The relationship between the owner of standing timber and the purchaser of stumpage who depends on him for supplies for sawing, hewing, or selling as a round product is seldom understood, except by those closely in contact with this phase of the timber trade. It is still more seldom written about. The chain that reaches from the grower to the ultimate retail purchaser of a raw material fit for processing and subsequent sale to the end-consumer is of varying length, with a tendency to lengthen still further; and the initial link, the one which connects forest-owner and primary purchaser, is seldom seen by the consumer or by the public. It is in consequence apt to receive little attention; but it is the link which binds wood, the second greatest staple product of the earth, to the world’s soils which produce it. It is the key link of the whole chain, no matter what the length. Inattention to this link will cause complete functional failure of the chain, no matter what care and attention are lavished on the manufacture and the maintenance of the other links.

In a more primitive economy, it did not exist. Grown and growing timber were free gifts of nature and their users no more thought of paying for such raw material for their wants than the fisherman thought (or thinks) of paying for the right to use the harvest of the sea. With the arrival of the idea of property in land, there slowly evolved the acceptance of the principle that growing timber was part of the land on which it stood; that sale of the land involved sale of the timber thereon and the subsequent right to cut that timber either for use or for disposal. Growth of industry in the end brought it about in developing and civilised countries that many people wanted and could sell the felled timber without wanting the land that bore it. Hence arose the device of purchasing not land or timber per se, but the right to cut the timber. In England, by this date, most of the residual masses of timber were in forests of the Crown, and so such a right was termed a “royalty”, a payment to the Crown as a recognition of the royal ownership of land on which the industry operated, a payment specifically for a privilege and not for the commodity itself. There were naturally cases where timber removal improved the land for other purposes, or where timber supply was necessary for fostering of infant industries. In such cases, the royal owner (or in later days the State itself which had succeeded him) frequently forwent the now customary “royalties” and granted the right to cut all or some of the timber free of all payments to land-owner. These were “concessions”,

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developing still further, as time went on, into free grants of both land and timber thereon; in consideration of national benefits which would perhaps accrue from clearing, development and settlement of the land. The final extension of the concession principle was found in cases where title to both land and timber over extensive areas was granted free of all charges to organisations undertaking to promote certain necessary national development — new railroad promotion being a typical example that occurred in both New Zealand and U.S.A. in the late nineteenth century.

This sketch in hasty outline of the historical development of the methods by which a timber industry secured its supplies of raw material indicates the formidable obstacles that a land-owner who grew timber in the hope of selling it at a profit, plus enough return to finance a second crop, had to face in dealing with his customers. These had, in all good faith, built up their businesses on a system which supplied the raw material either free (or even with freehold of land thrown in as a makeweight), or by mere token and somewhat arbitrarily determined payments called "royalties". How could any of them afford to pay grower's outlay over say a century plus profit, whilst their competitors might still be drawing on supplies of free or at worst token-paid timber? Such cheap supplies with effluxion of time were admittedly getting more remote from centres of consumption. The most the purchaser could afford to do was to pay the grower the saving effected by securing any timber that did not demand long haulage to market.

This position still obtains partially in New Zealand, and to an even greater extent in most other countries settled and developed during the nineteenth century. Current cases illustrative of all details of it are getting fewer; but the mode of thought which it induced has still a strong hold on the mind of a public accustomed, when it makes contact at all with standing timber sale problems, to accept tried and customary principles and methods as laws of nature. As witness the pertinacity with which the public clings to the word "royalty" as meaning the selling price of standing timber. It is apparently embalmed in our legal phraseology; and there seems to be no way of getting rid of it. So long as it is retained, there will always be an aura of privilege around timber sales which will tend to corrode that vital first link in the chain between grower and ultimate customer. The timber grower or owner will always be an object of unspoken suspicion as one who is reaping where he has not sown; one who is holding up the development of the industry; who is preventing the opening up of desirable land; who is unjustifiably increasing the cost to the public of an essential staple; who is in a word collecting "royalties" for no outlay.

This traditional mode of timber disposal and acquisition had, moreover, several additional unseen consequences and attributes which left their traces on the industry and which still tend to operate...
almost as superstitions to prevent freedom of bargaining between timber-owner and purchaser. It was usual for the seller-on-royalty or the grantor of concessions to take no responsibility, either physical or legal, for securing access. The grantee displayed his enterprise by overcoming all obstacles on that score himself: and it frequently cost him a great deal more than did the actual raw material for which he was securing it. To furnish security for this outlay and to secure the maximum return on it, he frequently found it necessary to secure a monopoly of access rights or a monopoly of the available areas feeding to that access, or for preference a monopoly of both, if it was within his financial resources. The principle of the monopoly, the sole and exclusive right, as an essential condition of successful timber purchasing became ingrained in the industry, and apparently in the philosophy of the financial institutions which assisted and supported it.

As a background for romantic thrillers about the lumber barons of the Wild West, this made good enough popular fiction based on fact; as a background for the financial structure of a profitable industry of increasing mechanical efficiency it was beyond criticism. But as a background for the timber-owner who had granted the concession of the cheap rights, or for the smaller adjacent timber-owner who had granted nothing but who wanted to sell timber in his turn in order to live and to grow more timber as his contribution to the national resources of the future, it was not at all so attractive a picture. Thus "prevention of monopolies" became one of the slogans associated with the inauguration of a forest reservation programme in many of the newer countries. It was perhaps never wholly relevant. Certainly it never was and never could be a panacea or even a mild corrective for a national dearth of timber: but in the heat of any campaign, strict relevance or applicability are not required for publicity slogans. All that it really meant in New Zealand, in those cases where it was used, was that land laws which permitted aggregations of timber resources by the simple device of buying public timbered land should be restricted in their scope by laws which placed those lands in the category of public reserves not available for alienation. The timber purchaser could still buy the standing timber; but he was no longer on such land — national forests, State forests, forest reserves, etc., for it had different designations in different parts of the country — permitted to acquire both land and timber. This is in most countries now regarded as the first step in any forest policy, the setting aside of at least a nuclear area of the country, which can never be alienated to private interests, nor to public interests other than those of timber production. As an expedient, it was devised from reasoning along the somewhat devious evolutionary road I have endeavoured to describe — a road which had many of the characteristics, both pleasing and unpleasing, which are alleged to belong to the rolling English road.
This policy in its turn was nothing like so drastic as its opponents would have one believe or anything like so effective as its ardent advocates would aver. It was simply, as has been said, a device or expedient to overcome certain developments and practices in the selling of timber which bid fair to end in a complete disappearance of standing timber as an article of commerce. It ensured that the country which adopted it would always have the opportunity to grow at least some of its raw supplies, because land set aside for this purpose would never be lacking and could never be sold by a short-sighted or penurious government to provide immediate revenue. The timber from such land should be sold only in such a way as to assist rather than hamper prompt re-use of the land for growth of further timber. It is to be noted that the phrase used is “should be sold” and not “could be sold”: for the restrictions necessary are so many and so varied that they cannot possibly be defined by any statute, however exhaustively framed. Hence the intention only can be stated; the means of carrying it into execution being left to the wit, skill, and bargaining power of those entrusted with the administration of the land and its timber crop.

This is the point in the story at which the special knowledge of the forester should come into play. All of the previous history of these transactions as narrated had demanded analysis, skill and foresight that might reasonably have been expected of administrators, economists, lawyers, or business men. These various skills had carried the custom and practice of timber sales as far as they could – they had tried every device; but in the results of the bargaining which is the medium for every transaction, they had always reached an impasse whereby the vital first link in the chain between grower and ultimate consumer was weakened so that production was not continuous on the same ground. New Zealand recognized fairly early in its legislative history the principle involved, by providing for State Forests: but deferred application of the principle by using the legislation very little for almost half a century. The world at large may be said to have secured its continuous timber supplies by dint of timber purchasers’ continually changing their wholesale houses. The devising and negotiating of sale contracts and methods which will at the one and the same time permit timber growers to continue to function on unchanged areas, and timber purchasers to conduct their operations profitably without hampering and even bankrupting their suppliers is a function of the forestry profession; when it has secured the support of proper forest laws.

This is the prime difference between the practice of the British and American countries and that of the older European countries which are so frequently credited with a forestry practice in advance of that of the rest of the world. On the European Continent (until the advent of totalitarianism) the forester was early allowed, and has
subsequently always been allowed, to negotiate and to execute his timber sale contracts without administrative or managerial interference so long as he adhered to and enforced the governing forest law. In the more backward countries (in the forestry sense) he was seldom provided with a forest law covering timber sales in the broad sense; or if there was such a law, the tendency was to withhold the administration of it from the forester; to regard it as a permissive but not a mandatory legal provision; to hedge it with so many provisos and exceptions that even the few cases where it could be invoked were made impossible because of competition of the more numerous industries based on the contracts made under the exceptions.

The situation is still unsatisfactory. The trend in countries where attempts are being made to rectify it is still to lavish attention and care on every link in the chain of supply except that vital first link between grower and primary purchaser. Moreover attention to it raises so many vexed questions that devices are being employed to eliminate it altogether. The advance of the timber grower into the territory of the timber manufacturer is a device of this nature — an expedient apparently born of frustration and despair. In New Zealand, the Government in the 1930's entered into this field in order to demonstrate technical and mechanical methods and principles which should make possible a better liaison between grower and purchaser, i.e., a strengthening of that initial link which has again and again been stressed. Circumstances have led her further and further along the path of eliminating the link and of cutting and milling the timber she has grown. Local private interests who have grown large supplies have in some cases followed the same course. Sooner than enter upon the intricate course of negotiating sales of their standing produce, they have preferred to harvest and manufacture it themselves, thus avoiding immediate obstacles in order to grapple with more remote ones. The grower of timber is tending to become the large scale manufacturer of timber products, seeking and showing his profits from the manufacturing and trading sides of his enterprises; and seemingly content if his rural, landowning, raw-material-producing activities break even, without paying land tax or rates. In theory, there is at first glance little objection to this integration of the forest enterprise. Attempts have even been made to justify it by the creation of a new bogey called monopsony, which is to replace the old one of monopoly. Say the anti-monopsonists, “Timber manufacturers, faced with growers’ demands for a stumpage price that will cover cost of growing timber, will form buyers’ rings and refuse to purchase. We as timber-growers will combat this by ourselves becoming timber manufacturers, thus reaping two profits, a grower’s and a manufacturer’s”. The argument is superficially specious; but are we sure that it does not seek to fight the new dragon monopsony by breeding more of the dragon monopoly? Buyers’ rings will be fought by sellers’
rings; and the unfortunate foresters or timber consumers will be caught between the two combatants. Natural regeneration of dragon's teeth is often easier to accomplish than is natural regeneration of forests. The integrated enterprise must find that its integrated problems are still those that posed themselves to the unintegrated pair of the past, the timber-grower and the stumpage purchaser. If the unintegrated forester's complaint was that his customer never would buy his whole production, and never would clear his warehouse of what he did buy without damaging the balance and preventing entry of would-be purchasers thereof, he will not find that the position is in any way eased when he himself undertakes his own clearance. The fact is that standing timber sales have always stood in a class by themselves as commercial transactions, in that the classical maxim *caveat emptor* was far less applicable than the seldom considered and even heretical idea *caveat venditor*. The seller always tended to suffer in a stumpage transaction if his objective was to restock efficaciously his land at a minimum of cost and time. All romantic tales to the contrary, those cases where stumpage owners made fortune-saving windfalls have always really dealt with land-selling or land-ruining transactions. Liquidation of stumpage holdings at a profit has nearly always meant the liquidation of the forestry enterprise – the land has been converted to non-forest use or has later passed through some, if not all, of the degrading phases that culminate in tax delinquency.

A second modern factor, that is leading more and more to the displacement of the forester or the forest-owner from his true place as the free vendor of the product of his land and enterprise, is to be found in the various degrees of timber control that arise under a planned economy – and it seems that in this respect totalitarian and democratic planners all offer the same services, with only minor variants that fail to affect the main principle.

Integration of industrial processing management with management of raw material production is of course the most popular device. The alternative sometimes adopted – always indeed adopted under stress of war or of economic emergency – is control of timber prices and of standing timber sales. This does not seem to meet the requirements of forestry, however well it may meet the timber supply position. It is probably justifiable in emergency on the grounds of the welfare of the State. It avoids the protracted negotiations which, always in time of war, irritate the timber purchaser. The fact that they are the timber grower's only means of defence in the somewhat unequal domestic combat is overlooked: and in any case both parties become patriots, and have in recent times been on the whole well reimbursed for their patriotism. The fact is, however, that the price paid for the standing crop is only one (and it is sometimes the least) of the timber grower's anxieties in negotiation of a sale contract. At least equally as great is his anxiety to secure a proper sequence of
cutting, sequence of revenues, operations conducted in a workmanlike manner and according to the tenets of good forest husbandry, and finances and labour personnel for restocking of the forest all available at exactly the correct time after completion of felling. Under any system of emergency control and compulsory sale of timber, these requirements are usually unprovided for; or at most they are expected to be matters for subsequent “amicable” arrangement, the controlling authority contenting itself with dictating sale availability and price. It is almost needless to add that the “amicable arrangement” seldom takes place; any timber purchaser, under stress of urgency, feeling justified in confining his efforts to converting his acquired supplies of standing timber into usable material. Not unnaturally he also secures popular and even official support for that attitude and action. The timber land owner equally naturally tends to feel that, on balance, he has made the greater sacrifice to his country’s need: and, whilst he is seldom anxious to pursue the matter during any period of grave physical hazard to the nation, he is certainly unwilling to refrain from expressing his antipathy after times of stress are over, or to accept any plea that stresses of peace-time economy justify similar heroic sacrifices on his part.

These considerations are naturally of small moment under any regime based on totalitarian principles; but they do seem to be perfectly valid and even cogent objections in any reasonably democratic country. The pretext that long-term planning for use of natural resources necessitates such measures of control is unconvincing, if not frankly meretricious. The fact is that this particular aspect of forest management — the sale of standing timber and its attendant contracts and conditions — has received much less technical attention than has any other phase of the profession. There has of recent years been a superfluity of forest literature, both British and American. The one subject which is missing from this mass of technical material is a scheme of reasoned exposition and discussion of contracts for the sale of standing timber. The single English text book which dealt with it in any detail is long out of print, as well as out of date; and in any case it applied in the main only to Indian Forestry.

Principles underlying this specialized type of contract can therefore be learned only from foreign textbooks; and they must then be applied as best they may to the several statutes governing forestry in different countries. In this restricted phase of forestry the old plea that “European forestry is not American (or New Zealand, or any other) forestry” is completely correct. But the varying provisions of the differing national statutes should still be based on the inherent judicial peculiarities that adhere to this strange transaction — a contract for sale of a chattel before it has been “chattelised”.

The intricacies of the underlying theories, and the conventions and customary precautions and saving clauses that have accrued around the transaction in the course of time cannot be detailed here.
As illustrative of the contention already made that it is a case of cavea

t venditor, one may quote from a standard French authority on

the matter that "Toute pacte obscuir ou ambigus s'interprete con're le

vendeur" (Guyot, Cours du Droit Forestier). One may note further

that the same authority uses eleven paragraphs to explain the obliga­

tions that fall on the vendor; six paragraphs to explain the commercial

and other minor obligations that fall on the buyer; and fifty-four

paragraphs to explain the nature of the special guarantees that the

vendor must exact and provide for, in order to ensure that his forest

property is completely protected against damage and loss resulting

from purchasers’ actions or default. It is apparently this legal com­

plexity that has always repelled foresters of the English-speaking

world. The custom in New Zealand, at least, has long been for the

purchaser to have his own standard set of purchase-conditions, and

for the private would-be vendor to have the option of selling on those

conditions or not at all, price being the only variable determined by

negotiations. This is perhaps slowly changing in private transactions;

but the custom is so ingrained that it is with the utmost difficulty

that one can convince even sellers of stumpage that it is a reversal of

regular commercial procedure. Again and again one has asked

whether the party who readily accepts a timber-buyer’s conditions

of purchase would dream of going himself (as a buyer of insurance)

to an insurance company with his own prepared conditions and

saying that he buys on those and no other. Or, would he go similarly

to a shipping line to buy freight or passage on his own terms? Or, to

a railway or aviation company? From the point of view of continuity

of forestry operations, the sale conditions and their observance are at

least as important as the unit price of the timber; and, indeed,

omission of attention to some of them may involve the land owner in

costs far greater than the cash sum he secured for the original crop.

It is, for example, not very difficult to see that a purchaser who leaves

standing on the area an appreciable quantity of the timber he has

paid for will leave the landowner to face an outlay for removal that

may readily exceed the revenue he received; or, looked at from

another angle, it means that partially cleared land is often a liability

to the land-owner desirous of establishing a new crop. Simple though

this point may appear, it is often very hard to establish it in face of

the counter-argument that the purchaser has paid for the whole

original crop, although he has left in the possession of the seller a

large proportion of the goods he has paid for and makes no claim

for price rebate. From the legal viewpoint, the forester’s retort to

this argument is that the purchaser contracted for the right to fell and

remove all (or a defined proportion) of the trees on an area of ground

within a certain time. By leaving some trees, he failed to carry out

his contract and has incurred liabilities accordingly. The usual public

view on such a case — and in the absence of specific conditions to

cover the case in the sale contract, the legal point of view as well —
is that the purchaser has been generous in abandoning goods, that he has paid for, without seeking reimbursement.

The matter need not be further discussed here. It is only a single — and to forestry readers, a hackneyed — example of the complexity of sales of standing timber; and of the way in which imperfect sales contracts disposing of one crop may affect adversely the cost of handling an area of forest for a whole rotation to come. As has been stated earlier, the tendency seems to be to shirk the responsibility and the difficulty of establishing a firm, improved, and accepted basis for such sales contracts by substituting administrative devices which tend towards the total elimination of this link in the forestry chain. Such devices are, for example:

(a) Integration of timber growing, timber manufacture, further processing and sale of either manufactured or processed product under the one authority.

(b) Governmental dictation of permissible purchasers of stands and of prices chargeable per unit of produce (i.e., timber control).

(c) Lengthening of terms of sales contracts, and increasing the areas allocated in proportion to industrial demand for assured raw material supplies over a prolonged period (even over an indefinite period).

(d) Merging on a large scale of publicly-owned timber with privately-owned timber for sale purposes; the owner of the private forest thus procuring non-competitive rights over public timber for a long period.

These devices are not all in operation in New Zealand. There is of course infinite variation in the detail of the agreements and the contracts that govern them. Nevertheless such devices seem to represent a world-wide trend in management of timbered land; so far as this little-publicised phase of forestry can be synthesized into a clear picture based only on information from technical and commercial journals. In essence, most of them seem to a forester to lead back towards the era of wide concessions on indefinite or non-existent terms. He fears that the net result on forestry will be a century of fixation in a mould that will be as inhibitory of forestry progress as was the mould of the concession era of the late nineteenth century.

Every wood-using industry naturally does covet an assured source of raw material of sufficient magnitude to last forever. Such wishful coveting gave rise to the legend of inexhaustibility which was one of the greatest retardants to the inception of forestry programmes throughout the New World. As a retardant, it was operative and effective for a full three centuries. After the first short rotation of artificially grown forests (artificially grown at great cost, incurred because the legend was proving untrue) we find that the old story of inexhaustibility is again being brought out of cold storage, and again being used to justify the old abuses under new names.
It is not due to failure of trials of the better and more orthodox procedure. Sequences of small but adequate timber sales have been made for years in many districts in New Zealand, with pleasing results both to foresters and to stumpage purchasers.

These sales are very numerous and have been going on in exotic forests and in farm shelter belts (rather than in wood lots in the strict sense) for about twenty-five years. This period has been sufficient to develop a technique and local customs which in many cases are unsurpassed, and perhaps unsurpassable, for the particularly simple silvicultural system involved (i.e. clear felling on flat to rolling country, with artificial regeneration). There are, particularly in Southland, sawmill firms which, as a matter of routine and ordinary organization, remove all wire fences around felling areas, log by varying routes across pastures (to avoid rutting and destruction of pasture), clean and burn all debris if required, and replace fences with old material. If the seller cares to pay cost of the extra operation, usable domestic firewood from lop and top will be saved from burning and rough stacked in random sizes, and new material provided by him will be used in replacing the fencing at the end of the logging. Naturally not all purchasers are willing to take such care; nor, from the forestry point of view, are all sellers capable of imposing reasonable care conditions in their sales contracts and of forgoing impossible standards of care, which have only amenity value. The difference is just the same as that between employers of a jobbing gardener about a home site — the rational employer who can say what he wants done and what is to be left untouched usually gets value for his money if he avoids half-hourly visits of supervision; the garden-proud home owner who can neither give comprehensive directions nor refrain from continuous supervision gets small value and ends by finding that he cannot secure anyone to do the garden. The ability to negotiate timber sales on a forest under management, be the forest large or small, is clearly part of the forester’s stock-in-trade. Arrangements for reasonable conditions to ensure a workable and creditable state of the forest land after completion of felling operations are as essential as the knowledge of timber prices and uses which partly govern the price secured. A high stumpage price from an operator who leaves an area silviculturally unworkable is a false economy based on the common fallacy that forest utilization and timber utilization are synonymous terms.

These matters (with special emphasis on the term of cutting rights provided for in sale conditions) are some of those which have a marked influence on the silvicultural operations which must accompany or follow the felling operations. The separation of felling and silviculture is here made for the sake of simplicity, without prejudice to the technically orthodox idea that in a perfectly managed forest, all felling is in itself a silvicultural operation. A prolonged period for a felling grant is the most potent preventive of that flexibility of
silviculture which has been demanded earlier. Unfortunately, long-period evidence appears to show a marked trend towards period lengthening. As a current New Zealand example of this trend, it is worth noting that in 1927 the Wellington City and Suburban Water Supply Board was empowered by statute to manage the forests in its catchment areas (including selling of indigenous forests to sawmills). The statutory limit of period was ten years — after which time every working plan had to be revised. In 1949, twenty-two years later, the Dunedin City Council had to secure a similar statute to enable it to develop its rapidly maturing exotic forests. The corresponding period was set in that statute at twenty years. I am aware that the period between working plan revisions does not legally dictate the period of sales contracts entered into under those provisions. The fact remains that in practice, there is a strong tendency to synchronize, and even to confuse, the two. The forester who wishes to be conservative and to provide for silvicultural flexibility for himself, or his successors, is hard set to withstand pressure for long term sales in the face of his customer’s (and frequently his employer’s) insistence that by statute the long term is perfectly permissible and so, by inference, technically unimpeachable.

Similarly, the 1921 Forests Act provided a 10-year maximum period for working plans; and a 25-year maximum for miscellaneous leases on State Forest Land. The 1949 Act extended these permissible terms to 20 years and 33 years respectively. The trend obviously is from flexibility towards rigidity; and future silviculture must suffer. Although the examples quoted are local ones, there are many indications that the policy is much more widespread and that foresters are witnessing insidious encroachments on matters of technical principle which took over a century to establish. One quotation from abroad must suffice — “Dedication precludes the owner for all time from utilizing his capital asset. Private owners are most strongly opposed to some of the clauses.”* This is written concerning a statutory provision which is vexing all British forest landowners at the moment. The details of it do not matter; its relevance to the argument is that it exemplifies the same trend towards a rigidity in silviculture and forest management; a rigidity made probable by extreme extension of the period of particular rights granted, viz., in perpetuity.

These instances should be sufficient to prove the point that the conduct of sales of standing timber cannot be divorced from the duties of the forester who grows it, and tends both timber and the land which bears it. Either to segregate the process into a separate compartment or to “integrate” both it and the precedent timber culture into a long chain of industrial processes is to invite ultimate forest disaster, by petrifying the possible silviculture of the all-important forest (in the forester’s sense of trees plus land). To avoid this disaster is the greatest problem of the New Zealand forests.

* Stebbing, Nature, 19 Nov., 1949

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