste land and whether, if it be not such land, the plaintiffs are entitled to the occupation thereof.

(Balwant Ramchandra v. Secretary of State (1905) I.L.R. 29 Bombay 480)

4. Notification by state government :-

- (1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette.
 - (a) declaring that it has been decided, to constitute such land a reserved forest;
 - (b) specifying, as nearly as possible, the situation and limits of such land; and
 - (c) appointing an officer (hereinafter called "the Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this chapter.

*Explanation:-*for the purpose of clause (b), it shall be sufficient to describe the limits of the forest roads, rivers, bridges or other well-known or readily intelligible boundaries.

- (2) The officer appointed under clause (c) of sub-section 1 shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.
- (3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of them shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

Note 9 :- Meaning of the words "any land" :- Chapter II relates to forest land or waste land described in s.3 and to no other land.

S.3 specifies what land it shall be lawful for the Government to constitute reserved forest : namely, forest and waste land belonging to Government. The words "any land" in s.4 cannot include any other land than it is lawful for the Government to constitute a reserved forest. The Government cannot notify cultivated lands, whether alienated or unalienated, as forest reserves, except by first acquiring all the rights of ownership and converting them into waste lands. The object of s.11 is to meet the case of any claim that may possibly be made of private ownership in or over such forest land or waste land or any portion thereof as is notified under s.4, and to empower the F.S.O to exclude such land from the proposed forest or obtain a surrender of it from the claimant or acquire it under the Land Acquisition Act.

With regard to any land other than forest land or waste land belonging to Government if required for the purposes of the I.F.A., s.84 provides that it can be treated as required for a public purpose and dealt with under the Land Acquisition Act. When such land has been so acquired, it becomes, with all rights in or over the same, public property, subject always to the right of way and all other rights of the public or of individuals legally subsisting. If Government does not dispose of it in any other way or for any other purpose, it becomes waste land belonging to Government, and may be constituted a reserved forest in the manner provided in Chapter II of the I.F.A. (R.3112 of 31st May, 1881)

Read **Note 8** under s.3.

Note 10:- D.F.O as F.S.O. :- It seems inexpedient, and not in accordance with the spirit of the Act, that a D.F.O. should be appointed Forest Settlement and Demarcation Officer. (R.4157 of 28th June, 1882)

Note 11 :- Forest Settlement and Forest Demarcation office may be held by the same Officer :- There is no objection to a F.S.O. being also a Forest Demarcation Officer. A Forest Demarcation Officer is not invested, as such, with any powers under the I.F.A. and he does not, therefore, hold a "Forest Office". Moreover, s.4 does not absolutely prohibit the appointment of a person holding a "Forest Office" to be F.S.O. It merely directs that such an appointment shall not "ordinarily" be made.

(R.1125 of 23rd February, 1881)

Note 12 :- For form of notification under this s., see Appendix Part V(i) of this volume.

5. Bar of accrual of forest rights :- After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued and no fresh clearing for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf .

6. Proclamation by Forest Settlement-officer :- When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein a proclamation :

- (a) specifying as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which as hereinafter provided will ensue on the reservation of such forest; and

- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer written notice specifying or to appear before him and state the nature of such right and the amount and particular of the compensation (if any) claimed in respect thereof.

7. *Inquiry by Forest Settlement-officer* :- The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Note 13 :- Forest settlement Officer has not to record privileges but to deal with rights :- A F.S.O. in his award of settlement is not required to make any record of privileges. The F.S.O. has simply to record in his award column against the different forest numbers, **rights**, their nature and extent, where rights exist, and to record "free or rights" where no rights exist.

A F.S.O. is not to record that certain forest lands should be expunged and that others are available for exchange. This is the work of a Forest Demarcation Officer and not of a F.S.O. as defined by the I.F.A.

(R.4919 of 15-9-1879)

NOTE -- For nature of the above rights see **Note 16** under s.9.

Note 14 :- Former demarcation need not come under settlement again :- Lands handed over to forests under former demarcations should not come with the cognizance of the F.S.O., for the reason that all claims connected with them have already been enquired into, settled, and recorded, and his settlement has been approved of and sanctioned by Government and has been in observance for years. Should the F.S.O. have reason to suspect that in any instance the previous enquiry was insufficient, he may report the case for the special orders of Government as to whether a detailed enquiry is to be made under the Act.

(R.4919 of 15-9-1879)

- 8. *Powers of Forest Settlement-officer* :-** For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:-
- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land and to survey, demarcate and make a map of the same; and
 - (b) the powers of a Civil Court in the trial of suits.

Note 15 :- Surveys under s.8 :- Surveys for the purpose of demarcating forests merely need not necessarily be made under the provisions of Chapter VIII to X of the L.R.C.

S.8 of the I.F.A. empowers a F.S.O. to enter by himself or any officer authorized by him for the purpose, upon any land and to survey, demarcate and make a map of the same, and this appears to be quite sufficient for all the purposes of the I.F.A. Such survey and demarcation, can, however, only take place after a notification declaring that it is proposed to constitute a reserved forest has been issued under s.4. In such notification it is sufficient to describe the limits of the forest by roads, rivers, bridges or other well-known or readily intelligible boundaries" (Vide explanation 1 to s.4). In the notification finally declaring a forest reserved, to be issued under s.20 the limits must be specified "definitely, according to boundary-marks erected or otherwise".

(R.2813 of 9-4-1883)

9. Extinction of Rights :- Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Note 16 :- Rights of way and rights to water-courses are included in the rights referred to in s.9 :- The F.S.O. is appointed to inquire into and determine the existence, nature and extent of any right alleged to exist in favour of any person in or over any land comprised within the specified limits of the proposed forest, and to deal with the same as provided in Chapter II. He has, therefore, two principal duties to attend to; first, to make a proper inquiry and, secondly, to dispose of the claims in accordance with the provisions of the said chapter.

His enquiry is to be made not only into all claims duly preferred, but he is to search for the existence of any rights which are not claimed, by examining Government records taking the evidence of persons likely to be acquainted with any such rights, and personally surveying and mapping out the proposed forest.

The rights so contemplated are classed as follows :-

- (1) Right of pasture.
- (2) Right to forest produce.
- (3) Right of way.
- (4) Right to water-courses.
- (5) All other rights in or over any land.

S.11 provides how the F.S.O. shall deal with the last class of rights.

S.12,13,14,15 and 16 provide how the F.S.O. shall deal with the first and second classes of rights.

The third and fourth classes relate to certain incorporeal hereditaments or easements attaching to the land which is the property of Government. It is obvious that when once after due inquiry a claim to any such right is admitted, or when once the existence of any such right is discovered, the fact of the right is sufficiently established.

Where no claims are preferred in respect of these rights, it is undoubtedly the duty of the F.S.O. not to overlook their existence and not to neglect to make every possible enquiry to ascertain whether any such rights do exist. It depends on the F.S.O. to prevent any hardship occurring to villagers living near proposed forests in respect to the use of public pathways or of water-courses in the forests; and it is not likely that any such rights, where they are clearly defined and ascertainable, will become extinct through the operation of s.9. Any right of this description which is so obscure as not to be claimed at the proper time, or to come to knowledge after careful search has been made, cannot be of much worth.

It is clearly the intention of the Legislature that all existing rights of way or to water-courses should be carefully ascertained and preserved intact unless it is found convenient to stop such ways or water-courses and substitute others for them, as provided by s.25. (R.3112 of 31-5-1881)

Note 17 :- Object of appointing a F.S.O. :- The object of the appointment of a F.S.O. is that after a fixed date all rights not asserted before him or otherwise brought to his knowledge may be **extinguished**.

(R.3329 of 24-6-1879, 3567 of 7-7-1879 and 7840 of 9-11-1882)

10. *Treatment of claims relating to practice of shifting cultivation :-*

- (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.
- (2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.
- (3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise:
 - (a) by altering the limits of the land under settlement so as to exclude land of sufficient extents, of a suitable kind, and in a locality reasonably convenient for the purpose of the claimants, or
 - (b) by causing certain portion of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe .
- (4) All arrangements made under sub section (3) shall be subject to the previous sanction of the State Government.
- (5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11. *Power to acquire land over which rights is claimed :-*

- (1) In the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest-produce or a water course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.
- (2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either :
 - i) exclude such land from the limits of the proposed forest ; or
 - ii) come to an agreement with the owner thereof for the surrender of his rights; or
 - iii) proceed to acquire such land in the manner provided by the land acquisition Act, 1894.
- (3) For the purpose of acquiring such land :-
 - (a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894;
 - (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
 - (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
 - (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties may award compensation in land, or partly in land

and partly in money.

Note 18 :- F.S.O. has no power to expunge former settlements- Although under s.11, 15(2) (a),(b) and 16, a F.S.O. is empowered to exclude proposed forest land which may be burdened with rights, to give some forest tracts as compensation for rights that were attaching to other forest tracts retained in reserved forest, to alter the limits of **proposed forest**, so as to exclude forest land from the exercise of rights, he has no power to throw out any portion of declared reserved forest previously settled - land indeed which has not been by law subjected to his operations or control in this respect. S.27 of the Act prescribes the procedure to be observed when any forest, or any portion of it, is desired to be removed from the reservation, and the F. S. O.' s duties have no connection with this work.

(R 4919 of 15-9-1879)

12. *Order on claims to rights of pasture or to forest produce :-*

- (1) In the case of a claim to rights of pasture or to forest produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.
- (2) A copy of the order passed under sub section (1) shall be furnished to the claimants by the Forest Settlement-officer, and another copy of that order shall be forwarded to the Forest Officer who attended the inquiry or, if no such officer attended, to the Divisional Forest Officer.

Note 19:- The F.S.O. has no jurisdiction as to a right to the proceeds of forest produce :- The F.S.O. can only enquire into and determine the existence, nature and extent of rights in or over the land or actual forest produce, and has no jurisdiction as to a right to the **proceeds** of forest produce.

(R. 8598 of 24-12-1888)

13. *Record to be made by Forest Settlement-officer :-* The Forest Settlement-officer when passing any order under section 12, shall record, so far as may be practicable.

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any), in respect of which the exercise of such rights is claimed.

14. *Record where he admits claim :-* If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which is from time to time authorized to take or receive, any such other particular as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Note 20 :- S.38. L.R.C., not applicable to grazing rights :- Grazing grants recorded by the survey can at any time be dealt with under s.38 of the L.R.C., but **grazing rights** imply that the survey records rights which it found to be in existence, and if the F.S.O. has placed them on record, neither the Survey nor the commissioner could touch them. (R.4474 of 15-7-1887)

15. *Exercise of rights admitted :-*

- (1) After making such record, the Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights of admitted.
- (2) For this purpose the Forest Settlement-officer may :-
 - (a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest produce (as the case may be) to the extent so admitted; or
 - (b) so alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient, for the purpose of the claimants; or
 - (c) record an order, continuing to such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, as such reasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the State Government.

16. *Commutation of rights :-* In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the State Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Note 21 :- Commutation must be permanent and complete :- The object of Chapter II of the I.F.A. is to enable the State to maintain certain areas permanently as reserved forest, and with this view an elaborate procedure is prescribed. The F.S.O. hears claims to rights, and, under s.14, makes a record of such rights as he admits. Then under s.15, "having due regard to the maintenance of the reserved forest" he proceeds to pass such orders as will ensure the continued exercise of the rights so admitted. If, however, he finds it impossible, having, again, "due regard to maintenance of the reserved forest", to arrange the matter suitably, he can, under s.16, commute such rights, either by money payment, or by grant of land, "or in such other manner as he thinks fit." The commutation of rights thus provided for must be of a permanent, and not of a temporary character, and in fact, it must be of such a nature (in whatever manner it may be made) as to absolutely extinguish the right which the F.S.O. has admitted, but the exercise of which cannot be allowed with due regard to the maintenance of the reserved forest. It may be observed that the words "other manner", in the expression "in such other manner as he thinks fit", simply refer to the nature of the consideration which the right-holder is to receive for the commutation of his rights, and imply that it must be a mode **ejusdem generis** with payment of lump sum or a grant of land.

(Letter No.893 of 23-9-1887, from G.of I. Revenue and Agriculture Forests)

Note 22 :- Commutation should be an extinguishment of the rights commuted :- The commutation of rights provided for in s.16 of the Act was intended to be, and according to the true construction of the terms of the section is, an extinguishment of the right commuted for the consideration mentioned, just as by s.11 and absolute surrender [Sub-clause (2) (ii)] or complete and permanent acquisition [Sub-clause (2) (iii)] of the rights dealt with by that section, are provided for. This view is supported by the terms of s.27, which appear to assume the operation of the Act on forest rights to be limited to extinguishment or absolute acquisition of the same, and by the fact that nowhere in the Act is there any trace of an intention that forest rights should, under its provisions, be suspended or temporarily taken up by Government. The expression at the end of s.16, "in such other manner as he thinks fit", may be construed as having reference only to the consideration to be paid or given for the right commuted, and these words cannot properly be interpreted as in any degree amplifying or affecting the meaning of the word "commuting" which must be read in its ordinary significance of "exchanging", out and out, and permanently. There seems no reason why a cash allowance, either permanent or temporary, and terminable at a fixed period or on the expiry of one or more lives, should not form the consideration for the commutation (i.e. permanent acquisition) of rights under s.16. The granting of such allowances, either permanent or temporary, in lieu of the rights commuted, would be within the scope of the words "in such other manner as he thinks fit", at the close of the section, and no rule appears to be necessary to warrant the adoption of this course. There can be few forest rights for the permanent acquisition (commutation) of which allowances, terminable at periods more or less remote, according to the nature and value of the rights, would not be adequate compensation.
(Advocate General's No. 28 of 8-11-1887, vide R.8524 of 15th December 1887)

Note 23 :- Commutation is compulsory where settlement under s.15 is impossible :- In cases in which the F.S.O. "finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under s.15 as shall ensure the continued exercise of the Inamdar's rights to the extent" to which he has admitted their existence, s.16 requires that the F.S.O. "**shall** commute such rights, either by the payment to such persons of a sum of money *in lieu* thereof, or by the grant of land or in such other manner as he thinks fit". This it is incumbent on the F.S.O. to do, and an appeal will lie under s.17 against any order he may pass. The provisions of the Land Acquisition Act are not applicable. The commutation must be made under s.16, I.F.A., and subject to such rules, if any, as Government may have prescribed under that section.
(R.6940 of 29th August 1884)

17. Appeal from order passed under section 11, section 12, section 15 or section 16 :- Any person who has made a claim under this Act, or any Forest officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such order :

Provided that the State Government may establish a Court (hereinafter called the "Forest Court") composed of three persons to be appointed by the State Government and when the Forest Court has been so established, all such appeals, shall be presented to it.

Note 24 :- Right of appeal lapses after 3 months :- S.17 gives "right of appeal within three months from the date of the orders passed" and it follows that after that period there is no right of appeal against the awards of the F.S.O.
(R. 4888 of 18th June 1884)

18. Appeal under section 17 :-

- (1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same .
- (2) If the appeal be to an officer appointed under section 17 it shall be heard in the manner prescribed for the time being for the hearing of appeals in matter relating to land-revenue.
- (3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.
- (4) The order passed on the appeal by such officer, or Court, or by the majority of the members of such Court as the case may be, shall subject only to revision by the State Government, be final.

Note 25 :- Government have no power to revise order when there is no appeal under s.17:- S.18 empowers Government to revise an appellate order when an appeal has been made under s.17. But when no such appeal is made Government have no power to revise the order of the F.S.O., nor is Government vested with authority to quash proceedings and direct a fresh enquiry.

(R.4090 of 9th June 1886 and 3027 of 14th May 1887)

Note 26 :- The Bombay Revenue Tribunal - The power vested in the Provincial Government to revise decisions in cases under s.18 and 22 has been transferred to the Bombay Revenue Tribunal by s.4 of the Bombay Revenue Tribunal Act, 1939 (XII of 1939) and serial No. 12 of the schedule thereto.

For the Bombay Revenue Tribunal Rules, see G.N., 4877/33 of 31st July 1939, pages 1190-91 of the **B.G.G.** Pt. IV-A, dated 31st July 1939.

For the Bombay Revenue Tribunal Regulations see the Tribunal's notification No. 4877/33 of 11th August 1939, pages 1348 to 1351 of the **B.G.G.**, Pt. IV-A dated 11th August 1939.

R.3724/39 of 16th August, 1941 and 10th November, 1942 prescribe the procedure for presentation of Government's case before the Revenue Tribunal in cases fixed for hearing arguments.

(BFM II, N: 33)

19. Pleaders :- The State Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

20. Notification declaring forest reserved :-

- (1) When the following events have occurred, namely :-
 - (a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement-officer;
 - (b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and

all appeals (if any), presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any), to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 have become vested in the Government under section 16 of that Act, the State Government shall publish a notification in the Official Gazette specifying definitely, according to boundary-marks erected or otherwise, the limit of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

Note 27:- Conversion of protected forest into reserved Forest:- Lands with regard to which the provisions of Chapter II have been duly carried out and which have been notified as Protected Forests under s.29 can, without further enquiry being made, be notified under s.20.

(R.5305 of 31st May,1906)

But lands once disforested cannot again be notified as reserved forest unless the provisions of Chapter II are duly carried out, vide **Note 43** below s.27.

(BFM II, N: 34)

21. Publication of translation of such notifications in neighbourhood of forest :- The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under section 15 or section 18 :-The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

Note 28 :- Limitations on the revisional power of Government :- R.L.A.'s Memorandum :- The Collector has confirmed the F.S.O.'s decision, in so far as it related to the award to the lessee, under s.12, of three articles of forest produce. The Conservator asks Government, under s.22, to rescind the Collector's order and require him to try the appeal over again and, in his new decision, to comply with the provisions of the Act, which prescribes that the extent of admitted rights shall be clearly defined

S.18 enacts that the decision of the Appellate officer shall be final, subject only to revision by the Provincial Government. S.22 prescribes the revisional power of Government. It says that Government may "rescind or modify any order made under s.15 or 18, and direct that any one of the proceedings specified in s.15 be taken *in lieu* of any other of such proceedings, or that the rights admitted under s.12 be commuted under s.16." If, therefore, Government think fit to modify the Collector's order under s.18, they are limited, in doing so to directing either,

i) that some other course than that ordered by the Collector under s.15 be taken, or,

ii) that the admitted rights, or some of them, be commuted under s.16.

It is not open to Government, I think, to pass such an order as the Conservator suggests; and as no order has been made by the Collector or the F.S.O. in respect of the admitted rights in question under s.15, none can be made by Government. It is, in my opinion, only possible for Government, if they think fit, now to direct that the admitted rights be commuted under s.16. (R.4149 of 25-6-1888).

2) Further opinion of the R.L.A.: -- The Conservator, Northern Circle, takes exception to the construction put by the Honorable Mr. Naylor, on s.22.

The Honorable Mr. Naylor pointed out that the revisional power of Government is limited by that section to the substitution of any one of the arrangement which a F.S.O. has power to make under s.15 for any arrangement actually adopted by such officer.

The Conservator appears to argue that s.22 must extend to the revision of the order admitting or rejecting the claim, because it gives the Provincial Government power to revise an order under s.18, which is silent as to commutative arrangements,

This argument, however, seems untenable. An appeal may be made under s.17 from any order under s.15, and, therefore, includes commutative arrangements, and such an appeal must be dealt with under s.18 and the order on appeal is subject only to revision. The Conservator is mistaken, therefore, in thinking that the Collector, as appellate Court, has nothing to do with an order under s.15, s.17 and 18 require him to deal with an appeal against an order passed under s.15, and his order thereon is liable to revision only.

The revisional powers of the Provincial Government are not defined, but only referred to in s.18. No provision is made in that section as to when they are to be exercised. The only provision as to the exercise of those revisional powers is to be found in s.22, and it is clear from s.22 and the intervening s.19 and 20, that so far as the admission or rejection of a right claimed is concerned, the decision of the appellate Court under s.18 is final. For s.19 provides for the appearance on behalf of the Provincial Government, as a party interested, at the enquiry and appeal, and s.20 provides for a notification issuing on the decision of the appellate Court, or on the period allowed for appeal expiring without appeal made. It is, therefore, clear :-

a) that the time for the Provincial Government to prefer their claims is when the enquiry or the appeal is proceeding,

b) that on the decision on appeal, or on the expiry of the period allowed without an appeal, the rights are taken to be so definitely settled that the Government are empowered to act on the decision as to them by issuing the final notification.

I would note that it is most improbable that the Legislature intended that Government after appearing as a party in the proceedings and after acting on the decision as binding one, should then assume judicial functions in the very same matter and should exercise them at any time within five years.

S.22 clearly refers to executive or administrative orders only, and as there is no other section defining their powers in revision, those powers must be strictly limited by s.22. The words governing the whole section are "The Provincial Government may an order under s.15 or s.18 **Expressio, unius est exclusio alterius** and Government can revise **any arrangement** and it is **only `for that purpose`** that Government may rescind not, therefore, set aside an order under s.12 as to the existence of a right claimed. They can only deal with the arrangements made under s.15 as confirmed or modified by the appellate Court under s.18 as to the manner in which the rights are to be exercised or commuted. The latter part of the section clearly restricts the power of the Provincial Government in rescinding or modifying an order under s.15 or 18 to the selection of commutative **arrangements.**

It is very possible the original or the appellate Court may or in admitting or rejecting a claim, and an error may have occurred in the present instance. But when the Legislation has appointed the forum, it is not open to the one of the parties interested, if dissatisfied with the decision, to assume appellate powers not conferred by law. Under s.18, the order of the appellate Court is final except so far as the Provincial government may revise it under s.22, and neither Government nor the claimant has any further right of

appeal. Government are not more helpless to prevent the alienation of public property in this instance than in other which comes before a judicial tribunal. They have a right to be heard by the tribunals constituted by law, and the Legislature evidently never intended to empower them to readjudicate on their own rights.

No doubt s.14 requires the F.S.O. to record the extent to which a claim is admitted, and for this purpose the quantity of timber or other forest produce which the claimant is from time to time authorized to take or receive must be specified, and the record must also show whether such timber or other forest produce may be sold or bartered. But **certum est quod certum reddi potest**, and Mr. Lawrence's decision, confirmed by Mr. Keyser, limits the right by a test as definite arithmetic. The claimant's right to wood is limited by the order which he is permitted by the Collector to take, and the power to take wood for sale is, I think, clearly excluded by the words "for purely domestic purposes in the village". The rights to fruit trees and brab trees are no less clearly defined under paragraphs 4 and 6 of Mr. Lawrence's decision, and Mr. Keyser as appellate Court, has confirmed the decision on these points without qualification.

The Conservator, Northern Circle, in paragraph 14 of his letter leaves incomplete his quotation of s.15.

The F.S.O. may make arrangements under (a),(b) and (c) of s.15, but is not bound to do so. All he is bound to do is, to "pass such orders as will ensure the continued exercise of rights admitted". This is to protect the interests of the claimant. The imperative shall at which Conservator's quotation stops short, refers only to the passing of those orders. The manner of effecting the object of those orders is discretionary, and if the Provincial Government consider that better arrangements might be made by commuting the admitted rights, the law allows them five years to judge by the light of practical experience as to the best way in which such arrangements may be effected.

It is very possible that the orders of the F.S.O. as confirmed by the appellate Court, may not have provided for the continued exercise of the rights admitted, in such a way as to provide adequately for the maintenance of the reserved forest, and it is here that the revisional power of the Provincial Government may legally be exercised, who may proceed under (a),(b) or (c) of s.15, or under s.16 may commute the claimants' rights by a money payment or a grant of land, or in any other manner they may think fit.

(R.957 of 6-2-1889)

Note 29:- The revisional power of the Provincial Government under s.22 has been transferred to the Bombay Revenue Tribunal, see **Note 26** under s.18. **(BFM II, N: 37)**

23. *No right acquired over reserved forest except as here provided :-* No right of any description shall be acquired in or over a reserved forest except by succession under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.

24. *Rights not to be alienated without sanction :-*

(1) Notwithstanding anything contained in section 23 no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise without the sanction of the State Government.

Provided that when any such right is appendant to any land or house it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right

shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. *Power to stop ways and water courses in reserved forests* :- The forest officer may with the previous sanction of the State Government or of any officer duly authorised by it in this behalf, stop any public or private way or water course in a reserved forest provided that a substitute for the way or water course so stopped which the State Government deems to be reasonably convenient already exists or has been provided or constructed by the Forest officer in lieu thereof.

26. Acts prohibited in such forests :-

(1) Any person who :

- (a) makes any fresh clearing prohibited by section 5 or
- (b) sets fire to a reserved forest or to proposed forest in land in respect of which a notification declaring the decision of the State Government to constitute it a reserved forest has been issued under section 4 or in contravention of any rules made by the State Government in this behalf kindles in such forest any fire or leaves any fire burning, in such manner as to endanger such a forest; or who in a reserved forest or a proposed forest in land notified as aforesaid under section 4 ;
- (c) kindles, keeps or carries any fire except at such seasons as the forest officer may notify in this behalf;
- (d) trespasses or pastures cattle, or permits cattle to trespass;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest produce;
- (h) clears or breaks up any land for cultivation or any other purpose ;
- (i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares ; or
- (j) in any area in which the Elephants Preservation Act, 1879 is not in force, kills or catches elephants in contravention of any rules so made;

shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit-

- (a) any act done by permission in writing of the Forest-Officer or under any rule made by the State Government ; or

- (b) the exercise of any right continued under clause (c) of sub section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under section 23.
- (3) Whenever fire is caused wilfully or by gross negligence in a reserved forest the State Government may notwithstanding that any penalty has been inflicted under this section direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit.
- (4) Where a person is convicted under clause (d) or (h) of sub section (1) -
- (a) a Forest Officer not below the rank of a Ranger, or
 - (b) a Police Officer not below the rank of a Sub Inspector, or
 - (c) a Revenue Officer not below the rank of a Mahalkari or Tahsildar, may evict him from the forest or land in relation to which he has committed the offence.

Note 30:- Possession of flint and steel is no offence- S.26 (1) (c) :- The mere possession of a flint and steel within the forest limits does not constitute an offence under s.26 (1) (c).

(Runchhod, 4 Bom.L.R.935)

Note 31 :- Trespass of a human being is an offence :- S.26(1) (d) makes punishable the trespass of a human being in a reserved forest.

(Umdya, C.R. 21 of 1892)

Note 32 :- Entry except by authorized paths is trespass:- S.26 (1)(d) - Any person who enters a forest except by a public or private way, the rights of which have been recorded under s.7, is a trespasser. An unlawful entry on another's land is a trespass; but it is not an offence punishable under the I.P.C., which only contemplates the offence called "criminal trespass", i.e., trespass with intent to commit an offence or to annoy the person in possession. But unlawful entry on a reserved forest is a forest offence punishable under the I.F.A.

(R.3112 of 31-5-1881)

Note 33 :- Permitting cattle to trespass :- s.26 (1) (d)- The question whether the owner of cattle, whose animals trespass in a reserved forest, is criminally liable for committing an offence under s.26 (1) (d), depends upon the whole circumstances of each particular case. In a great many cases, the question will resolve itself into 'did he or did he not take proper precautions to prevent such trespass?', and it does not depend upon the presence or absence of the owner at the moment.

(Samandar, 16 P.R. 1909)

Note 34 :- Liability of absentee owners for cattle trespass :- S.26 (1) (d) - R.L.A.'s Memorandum on the question whether an absentee owner of cattle is criminally responsible for the acts of his servants in permitting cattle entrusted to their care to trespass into forest area closed to grazing.

S.26 of the Cattle Trespass Act, 1871, and s.26 of the I.F.A., impose penalties for trespass by cattle. The former enactment (when made applicable by the Provincial Government to cattle) would render the owner of cattle liable for any trespass committed by his cattle, if he allowed his cattle to trespass on any particular land and, through neglect or otherwise, caused or permitted the land or its produce to be thereby damaged. This section applies to any land and the penalty may be raised to Rs.50. S.26 (1) (d) of the I.F.A. makes it an offence to permit cattle to trespass in a reserved forest. In the case of both of these enactments, if a competent herdsman were employed, it would be necessary, before an absentee owner could be convicted, to prove at least that he had reason to believe that offence was likely to be

committed, and wilfully neglected to take proper precautions against it. I suppose that there would generally be difficulty in proving this.

S.32 (i) of the I.F.A. provides for the making of rules respecting the pasturing of cattle in protected forests and s.33 (l) (h) imposes a penalty for infringement of any such rule. But I doubt whether Government could insert in such rules a more stringent provision than the Act enacts for reserved forests, and in any case such rules apply only to protected forests.

It will be noted that s.55 of the Forest Act prescribes that cattle used in committing a forest offence may be confiscated; this would subject the owner to considerable loss and would probably have as much effect as any other penalty.

A master is in general criminally liable for the criminal acts of his servant only if he abets them; and to render him liable for any less degree of complicity an express legislative enactment is required. Except those stated above, I do not think there is any such enactment at present touching the matter under reference.
(R.621 of 21-1-1919)

Note 35 :- Removal of private timber through reserved forest by an unauthorised route causing damage :- s.26 (1) (e) - A had some timber cut from trees in occupied land which he wished to take to a port for exportation. The nearest way from the place where the timber was lying was through reserved forest. A asked and obtained the permission of the D.F.O. to transport the timber through forest. The permission was stated to have been conditioned on A carrying his timber by route B and not causing any injury to the forest. A moved the timber by another route C, making a timber slide for the purpose and injuring trees in reserved forest. Thereupon the D.F.O. attached the timber after it had reached the bunder and subsequently accepted compensation under s.68 (l) (b) as consideration for releasing the timber. On the question being raised whether the D.F.O.'s action was legal, the R.L.A. recorded the following opinion which was concurred in by Government :-

'Forest produce' includes timber whether found in or brought from a forest or not, and the timber in question was therefore "forest produce". If therefore a "forest offence" was committed regarding such timber, it could be seized under s.52.

A "Forest offence" is an offence punishable under the Act or under any rule made under the Act. Under s.26 (l) (e) it is an offence to cause damage in a reserved forest by negligently dragging timber. If timber is so negligently dragged, in my opinion an offence is committed regarding such timber. In the case put the facts apparently constitute an offence under s.26.

Further, under rule 66 of the rules framed under s.41 no timber shall be moved within any district of the Bombay Province, without a pass from some person duly authorised to issue pass, or otherwise than in accordance with the condition of such pass. The pass must prescribe a route as laid down in rules 66 and 68, and if such route was not observed, then the removal of the timber was punishable under rule 129. If so, a "forest offence" was committed in regard to such timber and could be attached under s.52.

(R.3308 of 13-4-1910)

Note 36 :- Conviction of a dumb person under section 26 (l) (f) -- A District Magistrate forwarded for the orders of the High Court, under s.341 of the Code of Criminal Procedure, the proceedings of a case in which the accused who was dumb, was convicted by a third class Magistrate of an offence under s.26 (l) (f) of the Forest Act.

Held, returning the proceedings, that as the accused was reported to have understood the proceedings, s.341 was not applicable.
(C.R.No.7 of May 1901)

Note 37 :- Conviction under s.26 (1)(i) is illegal in the absence of rules under that clauses :- A conviction recorded under clause (i) of s.26 (l) for shooting in a reserved forest in contravention of any rules which the Provincial Government may from time to time prescribe is illegal, in the absence of any such rules having been passed by Government.
(Hanmanta, C.R.No.51 of 1893)

Note 38 :- Question whether the word 'hunting' in s.26 (1) (i) includes carrying a gun or rifle loaded or unloaded in a reserved forest except along recognized roads or paths while actually traveling.
:- The word 'hunting' as used in the rules under s.26 (1) (i) and 32 (j) includes tracking for the purpose of discovering the lie of wild animals, and in the Northern and Central Circles no licensee is prohibited from employing any number of trackers (see rules 10 and 21, Pt.II-A). Hunting according to its dictionary meaning means the action of chasing, pursuing or searching (see Murray's Dictionary). The definition of the word 'hunting' in rule 10 is inclusive and it includes something more than what the word 'signifies' according to its natural import. Carrying a gun or rifle loaded or unloaded in a reserved forest except along recognized roads or paths while actually travelling in ordinary course cannot amount to hunting as defined in rule 10 and much less to hunting according to its ordinary meaning. Carrying a gun or a rifle loaded or unloaded in a reserved forest even along recognized roads or paths may raise a presumption that the object of it may be for hunting; but such a presumption would be rebuttable and the mere carrying of a gun or rifle would not, by itself, be necessarily sufficient to constitute or prove hunting within the meaning of s.26 (1)(i) although, of course, the presumption will be stronger if such arms are carried into the interior i.e. not along recognized road or paths. Each case will depend upon its own facts. Hunting connotes an element of **pursuit** of game or wild animals and would be such hunting, chasing or pursuit that will be culpable if carried out in reserved forest. For this purpose it will be immaterial whether this pursuit is along recognized roads or paths or in any other part of the reserved forest. Mere carrying of gun loaded or unloaded and whether inside or outside reserved forest would not, **per se**, constitute hunting.

(R.L.A.'s 7089 of 17-9-1938 and R.9518/33 of 24-9-1938)

Note 39 :- A case under s.26 is a "summons case" - A case under s.26 is a "summons case" and Tahsildar, if he did not find the accused guilty, was bound to acquit him, and no order under s.437, Criminal Procedure Code, directing further enquiry could be passed by the District Magistrate or Sessions Judge.

(Amir Khan, I Punj .L.R.50)

Note 40 :- Order for payment of court-fees is illegal :- S.26 and 64 - Accused were convicted of an offence under s.26 (1) (g), and each sentenced to pay a fine of 13 annas, or in default to suffer one day's simple imprisonment, and all of them were ordered to pay annas five as compensation for the loss of the forest fuel or wood and Rs. 1-4-0 as court fee expenses under s.31 of Act VII of 1870. Held setting aside so much of the order of the trying Magistrate as directed payment of court fees, that no court fees had been paid as none were due under s.31 of the Court Fees Act 1870, offences under the I.F.A. being under s.64 of the kind for which police officers may arrest without warrant.

(C.R., Bom. 25 of 1894)

Note 41 :- Punishment for juvenile offenders :- Juvenile offenders may be punished with whipping for the abetment or commission of, or attempt to commit, offences under s.26, 33, and 63 and rules under s.41 for the infringement of which imprisonment is prescribed as a penalty.

(H.12015 of 21-12-1920)

Note 42 :- Operation of general criminal law :- No inference can be drawn as to the intention of the legislature that it prevents the operation of general criminal law by the passing of a special Act, which nowhere expressly sets out any such intention. (Imam Baksh, P.R.10 of 1895).

The I.F.A. does not prevent any person from being prosecuted under any other law for any act or commission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act. No person can however be punished twice for the same offence.

(Vide S.26 of the General Clauses Act.)

27. *Power to declare forest no longer reserved :-*

- (1) The State Government may by notification in the Official gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.
- (2) From the date so fixed such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Note 43:- Reforestation of land disforested under s. 27:- When land has been once disforested it can be made reserved forest only in accordance with the provisions of s.4 to 20 since the existence of rights which may have been acquired subsequent to the disforestation must be inquired into. Such rights can be acquired even though the land remains as Government waste after disforestation. To guard against any subsequent complaints or claims against the Forest department the procedure laid down in s.4 to 20 should be followed. A mere cancellation of the notification issued under s. 27 is not sufficient. (R.1157/24 of 1-8-1924)

CHAPTER III OF VILLAGE FORESTS

28. *Formation of village forests :-*

- (1) The State Government may assign to any village community village panchayat established under the Bombay Village Panchayats Act, 1958 or co-operative society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960, the rights of Government to or over any land which has been constituted a reserved forest or called a protected forest, and may cancel such assignment. All forests so assigned shall be called village-forests.
- (2) The State Government may make rules for regulating the management of village forests, prescribing the conditions under which the community Panchayat or society to which any such assignment is made may be provided with timber or other forest produce or pasture, and their duties for the protection and improvement of such forest.
- (3) All the provisions of this Act relating to reserved or protected forests shall so far as they are not inconsistent with the rules so made apply to village forests according as the forests assigned are reserved or protected forests.

Note 44 :- Question whether the management of village forests can be entrusted to Village Panchayats constituted under the Bombay Village Panchayats Act, 1932 :- The following is a summary of the R.L.A.'s opinion on the subject in which Government concurred :-

S.28 (1) of the I.F.A. provides for assignment of village forest to 'any village community'. The term 'village community' used here is a general one, and since village panchayats constituted under the Bombay Village Panchayats Act, 1933, are statutory bodies and not village communities within the meaning of s.28 of the I.F.A., it would not be legally feasible to assign under that section village forest to such

panchayats unless the section is suitably amended. It is true that under s.26 (1) (f) of the Bombay Village Panchayats Act it is one of the obligatory duties of the panchayat to make reasonable provision for the maintenance and regulation of the use of the forest lands (including lands assigned under s.28 of the I.F.A.). But that only means that if a village forest is assigned by Government to a village community under s.28 of the I.F.A. the village panchayat of such village constituted under the Bombay Village Panchayats Act will have to make provision for the maintenance and regulation of the use of such forest.

Government have therefore directed that pending suitable legislation village forests may be assigned under s.28 of the I.F.A. to village communities in those villages only in which there are village panchayats constituted under the Bombay Village Panchayats Act. (R. 170/39 of 20-9-1940)

CHAPTER IV OF PROTECTED FORESTS

29. *Protected forests :-*

- (1) The State Government may, by notification in the Official Gazette declare the provision of this Chapter applicable to any forest land or waste land which is not include in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.
- (2) The forest land and waste lands comprised in any such notification shall be called a “protected forest”.
- (3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved :

Provided that if, in the case of any forest land or waste land, the State Government thinks that such inquiry and record are necessary but that they will occupy such length of time as in the mean time to endanger the rights of Government, the State Government may, pending such inquiry and record, declare, such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Note 45 :- Preliminary notification unnecessary :- The I.F.A. does not apparently contemplate the issue of any notification stating that it is proposed to constitute certain lands protected forests. S.29 authorizes Government to declare by notification that the provisions of Ch.IV relating to protected forests are applicable to certain descriptions of forest land or waste land, and that the lands comprised in such notification shall be called protected forests. It does not, however, provide for the publication of a notification declaring merely that it is proposed to constitute certain lands protected forests.

(R.538 of 26-1-1881)

Note 46 :- Enquiry into rights :- Under s.29 rights enquired into and recorded at a survey or settlement are sufficiently enquired into the purposes of the Act. (R.4576 of 30-8-1879)

Note 47 :- S.9 and 16 inapplicable to protected forests :- R.L.A.'s Memorandum :- It is not competent to Government to extend the provisions of s.9 regarding the extinction of rights in reserved forests, and of s.16, regarding the commutation of rights in such forests, to protected forests. In case of a protected forest, all that the Act contemplates is an enquiry and a record of rights, not a settlement. If the existence of a right is denied by Government in a protected forest there is nothing to prevent the claimant from resorting to the usual remedy in the Civil Court to establish his claim, if he is so minded. And if his right is admitted he cannot be in any way **compelled** to commute or part with it. A "settlement" with him can only be made with his consent. (R. 2711 of 31-3-1885)

Note 48 :- Enquiry into rights need not necessarily be made by a F.S.O. :- The I.F.A. (vide s.4 and s.7) only really requires the appointment of a F.S.O. and of an appellate authority for the purpose of an enquiry into rights in a reserved forest. With regard to protected forests, s. 29 prescribes that "the nature and extent of the rights of Government and of private persons in or over the forest land or waste land comprised therein shall be enquired into and recorded at **survey or settlement or in such other manner as the Provincial Government thinks sufficient.**"

It is, of course, competent to Government, if they think fit, to direct, with reference to the last ten words of this quotation, that in protected forests the enquiry and record shall be made and prepared by a F.S.O. in the same manner and subject to the same provisions and right of appeal as in the case of reserved forests, but there is no legal necessity for their doing so, it is not even necessary that the enquiry and record be made by a F.S.O.

If, however, protected forests are proposed to be constituted reserved forests, then the enquiry into rights by a F.S.O., subject to the provisions of Ch.II of the Act, will be imperative.

(R.7950 of 9-10-1884)

Note 49 :- Decision of a Civil Court not sufficient for the requirements of paragraph 3 :- The provisions of Ch.IV of the I.F.A. are applicable to any forest land not included in a reserved forest which is the property of Government. A decision of a District Court declaring certain land to belong to Government cannot be taken as sufficient to satisfy the requirements of the third paragraph of s.29.

Nor can the axiom of law, **mullum tempus occurit domino regi** restrict an express enactment.

(R. 5962 of 11-11-1880)

Note 50 :- Disafforestation of areas declared to be protected forest :- Extract from R.L.A.'s opinion on the question whether it is competent to Government to cancel any notification issued by them under the Act declaring a certain area to be protected forest :-

"I am of opinion that it is competent to Government to do this. It appears from the Act that in protected forests no steps are taken for extinguishing private rights. Subject to the provision of s.30 (b), which renders them liable to be merely suspended for a term, such rights continue to exist just as if no notification had issued declaring the area in or over which they are exercisable a protected forest; so that, in truth, such a notification affects only the property of Government. Now it is obviously optional with Government to continue or discontinue on any portion of their own property the restrictions contemplated in protected forests, and it is I think, because it was felt to be unnecessary specially to empower Provincial Governments to cancel notifications declaring certain areas to be protected forests that the Legislature inserted no such provision in the I.F.A. The power is one which naturally appertains to Government independently of legislative enactments. The case of reserved forest is different because it was necessary specially to provide that rights which have been extinguished in a reserved forest shall not revive in consequence merely of such forest ceasing to be a reserved forest. This special provision sufficiently accounts for section 27 which would otherwise, I think, have been unnecessary."

(R.1125 of 23-3-1881)

Although Ch. IV of the Act, dealing with protected forests, does not contain a provision similar to s.27 in the case of reserved forests a formal notification that survey numbers formerly included in a protected forest shall cease to be protected forest is required for general information, especially when it is intended to notify them as reserved forest. If the notification by which land was declared protected forest is not traceable, it will be sufficient if a general notification is issued under s.29 of the I.F.A. read with s.21 of the General Clauses Act, 1897, declaring that it shall cease to be protected forest from a date fixed therein.

(R.L.A.'s 1746 of 23-3-1931 and R.S.36/18/2720 D.of 28.2.1934)

30. Power to issue notification reserving trees, etc. :- The State Government may, by notification in the Official Gazette :

- (a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for due exercise of the right suspended in the portion so closed; or
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, or any land in any such forest.

Note 51 :- Notifications under s.30 are of no avail prior to enquiry into rights as required by s.29 :- R.L.A.'s Memorandum :- (1) As regards the question whether notifications reserving trees and prohibiting the quarrying of stone, burning of lime or charcoal, etc., can be legally issued under s.30, in respect of forest or waste lands before the nature and extent of the rights of Government and private persons in those lands have been inquired into and recorded, it must be remembered that s.29 requires that unless such rights have been inquired into and recorded

- (a) at a survey or settlement, or,
- (b) in such other manner as Government thinks sufficient,

no notification shall issue under that section except for the purpose of preventing the actual rights of Government from being endangered, pending enquiry, in which case the notification leaves existing rights unaffected.

The last paragraph of s.29 contemplates that the notification in cases where the rights of Government are endangered, should be issued only when there is an enquiry **actually pending**. The notification is to be "**pending enquiry and record**", and it was clearly not intended that the enquiry should be indefinitely postponed after issue of the notification.

Where an enquiry has been instituted and is still pending a notification under s.29, final paragraph, can issue only if the enquiry is likely to last so long that the rights of Government may be endangered, but the result of that notification is to leave actual rights, then existing, wholly unaffected. But such a notification would be of no avail whatever, unless it operated under s.33 to protect by penalties the rights of Government then actually existing. S.30, therefore, gives power to Government to declare that the infringement of certain of its rights, then actually existing, shall thereafter entail a liability to the penalties provided by s.33. But under the final paragraph of s.29 such declaration cannot abridge or

affect any rights in existence and, therefore, in each prosecution under s.33 the question will be, not only whether Government have notified a reservation or prohibition, but whether such reservation or prohibition in any way affects or abridges pre-existing rights. Until the rights have been enquired into and recorded, it is almost impossible to say what act or order may not abridge or affect them, and if a forest officer prosecutes a private person and such person asserts that the act complained of was done in the exercise of a right which he claims, but which has not been enquired into, settled and recorded, it is hardly to be expected that the Criminal Courts will convict.

There would thus be a great practical difficulty in enforcing the penal provisions of s.33 in respect of any notified forest prior to enquiry into existing rights, for every prosecution would involve an enquiry into those rights, and unless it could be shown affirmatively that the reservations and prohibitions did not in any way affect or abridge existing rights, the prosecution would fail.

(R.2058 of 19-3-1890)

(2) The above argument applies equally to a declaration by Government under s.30 (b) as to a declaration under clause (a) or clause (c) of that section.

(R.5645 of 13-8-1890)

31. *Publication of translation of such notification in neighbourhood* :- The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

32. *Power to make rules for protected forests* :- The State Government may make rules to regulate the following matters, namely :-

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacturing and removal of forest produce, from protected forest;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest produce for their own use, and the production and return of such licences by such person;
- (c) the granting of licences to persons felling or removing trees or timber or other forest produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in

- such forests, and the killing or catching of elephants in such forests in areas in which the Elephants Preservation Act, 1879 is not in force;
- (k) the protection and management of any portion of a forest closed under section 30; and
 - (l) the exercise of rights referred to in section 29.

33. Penalties for acts in contravention of notification under section 30 or of rules under section 32 :

- (1) Any person who commits any of the following offences, namely:-
 - (a) fells, girdles, lopes, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;
 - (b) contrary to any prohibition under section 30, quarries any stone or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest produce;
 - (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;
 - (d) sets fire to such forests, or kindles a fire without taking all reasonable precautions to prevent its spreading or any tree reserved under section 30 whether standing, fallen, or felled, or to any closed portion of such forest;
 - (e) leaves burning and fire kindled by him in the vicinity of any such tree or closed portion;
 - (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
 - (g) permits cattle to damage any such tree;
 - (h) infringes any rule made under section 32; shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.
- (2) Whenever fire is caused wilfully or by gross negligence in a protected forest the State Government may notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest produce shall be suspended for such period as it thinks fit.
- (3) Where a person is convicted of an offence under sub section (1)
 - (a) a Forest Officer not below the rank of Ranger ; or
 - (b) a Police Officer not below the rank of Sub Inspector ; or
 - (c) a Revenue Officer not below the rank of Mahalkari or Tahsildar, may evict him from the protected forest in relation to which he has committed the offence.

Note 52 :- S.33 is inoperative unless provisions of s.30 and 32 have been complied with:- Unless notifications of reserved trees and restrictions on the collection of produce in protected forests are published under s.30 and rules as to the granting of licenses to remove produce are made under s.32, the felling and lopping of trees and the collection and removal of produce are not offences under s.33.

Note 53:- Conviction under s.33 (1)(a) for cutting trees in occupied land not legal:- Accused was convicted of cutting trees reserved in a protected forest under s.30 (a). Held, acquitting the accused, that a protected forest may be notified under s.29, but powers under this section are restricted to lands, which are forest or waste lands. Whatever liability the accused might be under in regard to the provisions of any other law, he could not be convicted under s.33(1)(a), for the land which formed part of survey number in an occupant's holding and was assessed, was not shown to be within the class of lands to which the powers of Government under s.29 and 30 applied.

(Sheshgirirao Vithalrao, 7 Bom. L.R.462-2C.L.J.437)

Note 54 :-Award of compensation for damage to protected forest is illegal :-There is no provision, either in the Act or the rules framed thereunder, to award compensation for damages in respect of the protected forest.

(Karianna Hulianna, 8 Bom. L.R.987, and 5 C.L.J. 9)

Note 55 :- Conviction for quarrying stones in protected forest by a P.W.D. contractor without formal permission of the Forest Department:- Accused, a contractor engaged by the P.W.D., quarried stones required for a public road, from a place which was pointed out to him by the Officers of that Department. The place in question was in a protected forest and no permission was taken of the Forest Department for quarrying. The accused was, under these circumstances, convicted of an offence under s.33 (1), clauses (a),(b) and (c), of the I.F.A. read with s.40 and 114 of the I.P.C. Held, reversing the conviction and sentence, that the accused was entitled to the protection of s.79 of the I.P.C.

(Emperor V.Kassim Isub, 128)

34. Nothing in this Chapter to prohibit acts done in certain cases :-Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest officer, or in accordance with rules made under section 32, or except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

34A. Interpretation :- For the purposes of the Chapter “forest” includes any land containing trees and shrubs, pasture, lands and any other land whatsoever which the State Government may, by notification in the Official Gazette, declare to be a forest.

35. Protection of forests for special purposes :-

- (1) The State Government may, by notification in the Official Gazette-
 - (i) regulate or prohibit in any forest-
 - (a) the breaking up or clearing of the land for cultivation ;
 - (b) the pasturing of cattle;
 - (c) the firing or clearing of the vegetation;

- (d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees;
 - (e) the lopping and pollarding of trees;
 - (f) the cutting, sawing, conversion and removal of trees and timber; or
 - (g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;
- (ii) regulate in any forest the regeneration of forests and their protection from fire; when such regulation or prohibition appears necessary for any of the following purposes;
- (a) for the conservation of trees and forests;
 - (b) for the preservation and improvement of soil or the reclamation of saline or water logged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
 - (c) for the improvement of grazing;
 - (d) for the maintenance of a water supply in spring, river and tanks;
 - (e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;
 - (f) for the maintenance of reservoirs or irrigation works and hydro-electric works;
 - (g) for protection against storms, winds, rolling stones, floods and drought;
 - (h) for the protection of roads, bridges, railways and other lines of communication ; and
 - (i) for the preservation of the public health.
- (2) The State Government may, for any such purpose, construct at its own expense in any forest such work as it thinks fit.
- (3) No notification shall be made under sub section (1) nor shall any work be begun under sub section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause within a reasonable period to be specified in such notice why such notification should not be made or work constructed as the case may be, and until his objection, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.
- (4) A notice to show cause why a notification under sub section (1) should not be made, may require that for any period not exceeding one year or till the date of the making of a notification, whichever is earlier the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things specified in clause (i) of sub section (1), whether by reason of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub section

- (1), to the extent specified in the notice.
- (5) A notice issued under sub section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 for the service of summons and shall also be published in the manner prescribed by rules.
- (5A) Where a notice issued under sub section (3) has been served on the owner of a forest in accordance with sub section (5), any person acquiring thereafter the right of a ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.
- (6) Any person contravening any requisition made under sub section (4) in a notice to show cause why a notification under sub section (1) should not be made shall, on conviction , be punished with imprisonment for a term which may extend to six months or with fine, or with both.
- (7) Any person contravening any of the provision of a notification issued under sub section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

36. *Power to assume management of forests :-*

- (1) In case of neglect of, or wilful disobedience to, any regulation or prohibition, under section 35, or if the purposes or any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest and after considering his objections, if any place the same under the control of a Forest Officer and may declare that all or any of the provisions of this Act relating to reserved or protected forests shall apply to such forest.
- (2) The net profits, if any, arising from the management of such forest shall be paid to the said owner.

36A. *Manner of serving notice and order under section 36 :-* The notice referred to in sub section (1) of section 36 and the order, if any, made placing a forest under the control of a Forest Officer shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 for the service of summons.

36B. *Period of control :-*

- (1) The period of such control of any forest shall be for ten years from the date of the order aforesaid; but such period may thereafter be extended for successive periods of not more than ten years each; Provided that the period of such control shall not in the aggregate exceed 30 years from the date of the order.
- (2) The Forest Officer, under whose control the forest is placed, shall not, later than six months before the expiry of any period, referred to in sub-section

- (1), make a report regarding such control and shall state therein whether in his opinion, any period of control should be extended.
- (3) After considering any such report and subject of sub-section (1), the State Government shall decide whether to extend any period of control or whether to terminate it in the manner provided in the next succeeding section.
- (4) No period of control shall be extended unless the owner has been given reasonable opportunity of showing cause against such extension.

36C. *Termination of Control –*

- (1) If the State Government decides to terminate any period of control of any forest, it shall, by order published in the *official gazette* and in such other manner as may be prescribed by rules, so declare; and thereupon possession of the forest shall be given to the owner, or if the owner be dead, to any person entitled to such possession, together with any sum of money which may be standing to the credit of such owner.
- (2) All acts done or purported to be done by the Forest Officer in respect of any forest placed under his control, during the period of such control or of any extension thereof, shall be binding on the owner of such forest or any person to whom possession of the forest has been delivered under this section.

37. *Expropriation of forest in certain cases :*

- (1) In any case under this Chapter in which the State Government considers that, in lieu of placing the forest under the control of a Forest Officer the same should be acquired for public purposes the State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

38. *Protection of forest at request of owner :*

- (1) The owner of any land or if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represents, in writing to the Collector their desire,
 - (a) that such land be managed on their behalf by the Forest Officer as reserved or a protected forest on such terms as may be mutually agreed upon; or
 - (b) that all or any of the provision of this Act be applied to such land.
- (2) In either case, the State Government may, by notification in the *Official Gazette* apply to such land such provisions of this Act as it think suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER VI

OF THE DUTY ON THE TIMBER AND OTHER FOREST PRODUCE

39. *Power to impose duty on timber and other forest-produce :*

- (1) The Central Government may levy a duty in such manner, at such places and at such rates as it may declare by notification in the *Official Gazette* on all timber or other forest-produce-
 - (a) which is produced in the territories to which this Act extends and in respect of which the Government has any right;
 - (b) which is brought from any place outside the territories to which this Act extends.
- (2) In every case in which such duty is directed to be levied *ad-valorem*, the Central Government may fix by like notification the value on which such duty shall be assessed.
- (3) All duties on timber or other forest-produce which at the time when this Act comes into force in any territory, are levied therein under the authority of the State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.
- (4) Notwithstanding anything in this section, the State Government may until provision to the contrary is made by Parliament continue to levy any duty which it was lawfully levying before the commencement of the Constitution under this section as then in force;

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the State, and similar produce of the locality outside the State, discriminates in favour of the former, or which in the case of timber or other forest-produce of localities outside the State, discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.

Note 56 :- Duty on timber etc. brought from places outside British India :- Under the powers vested in them by sub-s.39 (1) (b) as it stood before the passing of the Government of India Act, 1935, the Bombay Government, with the previous sanction of the Governor General in Council, prescribed the levy of duty on timber, etc, brought into the East and West Khandesh districts from the Hyderabad, Indore Barwani and Bhopal States. It was held in *Emperor v. Kadarbhai Usufalli Bohri*, 29 Bom.L.R. 987, that under s.39 and the notifications issued by the Provincial Government thereunder duty could be levied only on timber or other forest produce brought directly from the above States in Khandesh and that consequently timber grown in the Indore State and purchased by a timber merchant and stored in his depot at Harda in the Central Provinces of British India (where there was no levy of duty) and which was subsequently purchased from that merchant by the accused, another timber merchant, and brought to his own depot at Dharangaon in the East Khandesh district was not liable to duty and that the action of the accused in refusing to pay the duty and to allow the R.F.O. to search for or remove the timber did not amount to an

offence under section 186, I.P.C., of obstructing a public servant in the discharge of his duties, as the latter was acting wholly outside his jurisdiction or authority. (BFM II, N: 80)

Note 57 :- Duties levied on timber and other forest produce imported from the Hyderabad, Indore, Barwani and Bhopal States should continue to be recovered under s.143 (2) of the Government of India Act, 1935, until a contrary provision is made by the Central Legislature.

(R. 9096-D/24 of 11-10-1937)

40. *Limit not to apply to purchase money or royalty* : Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase money or royalty on any timber or other forest, produce, although the same is levied on such timber or produce while in transit, in the same manner, as duty it levied.

CHAPTER VII

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

41. Power to make rules to regulate transit of forest-produce :

- (1) The control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.
- (1A) Notwithstanding anything contained in any law for the time being in force, the State Government may make rules to regulate by grant of licences, within the forest limits or such distance therefrom not exceeding eighty kilometers as may be determined, the converting or cutting of timber in a saw mill, and prescribe fees and conditions, subject to which such licence may be granted, and the manner in which, and the authority to whom, an appeal against the order of refusal, suspension or revocation of a licence may be filed;
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may-
 - (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State ;
 - (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;
 - (c) provides for the issue, production and return of such passes and for the payment of fees therefor;
 - (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe

- that any money is payable to the Government on account of the price thereof, or on account of duty, for royalty or charge due thereon or to which it is desirable for the purpose of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stores at and removed from such depots;
 - (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be close or obstructed;
 - (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
 - (h) prohibit absolutely or subject to conditions, within specified local limits the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammer or other implements used for marking timber;
 - (i) regulate the use of property marks for timber, and the registration of such marks, prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.
- (3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

41A. *Powers of Central Government as to movement of timber across customs frontiers* : Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest produce may be imported, exported or moved into or from the territories to which this Act extends across, any customs frontier as defined by the Central Government and any rules made under section 41 shall have effect subject to the rules made under this section.

Note 58 :- In pursuance of entry 19 of List I in the 7th Schedule to the Government of India Act, 1935, the Central Government in its notification No. Customs 1-X of 1-4-1937, defined the customs frontier for the purpose of that entry as the frontier, when one or more than one, whether sea or land, whether exterior or interior, of the British India. (BFM II, N: 83)

42. *Penalty for breach of rules made under section 41 :*

- (1) The State Government may by such rule prescribe as penalties for the contravention thereof imprisonment for a term which extend to one year or with fine which may extend to two thousand rupees, or both.
- (2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. *Government and Forest Officers not liable for damage to forest-produce at depot :* The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41 or while detained elsewhere for the purpose of this Act; and no Forest officer shall be responsible for any such loss or damage, unless he cause such loss or damage negligently, maliciously or fraudulently.

44. *All persons bound to aid in case of accidents at depot :* In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest officer or Police officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45. *Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly :*

- (1) All timber found a drift, beached, stranded or sunk;
All wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered, or defaced by fire or otherwise; and in such areas as the State Government directs, all unmarked wood and timber; shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, provided in this Chapter.
- (2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot, which the Forest-officer may notify as a depot for the reception of drift timber.

- (3) The State Government may, by notification in the *Official Gazette* exempt any class of timber from the provisions of the section.

Note 59 :- Settlement of claims of the Forest and Salt Departments to salvaged timber :- Timber salvaged in tidal waters should not be disposed of by the Salt Department as 'wreck' under Pt.VII of the Merchant Shipping Act 1923, unless proof is forthcoming that it was carried from the sea into tidal waters. Similarly any timber salvaged from the sea should be handed over to the Forest Department for disposal under Ch.VIII of the Indian Forest Act, 1927, as drift timber if it is proved by that Department that it was carried away by flood from any forest depot. Prima facie timber salvaged at sea or on the-open sea shore outside the limits of a creek and timber which can be proved to have entered a creek on a flood tide should be treated as "wreck" and dealt with by the Salt Department in the first instance, while timber stranded on a creek bank which cannot be proved to have come in on a flood tide should be dealt with by the Forest Department.

(R.1800/28 of 31-5-1929)

Note 60 :- Right of Government under s.45 to collect and store drift and stranded timber with obligation to notify:- The object of Ch.VIII of the I.F.A. is to tangle the rights of owners, and not to deprive them of their property in drift and stranded timber and wood. S.45 does not divest the owner of, or transfer to the Government, any right therein. Nor does anything in the Act affect the right of the Government to take possession and dispose of timber and wood whereof they are the undisputed owners. But upon certain conditions only, the Government have a right to the possession of any drift and stranded timber and wood collected by their officers, which, however, may be claimed by the true owner, who may be a person holding a jalkar or water right comprehending those things. The conditions are that the officers of Government shall store the timber in the manner, and issue the notifications, required by the Act. In case of such procedure not being followed, and the wood being treated as the property of the Government, the latter are in the event of the wood being found not to belong to them in no better position than any other trespasser. The title to collect given to the Government by the Act is coupled with, and dependent upon, the duty of giving notice to the public, in order that the true owner, whether he be a person from whom the wood has drifted away or the owner of a jalkar, or however he may be entitled, may claim the drifted timber in the manner, and within the time, prescribed by the Act. There is no presumptive ownership of the Government save where their officers collect and hold for the true owner, in the first instance subject to the statutory duty of giving notice.

(Amriteswari Debi v. Secretary of State for India; I.L.R. 24 Cal. 504; L.R.I.A. 33; I.C.W.N.249)

46. Notice to claimants of drift timber : Public notice shall from time to time be given by the Forest officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. Procedure on claim preferred to such timber :

- (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.
- (2) If such timber is claimed by more than one person the forest officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the civil Courts and retain the timber pending the receipt of an order from any such Court for its disposal.

- (3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government or against any Forest-officer, on account of such rejection or the detention or removal of any timber, or the delivery thereof to any other person under this section.
- (4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered or a suit has been brought as provided in this section.

48. *Disposal of unclaimed timber* : If no such statement is presented as aforesaid or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him.

49. *Government and its officers not liable for damage to such timber* : The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. *Payments to be made by claimant before timber is delivered to him* : No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

51. *Power to make rules and prescribe penalties* :

- (1) The State Government may make rules to regulate the following matters, namely:-
 - (a) the salving, collection and disposal of all timber mentioned in section 45;
 - (b) the use and registration of boats used in salving and collecting timber;
 - (c) the amount to be paid for salving, collecting, moving, storing or disposing of such timber; and
 - (d) the use and registration of hammers and other instruments to be used for marking such timber.
- (2) The State Government may prescribe, as penalties, for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER IX

PENALTIES AND PROCEDURE

52. *Seizure of property liable to confiscation and forfeiture :*

- (1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce together with all tools, boats, vehicles or cattle used in committing any such offence may be seized by any Forest officer or Police-Officer.
- (1A) Any Forest-officer or Police officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest-producer in respect of which there is reason to believe a forest offence has been or is being committed require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle.
- (2) Every officer seizing any property under this section shall place on such property, or the receptacle or vehicle (if any) in which it is contained, a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior;

Provided further that, where the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest-produce as may be notified by the State Government from time to time (hereinafter referred to as the “notified forest produce”) and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned authorised officer under section 61A.

Explanation – For the purposes of this Chapter, the expressions “property of Government” and “property of the State Government” include the property belonging to the Forest Development Corporation of Maharashtra Limited.

53. *Power to release property seized under section 52 :* Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, vehicles or cattle under section 52 may subject to section 61 G, release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try offence on account of which the seizure has been made.

54. Procedure on receipt by Magistrate on report of seizure : Upon the receipt of any report under sub-section (2) of section 52, the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and, subject to sections 58 and 61 G for the disposal of the property according to law.

55. Forest-produce, tools etc. when liable to forfeiture :

- (1) All timber or forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, vehicles and cattle used in committing any forest-offence shall, subject to section 61 G, be liable by order of the convicting Court to forfeiture.
- (2) Such forfeiture may be in addition to any other punishment prescribed for such offence.

56. Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed : When the trial of any forest-offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of Government or has been forfeited be taken charge of by a Forest officer and in any other case may subject to section 61 G, be disposed of in such manner as the court may direct.

Note 61 :- Proper order to be made regarding Government property :- When the forest-produce, in respect of which an offence is committed, is found to be the property of Government the only order which the Magistrate can legally make regarding it under s.56 is that it should be taken charge of by a forest-officer. An order for its sale and the payment of a reward to the informer from its proceeds is therefore illegal.

(Ramaji, C.R. 3 of 1888)

Note 62 :- Disposal of Government property:- S.56 is imperative. If an offence with reference to any forest property be committed, the property must be ordered to be returned to the forest-officer.

(Mahomed Shekubhal,5 Bom.L.R.124)

57. Procedure when offender not known or cannot be found : When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, but subject to section 61 G, order the property in respect of which the offence has been committed, to be forfeited together with tools, boats, vehicles or cattle and other articles used in committing the offence, and taken charge of by the Forest officer, or to be made over to the person whom the Magistrate deems to be entitled to the same;

Provided that no such order shall be made until the expiration of the one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he may produce in support of his claim.

58. Procedure as to perishable property seized under section 52 : The Forest Officer who made the seizure under section 52 may, notwithstanding anything contained in this Act or any other law, sell any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior.

59. Appeal from orders under section 55, section 56 or section 57 : The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order, passed on such appeal shall be final.

60. Property when to vest in Government : When an order for the forfeiture of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred or when on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

61. Saving of power to release property seized : Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52 which is not the property of Government and the withdrawal of any charge made in respect of such property.

61A. Confiscation by Forest Officers of forest produce where forest offence is believed to have been committed :

- (1) Notwithstanding anything contained in the foregoing provision of this Chapter or any law, where a forest-offence is believed to have been committed in respect of timber, sandalwood, firewood, charcoal or any other notified forest-produce which is the property of the State Government, the officer seizing the property under sub-section (1) of section 52 shall without any unreasonable delay produce it, together with all tools, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the *Official Gazette*, not being an officer below the rank of an Assistant Conservator of Forests (hereinafter referred to as “the authorised officer”).
- (2) The State Government may authorise one or more officers for any local area under sub-section (1).

- (3) Where an authorised officer seizes under sub-section (1) of section 52 any timber, sandalwood, fire-wood, charcoal or any other notified forest-produce which is the property of the State Government or any such property is produced before an authorised officer under sub-section (1) and he is satisfied that a forest-offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle used in committing such offence.
- (4) (a) Where the authorised officer, after passing an order of confiscation under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof and the tools, boats, vehicles and cattle to be sold by public auction.
(b) Where any confiscated property or the tools, boats, vehicles and cattle are sold, as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto shall, where the order of confiscation made under this section is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61B. *Issue of show-cause notice before confiscation under section 61A:*

- (1) No order confiscating any timber, sandalwood, fire-wood, charcoal or any other notified forest-produce tools, boats, vehicles or cattle shall be made under section 61A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

- (2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, fire-wood, charcoal or any other notified forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boats, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

61C. *Revision :* Any Forest Officer not below the rank of Conservator of Forests specially empowered by the State Government in this behalf by notification in the *Official Gazette* may, *suo motu* call for and examine the record of the order of the authorised officer under section 61A, and may make such inquiry or cause such inquiry to be made and may pass such order as he

deems fit:

Provided that no such record shall be called for after the expiry of 30 days from the date of such order, and no order under this section shall be passed if, in the meanwhile, an appeal has been filed under section 61D against the order of the authorised officer :

Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. Appeal :

- (1) Any person aggrieved by any order passed under section 61A or section 61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property and the tools, boats, vehicles and cattle to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the authorised officer or the officer specially empowered under section 61C, as the case may be, to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.
- (2) An order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court.

61E. Award of confiscation not to interfere with other punishments : The award of any confiscation under section 61A or section 61C or section 61D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act or any other law for the time being in force.

61F. Property etc., confiscated when to vest in Government : When an order for confiscation of any property or any tools, boats, vehicles or cattle is passed under section 61A or section 61C or section 61D and such order has become final in respect of the whole or any portion of such property, or tool, boat, vehicle or cattle, such property or portion thereof or tool, boat, vehicle, or cattle or if it has been sold under clause (a) of sub-section (4) of section 61A the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

61G. Bar of jurisdiction in certain cases : Whenever any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government, together with any tool, boat, vehicle or cattle used in committing any offences is seized under sub-section (1) of section 52, the authorised officer under section 61A or the officer specially empowered under section 61C or the Sessions Judge hearing an appeal under section 61D shall have,

and notwithstanding anything, to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, court, tribunal, or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle.

62. *Punishment for wrongful seizure :*

- (1) Any Forest officer or Police officer who vexatiously and unnecessarily seize any property on pretence of seizing property liable to confiscation and forfeiture under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.
- (2) Any fine so imposed, or any portion thereof, shall, if the convicting court so directs, be given as compensation to the person aggrieved by such seizure.

63. *Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks :* Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code (XLV of 1860)-

- (a) knowingly counterfeit upon any timber or standing tree a mark used by Forest-Officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-Officer; or
- (c) alters, moves, destroys or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applied;

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

64. *Power to arrest without warrant :*

- (1) Any Forest-Officer, Police Pfficer or Revenue 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 in any forest offence punishable with imprisonment for one month or upwards.
- (2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.
- (3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under chapter IV, unless such act has been prohibited under clause (c) of section 30.

Note 63 :- A Forest-Officer has no authority to keep an arrested person in confinement :- S.64 provides that any forest-officer may arrest without warrant any person "against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards". He is bound to take or send any person so arrested before the Magistrate without unnecessary delay. S.223 of the I.P.C. contemplates the "keeping in confinement" a person who is charged with or convicted of any offence or lawfully committed to custody, and not a person who is arrested and taken at once before a Magistrate on suspicion of being concerned in any offence. A forest-officer has no authority to keep in confinement any person charged with having committed a forest-offence. A person who is arrested on suspicion by a forest-officer cannot be said to be "charged with having committed a forest offence". S.223 of the I.P.C. provides for a more serious kind of offence than such an act of negligence as that of a forest guard who negligently suffers a person arrested on suspicion of having committed a forest-offence to escape, which can only be punished departmentally by fine, suspension or dismissal. (R. 5459 of 21-9-1881)

65. Power to release on a bond a person arrested : Any Forest Officer of a rank not inferior to that of a Ranger, any Police Officer of a rank not inferior to that of Sub-Inspector or any Revenue Officer of a rank not inferior to that of *Mahalkari* or *Tahsildar* who, or whose subordinate, has arrested any person under the provisions of section 64, may subject to and without prejudice to the provisions of section 65A, release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case or before the officer in charge of the nearest police station.

65A. Certain offences to be non-bailable : Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973--

- (a) The offences under sections or clauses of sections mentioned in clause (b) shall be non-bailable.
- (b) The sections and clauses of sections of this Act, referred to in clause (a) are the following, namely :-Section 26, clauses (a), (b), (f), (g), (h) and (i) of sub-section (1) Section 33, clauses (a), (b), (c), (d), (f) and (h) of sub section (1) Section 42. Section 63.
- (c) No person accused of any offence referred to in clause (b), shall, if in custody, be released on bail or on his own bond unless,
 - (i) the prosecution has been given an opportunity to oppose the application for such release, and
 - (ii) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

66. Power to prevent commission of offence : Every Forest Officer, Police Officer and Revenue Officer shall prevent and may interfere for the purpose of preventing the commission of any forest offence.

67. Power to try offences summarily : Any Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court may try summarily, under the Code of Criminal Procedure, 1973 any forest offence punishable with imprisonment for a term not exceeding one year, or fine not exceeding two thousand rupees, or both and the provisions of section 262 to 265 (both inclusive) of the said Code shall as far as may be, apply to such trial ; but notwithstanding anything contained in the said Code, in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment for any term for which such offence is punishable under this Act.

68. Power to compound offences :

- (1) Subject to the provisions of sub section (3), the State Government may, by notification in the *Official Gazette*, empower a Forest Officer,
 - (a) to accept from any person about whom reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 62 or section 63, payment of a sum of money or, at his discretion, an undertaking in writing to pay a sum money, by way of compensation for the offence which such person is suspected to have committed, and
 - (b) when any property has been seized as liable to confiscation, to release the same on the payment of, or at his discretion, on acceptance of an undertaking in writing to pay, the value thereof as named by such Officer.
- (2) On the payment of, or on acceptance of an undertaking in writing to pay, such sum of money, or such named value, or both, as the case may be, to such Officer the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings, other than those under section 82 where necessary, shall be taken against such person or property.
- (3) A Forest Officer shall not be empowered under this section, unless he is a Forest Officer of a rank not inferior to that of a Ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted or agreed to be accepted as compensation under clause (a) of subsection (1) shall in no case exceed the sum of five hundred rupees.

Note 64 :- Meaning of the words "such officer" in clause (2) :- A District Magistrate having reported a case to the High Court under s.438, Criminal Procedure Code, stated that, in his opinion, the prosecution and conviction of an accused under s.26,I.F.A., was illegal, after a R.F.O., not empowered so to do, had accepted compensation from him under s.68,I.F.A. Held that the conviction of the accused and the sentence passed upon him under s.26 were not illegal, as the forest-officer who accepted the compensation was not an officer empowered so to do; that the words " such officer" in clause 2 of s. 68 meant an officer empowered and that, therefore, the case did not fall within clause 2.

(Ganu, C.R.6 of 1892)

Note 65 :- Acceptance of compensation by officers not empowered is illegal:- The acceptance of compensation by officers not empowered by name or as holding an office to accept compensation is clearly illegal, and when payment to such unempowered officers is induced by threat of prosecution or by restraint, it might amount to an offence under the I.P.C. (BFM II, N: 100)

Note 66 :- Compensation is not for damage but for offence :- Under s.68 compensation is allowed not for the damage but for the offence, i.e., for the actual criminality of the act. and the only limit placed is that in sub-s.(3), requiring that the officer empowered should be in receipt of Rs. 100/- per mensem and that the sum accepted as compensation should in no case exceed Rs. 50/- with reference to one offence and one person. (R.L.A.'s 1246 or 25-8-1892 in R.7907 of 6-10-1892)

69. Presumption that forest produce belongs to Government : When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER X CATTLE-TRESPASS

70. Cattle-trespass Act, 1871, to apply : Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest Officer or Police Officer.

Note 67 :- What amounts to trespass :- The accused forcibly opposed the seizure of their cattle by village officers who found them grazing in a reserved forest. The 2nd class Magistrate acquitted them on the ground that there was no trespass as the cattle had not gone into the reserved forest of themselves, but had been driven into it by the accused. Held, reversing the order of the acquittal, that under, S. 70, I.F.A., and S.11 of Act. I of 1871, the cattle were liable to seizure. (C.R. 22 of 1892)

Note 68 :- Cattle staying in reserved forest :- S.11 of the cattle trespass Act. 1871, in which the words “or found straying thereon” occur having been applied to forests by S.70 of the I.F.A. the seizure by a forest-officer of cattle found straying in a reserved forest is legal, even if no damage has actually be done. (Babaji Laxman, C. R. 35 of 1897)

Note 69:- Compensation for damage in case of conviction under section 24, Cattle-trespass Act :- Accused was charged before a 3rd class Magistrate with the offence of forcibly rescuing cattle lawfully seized while grazing in a forest and convicted under s. 24 of the cattle-trespass Act and sentenced to pay Rs. 5/- as fine and Rs. 2/- in addition as compensation for the damage done to the forest. The fine and compensation were recovered and credited to Government. Held, that the order directing payment of compensation which was apparently passed under s. 545 Criminal procedure code, was illegal as such compensation could only be ordered to be paid out of the amount of the fine. The order of the Magistrate was accordingly varied by directing that the amount of Rs. 2/- paid as compensation be restored to the accused, and that such compensation should be paid out of the fine imposed. (C.R. 12 of 1903)

Note 70:- Levy of charges for impounding inadmissible :- On the question whether charges of coolies employed on seizing cattle found trespassing in forest and taking them to a pound can be legally recovered from the owner under s. 13 of the cattle trespass Act, the following Resolution was passed:-

“S.12 of the Act prescribes the fines that may be levied. It indicates also what ‘charges’ (for feeding and watering cattle) may be levied as the condition for releasing impounded animals. No other claim can be legally made”.
(G.1394 of 2-5-1888)

71. Power to alter fines fixed under that Act : The State Government may, by notification in the *Official Gazette*, direct that in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871, there shall be levied for each head of cattle impounded under section 70 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say :

For each elephant..... ten rupees

For each buffalo or cameltwo rupees

For each horse, mare, gelding pony, colt, filly, mule, bull, bullock, cow or heifer.....one rupee

For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid.....(fifty naye paise)

CHAPTER XI OF FOREST OFFICERS

72. State Government may invest Forest Officers with certain powers :

- (1) The State Government may invest any Forest Officers with all or any of the following powers that is to say -
 - (a) power to enter upon any land and to survey, demarcate and make a map of the same;
 - (b) the power of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
 - (c) power to issue a search-warrant under the Code of Criminal Procedure, 1973; and
 - (d) power to hold an inquiry into forest offences and in the course of such inquiry, to receive and record evidence.
- (2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of accused person.

Note 71:- Question whether forest-officers are “police-officers” for the purpose of s.25 of the Indian Evidence Act and whether confessional statements made before them by accused persons are admissible as evidence :- S. 25 of the Evidence Act says “No Confession made to a police officer shall be proved as against a person accused of any offence”. There is no ruling of any High Court that a forest-officer is to be held to be a police-officer for the purposes of this section, but there is a full Bench ruling of the Bombay High Court (Emperor V. Nanoo 28 Bom. L. R. 1196) that an Abkari officer is a police officer within the meaning of this section the ground for the decision, as stated in the judgment, being as follows.

“It seems to me a perfectly fair interpretation of s. 25 to say that the police officer within the meaning of that section is an officer, who exercises the power of police conferred upon him by law, whether he is called a police officer or he is called by any other name and exercises other functions also under other provisions of law. He is a police officer within the meaning of s.25, if, in the investigation of offences, under a particular Act, he exercises the powers of an officer in charge of a police station for the investigation of a cognizable offence conferred upon him by that Act. S.25 of the Indian Evidence Act embodies an important rule, which is to be given effect to as a matter of substance and not as a mere matter of form. It is not merely the name given to an officer that should determine whether he is a police officer but the substantial fact whether he exercises the powers of a police officer conferred upon him by law should determine it..... To hold otherwise would be to cut down the protection intended to be afforded by s.25 of the Evidence Act, which is an Act of the Government of India to accused persons.”

Applying this reasoning it will be difficult to say that the position of a forest-officer materially differs from that of a police officer or an Abkari officer. The R.L.A. to whom the question was referred, observed as follows—

“The point raised here with regard to the admissibility of confessional statements made to a forest-officer is not covered by any specific authority..... Under S. 52, I.F.A., a forest-officer has the power of seizing property, under S. 64 of arresting without warrant, under s.66 of preventing offences and under s. 68 of compounding offences. Under s. 72 he may be invested with certain further power by the Provincial Government of entering upon land and of surveying it, of compelling the attendance of witnesses, of issuing search warrants under the Criminal Procedure Code, of holding inquiry into forest-offences and of receiving and recording evidence. Under s. 76, Government can frame rules prescribing and limiting the powers and duties of forest-officers under the Act. It would thus appear that the powers of a forest-officer are not unlike those of an Abkari officer although the power of investigation coupled with the power of a police-officer in charge of a police station for that purpose conferred by s.41 of the Abkari Act. 1878, is absent in this case. But on the other hand, a forest-officer has power of inquiring into and compounding a case. As the principle of Nanoo’s case (already referred to above) has now been extended even to excise peons (Emperor V. Dinshaw, 31 Bom.L.R.49) with no power of investigation but powers of arrest, seizure and detention which a forest-officer also has, it is possible that the High Court would hold that a forest-officer is also a police-officer for the purpose of s. 25 of the Indian Evidence Act. But the matter must remain in a state of doubt until it is finally decided by the High Court”.

(R.L.A.’s 1307 of 4-3-1933 and R. 315-D/33 of 10-3-1933)

Note 72 :- Exemption of forest officers from disclosing sources of information during trial of forest offence cases in a Court of law :- On the question whether forest officers are bound to divulge the names of informants in offence cases, the Legal Rembrancer, C.P. and Berar, recorded the following opinion in his memo. 358-A/II of 25-10-1939.

“In A.I.R. 1927 Bom.4, it was held that an Abkari Officer, who in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Code of Criminal procedure, 1898, upon an officer in charge of a Police Station for the investigation of a recognizable offence, is a police officer within the meaning of s.25 of the Indian Evidence Act, and therefore a confession made to him is inadmissible (Please vide Note 71 above). The **ratio decidendi** was that the object of s.25 was to prevent the abuse of their powers by the Police in extorting confessions from persons in their custody. It is public policy to exclude all confessions made before investigating officers

whether they are called police officers or excise officers or by any other name. Certain forest officers are also empowered to enquire into forest offences under s.72, I.F.A. Rules also have been framed regulating the inquiries to be made into forest offences.

2. S.125 of the Indian Evidence Act provides that no Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officers shall be compelled to say when he got any information as to the commission of any offence against the public revenue. The forest officer making an enquiry into a forest offence should, in my opinion be deemed to be a police officer within the meaning of s.125 of the Indian Evidence Act on the same analogy as in s.25 **ibid**. It is against public policy that a person who has the power to investigate or enquire into an offence should be compelled to state in a court of law the name of the informer. S.124 of the Indian Evidence Act provides that no public officer shall be compelled to disclose communication made to him in official confidence, when he considers that public interests would suffer by the disclosure. In cases where s. 125 **ibid** does not apply, and in fact in cases even where that section does apply, s.124 would apply.

3. “I am, therefore, of the opinion that if a forest officer is pressed to disclose the name of his informer he should ask the Court to exempt him from disclosing it. He should rely on s,124 and 125 of the Indian Evidence Act.” (BFM II, N: 111)

Note 73:- Production of unpublished official records as evidence in Court :- For instructions on the subject with reference to s.123, 124 and 162 of the Indian Evidence Act, 1872, (I of 1872) see H. 7080/3 of 15-11-1935. (BFM II, N: 112)

73. Forest Officers deemed public servants : All Forest Officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

74. Indemnity for acts done in good faith : No Suit shall lie against any public servant for anything done by him in good faith under this Act.

Note 74:- Conditions precedent to protection by law:- The following judgment of the High Court in appeal No.61 of 1889 (in the case of Mr. Waman Ramchandra Gavande, Sub-Assistant Conservator of Forests V. Dipchand Balkisan) shows that officers when discharging their duties with ordinary care and discretion are protected, even in a case of mistake, by any authority which in fact they have and which covers the particular act on which some person may sue as a wrong :-

“This is a suit brought against the defendant, an officer in the Forest Department, for having caused damage to the plaintiff by reason of his misconduct and his acting contrary to the law”. The defendant justified his conduct under s. 74, I.F.A., alleging that what was done by him was done in good faith.

“It is not in dispute that the carts containing the plaintiffs timber were stopped by the defendant on their way up the ghat to poona and the defendant himself admits that he did so, suspecting that the timber had been taken out of Government forest. Further, it is not in dispute that on the arrival of the plaintiff, who was some way behind the carts, he was asked by defendant if he had a pass, and that he replied that his servant had it; that the servant arrived the next day, when he produced a document which purported to be a pass given by the original owner to the plaintiff as purchaser of the timber. It was not contended that such a pass as a valid one under the rules made by Government with the sanction of Government of India in virtue of the I.F.A. there being no evidence that the owner, although he was a patel of the village, had authority to grant passes. The district Court, however, thinks it ought to have satisfied the defendant. This view is one which we cannot concur, the pass not being valid one-and although his principal motive at the time may have been that he suspected the timber had been stolen from Government forests, it is open to

him now to the justify seizure on the ground of the commission of forest offence arising from the want of a valid pass.

“It is said, indeed, by the District Court that owing to a Resolution of Government No. 5437, dated the 7th July 1884, a pass was not necessary. It is sufficient to say that, that Resolution only referred to teak, the ownership of which was in dispute between the Government and the occupants of the land on which it was grown, and, moreover, can only be understood (assuming that the Government intended to pass a Resolution *intra vires*) as setting the question whether such owners could move their timber as contemplated by clause (c) of Rule 13* (now this Rule has been superseded) without passes. But that clause clearly only allows timber to be moved within the confines of the village and has no application to this timber which was being transported to Poona for sale. The defendant was, therefore, clearly entitled by law to seize the carts. But it was urged before us that although he might have been entitled to seize them he ought not to have detained them from 18th January till 22nd June. As to this the evidence shows that defendant wrote exhibit 42 on 24th January to the Forest Ranger of Kolaba stating his suspicion that it was not ‘*malki*’ but Government timber, and asking him to make inquiries; he also reported on 25th January 1886 what he had done to his superior officer the Divisional Conservator of Forests of the Poona District. The plaintiff says he frequently asked the defendant to give him up the timber between January and May 1886 and was told by defendant that he could not do so until he got an answer, and that at last in May 1886 he himself wrote to the Divisional Conservator, the result of which was that the defendant was directed to deliver the timber to the plaintiff.

“Looking at s.52 we agree with the District Judge that the defendant cannot justify the detention on the ground of an offence against the Forest Laws, not having taken the course which that section requires of bringing the matter before a Magistrate. But suspecting as he did that the timber had been taken from a Government forest, we think the defendant was justified, under the circumstances, in laying the matter before his superior officer and waiting for his orders. The circumstance that there had been robberies from Government jungles in the neighbourhood from which the timber came, as stated by defendant, and which was not denied, coupled with the absence of a valid pass from the authorities, was sufficient to justify his suspicion that it was not *malki* timber and his detaining the timber until he received orders from his superior on the subject, and he cannot be held personally liable for the delay which occurred in obtaining them.

“It is said, indeed, that the defendant was afterwards shown a letter procured by the plaintiff at the defendant’s desire stating that the Patel had sold the timber his *malki* number to plaintiff, and that he took the objection that it was not signed by the Kulkarni. Such an objection, we think, was one which the defendant might reasonably and in good faith take, and if plaintiff thought that the letter was sufficient for the purpose he could have taken it or asked defendant to send it to the Divisional Conservator of Forests in whose hands the matter then was, and, as we cannot doubt, with the plaintiff’s full knowledge. Upon the whole, we think that the defendant acted throughout in good faith and has satisfactorily justified his conduct under s. 74 of the Act.

“That the question should have remained with the superior forest authorities in suspense until May is necessarily matter of surprise, and if Government are unable to give some satisfactory explanation of it, the plaintiff is, to say the least, entitled to favourable consideration at their hands.

“We must, therefore, reverse the decree and dismiss the plaint, with costs throughout on plaintiff.

C. SARGENT
K.T. TELANG.
(R. 6528 of 15-9-1890)

75. *Forest Officers not to trade* : Except with the permission in writing of the State Government, no Forest Officers shall, as principal or agent, trade in timber or other forest produce; or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the territories to which this Act extends.

CHAPTER XII

SUBSIDIARY RULES

76. *Additional powers to make rules* : The State Government may make rules-

- (a) to prescribe and limit the powers and duties of any Forest Officer under this Act ;
- (b) to regulate the rewards to be paid to officers and informers out of the proceedings of fines and confiscation under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons ; and
- (d) generally to carry out the provisions of this Act.

Note 75 :- “Fines and confiscations” referred to in s. 76 (b) include fines inflicted under the provisions of this Act and proceeds of property (not belonging to Government) confiscated under s. 55. They do not include compensation referred to in s. 68 or fines inflicted under other Acts (e. g. s. 379, I.P.C.) for forest offences. **(BFM II, N: 117)**

Note 76:- S. 76 (c) refers to reserved trees in **occupied lands** and it was held in *koya Mavaji* (C. R. 49 of 1896) that a conviction under the rule framed under this section for cutting a teak tree in **Government waste land** was illegal. The cutting and removal of trees from Government waste land can be dealt with under s. 43 of the L.R.C. or s. 379 of the I.P.C. **(R. 3394 of 25-5-1903)**

77. *Penalties for breach of rules* : Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

78. *Rules when to have force of law* :

- (1) All rules made by the State Government under this Act shall be published in the *Official Gazette* if shall thereupon, so far as they are consistent with this Act, have effect as and enacted therein.
- (2) All rules made by the State Government under this Act shall be laid for not less than thirty days before each House of the State Legislature as soon as

possible after they are made and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid, or the session immediately following and publish in the *Official Gazette*.

CHAPTER XIII

MISCELLANEOUS

79. *Persons bound to assist Forest Officers and Police Officers :*

- (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in such forest, and every person who is employed by any such person in such forest, and
every person in any village contiguous to such forest who is employed by the Government or who receives emoluments from the Government for the service to be performed to the community,
shall be bound to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall forthwith take steps whether so required by any Forest Officer or Police Officer or not :
 - (a) to extinguish any forest fire in such forest of which he has knowledge or information.
 - (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest; and shall assist any Forest Officer or Police Officer demanding his aid;
 - (c) in preventing the commission in such forest of any forest offence ; and
 - (d) when there is reasons to believe that any such offence has been committed in such forest, in discovering and arresting the offender.
- (2) Any person, who, being bound so to do, without lawful excuse, (the burden of proving which shall lie upon such person) fails-
 - (a) to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information required by sub-section (1);
 - (b) to take steps as required by sub-section (1) to extinguish any forest fire in a reserved or protected forest;
 - (c) to prevent, as required by sub-section (1) any fire in the vicinity of such forest from spreading to such forest ; or
 - (d) to assist any Forest Officer or Police Officer demanding his aid in preventing the commission in such forest of any forest offence or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Note 77 :- Refusal to serve as member of a panch- A person was convicted under section 187 of the I.P.C. for refusing, when called on by a forest guard, to serve as one of a **panch** for the purpose of drawing up a **panchnama** with reference to certain wood alleged to have been illegally cut in reserved forest. **Held** that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first two paragraphs of s. 79 (1), I.F.A., nor was the purpose for which he was called upon (a) to (d) of the section. He was therefore not legally bound to assist the forest guard.

(Queen –Express v. Babaji, I.L.R.22 Bom.769)

80. Management of forests, the joint property of Government and other persons :

- (1) If the Government and any person be jointly interested in any forest or waste land, or in the whole or any part of the produce thereof, the State Government may either-
 - (a) undertake the management of such forest, waste-land or produce according to such person for his interest in the same; or
 - (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.
- (2) When the State Government undertakes under clause (a) of sub section (1) the management of any forest, waste-land or produce, it may, by notification in the *Official Gazette*, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provision shall apply accordingly.

80A. Power of Government to apply provisions of this Act to certain lands of Government or local authority : The State Government may, by notification in the *Official Gazette*, declare that any of the provisions of this Act shall apply to all or any lands on the banks of canal or the sides of roads which are the property of the State Government or a local authority and thereupon such provisions shall apply to such lands accordingly.

81. Failure to perform service for which a share in produce of Government forest is enjoyed : If any persons be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that such service is no longer so performed : Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the State Government.

82. Recovery of money due to Government : All money payable to the Government under this Act, or under rule made under this Act, or on account of the price of any forest-produce or of expenses incurred in the execution of this Act in respect of such produce or on account of compensation or value of property agreed to be paid under section 68 may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue.

Note 78 :- Recovery from persons resident in Indian States, - R. L .A.'s memorandum :- Government calls for my opinion as to the legal course to be adopted for the recovery from persons resident in Indian States of monies due, which in the Bombay Province would be recoverable as arrears of land-revenue.

In the particular instance referred to,. a man bought Government timber for Rs. 209, deposited Rs. 43, and never paid the rest. The timber on resale by the Forest Department realized Rs. 114. The balance of Rs. 52 has yet be recovered. The purchaser, however, after the sale went and lived in an Indian State. The Political Agent expressed his inability to realize the deficit as an arrear of land-revenue.

The statement of the Law contained in the preamble to R. 2877 of 21-5-1881, appears to be indisputably correct and equally applicable to Indian States as to Districts in another Province.

There appear to be two courses open therefore :-

- (a) To wait till the debtor re-appears in British territory, and then enforce recovery under the Bombay L.R.C., against any available property he may have with him, the balance of the price being, as pointed out in R. 7373 of 6-11-1888 (vide **Note 81** under s. 83), still recoverable as land-revenue, or
- (b) To file a suit against him in the Court within whose jurisdiction, the cause of action arose, the service of summons being effected under s. 89 or 90, Civil Procedure Code, as amended by s. 12 of Act. VII of 1888, as the case may be, and on decree being obtained execution will probably be obtainable, by transfer of the decree to the appropriate Court established or continued by the authority of the Governor General in Council in the territories of the Indian State, if the Governor General in Council has by notification in the **Gazette of India** declared s. 229A, Civil procedure Code, as amended by s. 24 of Act. VII of 1888, to apply there to.

If s. 229A has not been made applicable to the Indian State in question, there would be apparently no means of executing the decree till the debtor appears in British territory. If he does so re-appear he might be called on to give security to appear and answer any decree that might be passed against him (s. 447, Civil procedure Code), and on failure to give security he might under s. 481 be detained till he complies.

Otherwise there appears to be no remedy unless Government should decide to sue the debtor in a Court having jurisdiction in the Indian State in question. (R. 7103 of 20-9-1889)

Note :- The above references to the Civil procedure code are to the old code, see now the corresponding sections of the new code, Act, V of 1908, viz., s. 45, rules 25 and 26 of Order V and rules 1 and 4 of order XXXVIII of the First Schedule. (BFM II, N:120)

Note 79:- Recovery of grazing fees as an arrear of land-revenue :- Grazing fee can be recovered as an arrear of land-revenue under s. 82, as being on account of the price of forest produce There is no material distinction between the case of a person who buys grass and of one who pays a grazing fee in order that his cattle may consume the grass.

(R.L.A.'s 1288 of 29-5-1926 in R. 6257/24 of 7-6-1926)

Rule 40 of the Bombay Forest Rules, 1942 framed since the above opinion was recorded by the R.L.A., has legalized the levy of grazing fees which are therefore payable under a rule under the Act and hence recoverable under s. 82 as an arrear of land-revenue. (BFM II, N:121)

Note 80 :- Scope of s. 82 – This section authorizes summary recovery, as arrears of land-revenue, of money payable-

- (a) under the Act or under any rule made under the Act, e.g., duty payable under s.39, fees payable under rules made under s. 41 (c), fines for cattle-trespass under s. 71, etc.; and
- (b) on account of the price of any forest produce or of expenses incurred in the execution of the Act in respect of such produce.

Expenses that may be incurred by the Forest Department in completing the work left incomplete by contractors in contravention of their agreements are not “expenses incurred in the execution of the Act” and cannot be recovered by a summary process as an arrear of land-revenue. They can be recovered by a civil suit.
(R. 3932 of 20-6-1922)

83. *Lien on forest produce for such money :*

- (1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-Officer until such amount has been paid.
- (2) If such amount is not paid when due the Forest-Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first, in discharging such amount.
- (3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

Note 81:- Recovery by Collector after sale by Forest Department. -- R.L.A.’s Memorandum:- A purchaser of Government timber at auction paid only a portion of the price. The forest Department appears to have taken possession of a portion of such timber and to have sold it by public auction in order to realize the balance of the price.

The price fetch at this second sale not realizing all that was due, the Conservator applied to the Collector to realize the outstanding under s.82, I.F.A.

The collector declined on the ground that the balance due was not part of the price but a deficit on resale for which no provision existed such as in analogous cases under the L.R.C. is made by s.175,176 and 177.

The question is whether the money can be recovered under s.82 of the I.F.A. as if it were an arrear of land revenue.

S.82 provides that money payable on account of forest produce may be recovered as if it were an arrear of land-revenue.

Money payable on account of the price does not lose its character by the mere fact the part recovery has been effected under another procedure. If a portion of the price had been recovered as it fell due by civil suit or by auction sale under the L.R.C. or in any other way, that would not affect the power conferred by s.82 in respect of the balance.

The collector appears to regard s. 83, I.F.A., as providing for a resale.

I do not think s.83 refers to resale. It was evidently framed so as to include all cases where money is due under the Act or under the rules and would cover such cases as are provided for by rules under s.51 (c) , and all cases in which money is payable under the Act as duty, fee, royalty, etc.

This I think accounts for the omission in s. 83 of all reference to deficit and resale.

Indeed s. 83 does not treat the sales made by a forest officer under its provisions as a resale at all. In cases where the legislature provides for resale (**vide** Civil Procedure Code, s.308*, and L.R.Cs. 175) the defaulting purchaser is declared to forfeit all claims to the property or to any part of the sum for which it may be sold.

S. 83 does not do this and does not extinguish the property in the produce sold, but only declares it subject to a charge.

S.83 therefore does not operate as a rescission of the sale, but only as one of the means by which money payable for or in respect of produce may be recovered, and the balance unrecovered is therefore still due on account of the price, and does not become due as a deficit on resale.

I am therefore of the opinion that such balance of the price is recoverable under s.82 as if it were on arrear of land revenue notwithstanding any other steps short of rescission of the sale that may have been previously taken for recovery. (R.7373 of 6-11-1888)

84. *Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894* : Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

85. *Recovery of penalties due under bond :-*

- (1) When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from in case of such breach as if it were an arrear of land revenue.
- (2) If any question arises :
 - (a) whether there has been a breach of any of the conditions of such bond or instrument;
 - (b) as to the sum to paid for such breach;
 - (c) as to the person or persons liable to pay such sum; the question shall be referred to and, after giving notice to the person concerned and after considering his objections (if any), be decided by an officer, not below the rank of a Sub Divisional Forest Officer, authorised by the State Government in this behalf. The person aggrieved by the decision of such officer may, within a period of sixty days from date of such decision, appeal to the State Government or such other appellate authority as the State Government may appoint in this behalf. The decision of such officer, subject to an appeal to the appellate authority, and decision of the appellate authority on such appeal, shall be final.

Note 82:- Limitations of s. 85- This section contains provisions similar to s.74 of the Contract Act only with this difference, viz., the recovery of the stipulated amount in case of breach of s. 74 of the Contract Act is to be decided by the Civil Court whereas the breach of s. 85 of the I.F.A. is penalized by empowering one of the parties to make the recovery of the amount stipulated as an arrear of land-revenue. In both the cases the amounts to be paid in case of breach of the conditions must be clearly mentioned in the bond or agreement, i.e., the sum must be determined and agreed upon between the two parties before the agreement is signed. This is clear from paragraph 5 of the objects and reasons of the bill amending the

I.F.A. of 1878 by the addition of this section. This paragraph states “**The section is intended to recover penalties stipulated in the bond or agreement**” and the new section will make the contractors responsible up to **the amount to which they have agreed**, and such sum will be recovered summarily”.

The amounts to be recovered should, accordingly, be pre-determined and recited in the bond. Amounts which cannot be so determined beforehand, e.g., expenses which Government may have to incur in carrying out work left incomplete by contractors, compensation due to Government for damage by fire or cattle-trespass in the contract area, etc. cannot be recovered as arrears of land-revenue, the only course in such cases being a Civil suit. (R.3932 of 21-9-1923.)

The recovery, in whole or in part, of the amount of damage to forest produce by fire or by cattle grazing in contract areas and of expenses incurred by Government in finishing the work left incomplete by contractors has been made possible by suitable amendment of the standard forest agreement forms in accordance with R 3932 of 21-9-1923 quoted above whereby a definite amount of penalty for failure to pay the damages and expenses has to be specified in the clauses concerned. (BFM II, N: 124)

Note 83:- Liability of forest contractors for breach of terms discovered after expiry of contracts.---

On the question whether a contractor who had entered into an agreement (in standard form 2, Press No. For. 196) for the felling, collection, removal and purchase of forest produce could be subjected to the payment of fine under the terms of the contract for a breach of a condition therein discovered after the expiry of the contract period and after the security deposit under the contract had been returned to the contractor, the R.L.A. gave the following opinion in which Government concurred:-

“ * * * * The Contract may provide for a period during which the contractor was to fell or remove the forest produce. But the expiration of such period would not necessarily put an end to or extinguish liabilities which the contractor may have incurred under the contract. It, however, appears that in the case under consideration the security which was deposited by the contractor was returned. The security was deposited for the due performance of the conditions in the contract and the return of such deposit might lead to an inference that the forest authorities held that all the conditions of the contract were duly performed and that they released any right of action which Government had under the terms of the contract for breach of a condition. But such inference would not be inevitable in all cases. A release is not construed as applying to facts of which the creditor had no knowledge at the time when it was given (Halsbury’s Laws of England, Vol.7 page 351). If the contractor through fraud concealed a breach of any of the conditions, it may be argued that the return of the deposit did not amount to a release of all rights which Government had under the contract. In the absence of any express or implied conduct on the part of Government to indicate that they had released or waived their rights to recover the penalty due under the contract, it would not be right to hold that the contractor is freed from the liability to pay the said penalty by the mere expiration of the period for which the contractor was allowed to fell or remove the forest produce or by the return of the security deposit”.

(R.L.A’s 2997 of 7-6-1937,R6481/33 of 9-7-1937)

85A. *Saving for rights of Central Government* : Nothing in this Act, shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.

86. *Repeals* : Repealed by Act II of 1948, s.2

THE SCHEDULE (Repealed by Act II of 1948, s.2)
