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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 4th September 1889 :—

Bill No. 13 of 1889.

A Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887.

Whereas it is expedient to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887; It is hereby enacted as follows :—

1. (1) This Act may be called the Forest Act, Title and commence- 1889; and ment.

(2) It shall come into force at once.

Indian Forest Act, 1878.

2. (1) For the definition of "Tree" in section Amendment of section 2 of the Indian Forest Act, 1878, the following shall be substituted, namely :—

"'Tree' includes bamboos, stumps, brushwood and canes :—"

(2) For the definition of "Timber" in the same section the following shall be substituted, namely :—

"'Timber' includes trees when they have fallen or been felled, and all wood, whether the wood is in log or has been shaped or hollowed

or been converted into charcoal, or been applied to any other use :—"

(3) For the definition of "Forest-produce" in the same section the following shall be substituted, namely :— [Regulation VI, 1887, s. 2.]

"'Forest produce' includes—

(a) trees, and timber, caoutchouc, catechu, wood-oil, resin, varnish, bark, leaves, flowers and fruits, and all other parts or produce of trees; and

(b) the following when found in, or brought from, a forest; that is to say :—

(i) plants not being trees, and all parts or produce of such plants,

(ii) animals, and skins, tusks, horns, silk, honey, wax and lac, and all other parts or produce of animals, and

(iii) peat, surface-soil, rock, and minerals (including mineral oils and all products of mines or quarries) :—"

3. For clause (h) of section 4 of the said Act Amendment of section the following shall be substituted, namely :—

"(b) specifying as nearly as possible the situation and limits of such land; and". [Act XIX, 1881, s. 6, and Regulation VI, 1887, s. 2.]

4. To section 5 of the said Act the following Addition to section 5, proviso shall be added, namely :— [Act XIX, 1881, s. 8, and Regulation VI, 1887, s. 2.]

"Provided that nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest Settlement officer, or any clearings lawfully made for shifting

cultivation by persons in the habit of practising such cultivation on such land."

5. After section 9 of the said Act the following section shall be inserted, namely:—
Addition of new section after section 9, Act VII, 1878.

[Act XIX, 1881 s. 11, & Regulation VI, 1887, s. 9.]

"9A. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record any local rule or order under which such practice is allowed or regulated, or, if no such rule or order exists, shall make an order specifying the particulars of the claim, and permitting, or refusing to permit, such practice wholly or in part.

(2) If such practice is permitted wholly or in part, the Forest Settlement Officer may—

(a) alter the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) cause certain portions of the land under settlement to be separately demarcated, and give permission to the claimants to practice shifting cultivation therein under such rules and conditions as he may prescribe.

(3) No absolute right to practise shifting cultivation shall be deemed to be conferred by any such local rule or order as is referred to in sub-section (1), or by any order made by the Forest Settlement-officer under that sub-section permitting such practice; and, except with the previous sanction of the Local Government, such cultivation shall only be practised by the persons to whom such permission is granted."

[Regulation VI, 1887, Chaps V and VI.]

6. (1). In the heading of Chapter VII of the said Act, for the words "OF THE DUTY ON TIMBER" the words "OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE" shall be substituted.

(2) In section 39, after the word "timber" in both places where the word occurs, the words "or other forest-produce" shall be inserted.

(3) In clause (a) of section 41 of the said Act, for the words "and other" the words "or other" shall be substituted.

7. For the first paragraph of section 67 of the said Act, beginning with the words "The Local Government" and ending with the words "as estimated by such officer," the following shall be substituted, namely:—

"The Local Government may from time to time, by notification in the local official Gazette, empower any Forest-officer by name, or as holding an office,—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than

an offence under section 61 or section 62 a sum of money by way of compensation for any damage which may have been committed or for the evasion or attempted evasion of the payment of any money which would, if not paid when due, be recoverable under this Act as if it were an arrear of land-revenue, and

(b) to release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer:

Provided with respect to clause (a), that the sum of money to be accepted by way of compensation may extend to, but shall not exceed, ten times the value of the forest-produce which has been damaged, or ten times the amount of the money of which the payment has been evaded or attempted to be evaded."

8. After section 83 of the said Act the following section shall be added, namely:—
Addition of new section after section 83, Act VII, 1878.

"84. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of section 74 of the Indian Contract Act, 1872, and upon breach of the condition of such instrument the whole sum mentioned therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue."

Burma Forest Act, 1881.

9. (1) For the definition of "tree" in section 3 of the Burma Forest Act, 1881, the following shall be substituted, namely:—

"'tree' includes bamboos, stumps, brushwood and canes."

(2) For the definition of "timber" in the same section the following shall be substituted, namely:—

"'timber' includes trees when they have fallen or been felled, and all wood, whether the wood is in log or has been shaped or hollowed or been converted into charcoal, or been applied to any other use."

(3) For the definition of "forest-produce" in the same section the following shall be substituted, namely:—

"'forest-produce' includes—

(a) trees, and timber, caoutchouc, catechu, wood-oil, resin, varnish, bark, leaves, flowers and fruits, and all other parts or produce of trees; and

(b) the following when found in, or brought from, a forest; that is to say—

(i) plants not being trees, and all parts or produce of such plants,

(ii) animals, and skins, tusks, horns, silk, honey, wax and lac, and all other parts or produce of animals, and

(iii) peat, surface-soil, rock and minerals (including mineral oils and all products of mines or quarries):".

10. (1) In the heading of Chapter V of the said Act, for the words "OF THE DUTY ON TIMBER" the words "OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE" shall be substituted.

(2) In sections 39, 41 and 42, after the word "timber", wherever it occurs, the words "or other forest-produce" shall be inserted.

(3) Throughout section 43, after the word "timber", except in the first paragraph where the word first occurs and in clauses (e), (i), (l) and (m), the words "or other forest-produce" shall be inserted.

11. For the first paragraph of section 66 of the said Act, beginning with the words "Any Forest-officer specially empowered in this behalf" and ending with the words "as estimated by such officer", the following shall be substituted, namely:—

"Any Forest-officer specially empowered in this behalf—

(a) may accept from any person reasonably suspected of having committed any forest-offence, other than an offence under section 61 or section 62, a sum of money by way of compensation for any damage which may have been committed or for the evasion or attempted evasion of the payment of any money which would, if not paid when due, be recoverable under this Act as if it were an arrear of land-revenue, and

(b) where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer:

Provided, with respect to clause (a), that the sum of money to be accepted by way of compensation may extend to, but shall not exceed, ten times the value of the forest-produce which has been damaged, or ten times the amount of the money of which the payment has been evaded or attempted to be evaded."

12. After section 80 of the said Act the following section shall be added, namely:—

"81. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any

duty or act, such duty or act shall be deemed to be a public duty or an act in which the public is interested, as the case may be, within the meaning of section 74 of the Indian Contract Act, 1872; and upon breach of the condition of such instrument the whole sum mentioned therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue."

Upper Burma Forest Regulation, 1887.

13. (1) For the definition of "tree" in clause (2) of section 2 of the Upper Burma Forest Regulation, 1887, the following shall be substituted, namely:—

"(2) 'tree' includes bamboos, stumps, brush-wood and canes:."

(3) For the definition of "timber" in clause (3) of the same section the following shall be substituted, namely:—

"(3) 'timber' includes trees when they have fallen or been felled, and all wood, whether the wood is in log or has been shaped or hollowed, or been converted into charcoal, or been applied to any other use:."

(3) For the definition of "forest-produce" in clause (4) of the same section the following shall be substituted, namely:—

"(4) 'forest-produce' includes—

(a) trees and timber, caoutchouc, catechu, wood-oil, resin, varnish, bark, leaves, flowers and fruits, and all other parts or produce of trees; and

(b) the following when found in, or brought from, a forest; that is to say—

(i) plants not being trees, and all parts or produce of such plants,

(ii) animals, and skins, tusks, horns, silk, honey, wax and lac, and all other parts or produce of animals, and

(iii) peat, surface-soil, rock and minerals (including mineral oils and all products of mines or quarries):"

14. For sub-section (1) of section 62 of the said Regulation the following shall be substituted, namely:—

"(1) Any Forest-officer specially empowered in this behalf—

(a) may accept from any person reasonably suspected of having committed any forest-offence, other than an offence under section 58 or section 59, a sum of money by way of compensation for any damage which may have been committed or for the evasion or attempted evasion of the payment of any money which would, if not paid when due, be recoverable under this Regulation as if it were an arrear of revenue, and

(b) where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer:

Provided, with respect to clause (a), that the sum of money to be accepted by way of compensation may extend to, but shall not exceed, ten times the value of the forest-produce which has been damaged, or ten times the amount of the money of which the payment has been evaded or attempted to be evaded."

[Regulation VI, 1887, Chaps. V and VI.]

Amendment of Chapters V and VI, Act XIX, 1881.

DUTY ON TIMBER AND OTHER FOREST-PRODUCE

(2) In sections 39, 41 and 42, after the word "timber", wherever it occurs, the words "or other forest-produce" shall be inserted.

(3) Throughout section 43, after the word "timber", except in the first paragraph where the word first occurs and in clauses (e), (i), (l) and (m), the words "or other forest-produce" shall be inserted.

11. For the first paragraph of section 66 of the said Act, beginning with the words "Any Forest-officer specially empowered in this behalf" and ending with the words "as estimated by such officer", the following shall be substituted, namely:—

"Any Forest-officer specially empowered in this behalf—

(a) may accept from any person reasonably suspected of having committed any forest-offence, other than an offence under section 61 or section 62, a sum of money by way of compensation for any damage which may have been committed or for the evasion or attempted evasion of the payment of any money which would, if not paid when due, be recoverable under this Act as if it were an arrear of land-revenue, and

(b) where any property has been seized as liable to confiscation, may release the same on payment of the value thereof as estimated by such officer:

Provided, with respect to clause (a), that the sum of money to be accepted by way of compensation may extend to, but shall not exceed, ten times the value of the forest-produce which has been damaged, or ten times the amount of the money of which the payment has been evaded or attempted to be evaded."

12. After section 80 of the said Act the following section shall be added, namely:—

"81. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any

duty or act, such duty or act shall be deemed to be a public duty or an act in which the public is interested, as the case may be, within the meaning of section 74 of the Indian Contract Act, 1872; and upon breach of the condition of such instrument the whole sum mentioned therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue."

[Act I, 1878, s. 25.]

XI of 1872.

VI of 1887.

[Act XIX, 1881, s. 66.]

15. After section 78 of the said Regulation the following sections shall be added, namely :—

Addition of new section after section 78, Regulation VI, 1887.

[Act I, 1878, s. 25.]

"79. When any person, in compliance with any rule under this Regulation, binds himself by any instrument to per-

Recovery of penalties due under bond.

form any duty or act, such duty or act shall be deemed to be a public duty or an act in which the public are interested, as the case may be, within the meaning of section 74 of the Indian Contract Act, 1872; and upon breach of the IX of 1872. condition of such instrument the whole sum mentioned therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of revenue."

STATEMENT OF OBJECTS AND REASONS.

THE expediency of amending

* Burma Forest Act, 1881.
Madras Forest Act, 1882.
Baluchistan Forest Law, 1886.
Berar Forest Law, 1886.
Upper Burma Forest Regulation, 1887.

brought out in the enforcement of enactments.

the Indian Forest Act, VII of 1878, has for several years past been constantly brought to the notice of the Government of India. Since the date of its enactment, several other Forest Acts, Laws and Regulations* have been passed for different parts of India. They have all been cast very much on the model of Act VII of 1878 changed only in so far as was necessary to adapt them to the peculiar circumstances of special localities. At the same time, defects of Act VII of 1878 were recognized and remedied in the more recent

The present Bill has for its main object the amendment of the Forest Acts and Regulations of the Governor General in Council, so as to place forest legislation as far as possible on the same footing wherever local circumstances permit.

2. It is proposed to add to Chapter II of Act VII of 1878 the additional provisions regarding forest-settlements and shifting cultivation contained in the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887. The necessity for these provisions has been fully made out on previous occasions, and their insertion in Act VII of 1878 calls for no special explanation.

3. The sections which provide for the compounding of offences have been revised and recast. Under Act VII of 1878, only compensation for any damage which might have been committed could be accepted, while, under all Forest Laws passed between 1878 and 1886, compensation could be demanded for the offence; in the Upper Burma Forest Regulation, 1887, the compensation was again restricted to the damage done. It has been urged that most of the offences to which the section should be applied are breaches of river rules, or the evasion of payment of dues; and that, if compensation may only be accepted for damage, the section is ineffective. On the other hand, it is objected that to permit the unlimited acceptance of compensation for an offence is to place too much power in the hands of the Forest-officer. The amendment now put forward suggests the assessment of compensation according to the damage done, or the dues of which payment is evaded, and prescribes that the demand shall in no case exceed ten times the value of the produce or ten times the amount of the dues.

4. In 1884 the Bombay Government brought to notice that section 41 of Act VII of 1878 was defective, and suggested its amendment on the ground that it limited the control of timber in transit to timber found in or brought from a forest, and gave no authority to require the taking out of a pass, under the rules, for trees felled on fields in the occupation of landholders, as was previously the practice. The amendment was again urged in 1887; and the Bombay Government represented that it was absolutely necessary with a view to prevent the misappropriation of timber from Government forests, that the executive authorities should have power to control while in transit all timber, from whatever source obtained, and that, if timber brought from private holdings were to be exempted from the operation of the rules framed under section 41 of the Act, the control of timber in transit would be rendered to a great extent ineffectual; for, directly any timber was conveyed outside the forests boundaries, it could be passed off as the produce of some private holding with little risk of detection. The Bombay Forest Commission also drew attention to this subject, and strongly recommended that the section should be amended in the interests of the cultivating classes no less than in those of the Government.

The simplest way of meeting the difficulty is to modify the definitions of "timber" and "forest-produce" so as to include all parts and produce of trees, and to subject to control under section 41 all timber whether grown in a forest or not.

This alteration in Act VII of 1878 is in accordance with the provisions of later enactments. The Madras and Burma Forest Acts provide for the control of timber in transit irrespective of the source whence it comes; while the Upper Burma Forest Regulation gives the same control over forest-produce of all kinds.

5. Passing over mere verbal alterations, the only other amendment requiring notice is the addition to Act VII of 1878, and to the Burma Forest Act and the Upper Burma Forest Regulation, of a section similar to section 25 of the Opium Act, I of 1878, by which power is taken to recover penalties stipulated in a bond or agreement. For the protection of State property contractors and licensees generally bind themselves to observe certain precautions or abstain from certain dangerous acts, but it has been held that this does not render them criminally liable for any damage caused to the forest by the negligence or wilful act of their agents or workmen employed in carrying out their contract or in extracting the produce covered by their license. The new section will make them responsible up to the amount to which they have agreed, and such sum will be recoverable summarily.

The 4th September 1889.

(Signed) P. P. HUTCHINS.

S. HARVEY JAMES,
Secretary to the Government of India.