AN HISTORICAL ACCOUNT OF TIMBER RIGHTS UNDER NEW ZEALAND MINING LAW.

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In this review, timber rights under coal-mining laws have not been dealt with. Actually, the relation between coal-mining timber rights and forest administration, while by no means a simple problem, is infinitely more simple than the relation between mining timber rights and forestry. Incidentally, in New Zealand law coal-mining is not mining.

Timber rights which have been provided for under the mining laws of New Zealand from time to time may be conveniently considered under two headings :

(1) Timber rights conferred by statute and exercisable by virtue of mining rights. The enjoyment of such timber rights is implied in the mining rights, and application to the Mining Warden is not necessary. This class will be referred to as **exercisable** timber rights.

(2) The second group comprises timber rights for which application for a license or other authority is necessary, and these will be referred to as **granted** timber rights.

Exercisable timber rights have been expressly provided for in the mining laws dating from the year 1877, and the exercise of such rights was without doubt sanctioned prior to 1877. Granted timber rights were first provided for in the year 1886, and in 1926 authority for the granting of these rights by the Wardens was deleted from the mining law. Exercisable timber rights have always been limited to the cutting of timber to be used for mining purposes exclusively, and between the years 1886 and 1900 this was also true in respect of granted timber rights. During the period 1900 to 1926, rights could be granted by the Wardens to cut timber for any purposes, though applicants for granted timber rights have at all times been required formally to hold miners' rights.

(1) Exercisable Timber Rights.

(a) **Period to 1877.**—Gold was discovered in the early fifties, but it was not until gold rushes definitely set in, that the necessity arose for statutory provision for the management of goldfields. In 1857 a minor rush commenced near Collingwood, and the big rush to Gabriel's Gully, Central Otago, took place in 1861. The first mining law, "The Goldfields Act, 1858," was passed by the General Assembly in August, 1858, and after receiving the Queen's assent, came into operation in July, 1859. Prior to that date there was provision in the Waste Lands laws for the granting of mineral leases. The Goldfields Acts of 1858, 1862 and 1866 did not expressly provide for any rights to timber, nor probably did any of the numerous Goldfield Rules and Regulations issued by the Superintendents of Provinces and

by others to whom the power to issue rules and regulations was delegated by the Governor. The only specific reference to timber rights is a negative one in the early Goldfields Acts prohibiting the occupation for mining purposes of Crown land exempted from the operations of mining or applied to public uses or purposes, and the cutting or removal from such Crown land of any trees growing thereon. It is fairly safe to conclude that both cutting and removal of timber from other Crown lands were permitted to persons lawfully entitled to occupy such Crown lands for mining purposes.

Such a conclusion is strengthened by several other considerations :

(1) The general settlement policy demanded that the clearing of forest occupying settlement land be officially encouraged. Standing timber was super-abundant on land of good quality and whilst broadly speaking, timber licenses were granted under the Waste Lands laws at an annual fee of ten shillings per acre, rural land was offered for sale at the same figure. It was therefore a more attractive proposition for a timber worker to purchase the land-title from the Crown before working the timber.

(2) Speaking generally, the Waste Lands laws expressly permitted lessees or licensed occupiers of Crown lands and their agents or servants to cut for their own use on lands so occupied such timber as was reasonably required for domestic purposes "for firebote, fencing, stockyards, or other conveniences for the enjoyment of the said lands."

(3) Revenue from goldfields was land revenue, and doubtless the administration of timbered Crown lands within goldfields was analogous to that of timbered Crown lands in general.

(4) Gold-mining leases granted and demised the land comprised in the leases, and licenses to mine for gold granted and demised full and free liberty to mine for gold, while miners' rights entitled holders to occupy land for mining purposes and for residence. These very broad rights of occupation (since restricted) were without doubt in these early phases so interpreted as to include rights to timber required for domestic and mining purposes. (State forests did not exist during this period).

(b) **Period 1877 to 1899.**—The Mines Act, 1877, entitled holders of miners' rights and business licenses to cut live or dead timber from any Crown lands open for mining, and to remove such timber for building residences or business places, for mining purposes or fuel, or otherwise for personal uses. This right, which was subject to the Act and Regulations, was repeated with little alteration in Mining Acts of 1886 and 1891. In 1892 Regulations made it clear that holders of miners' rights could enter on Crown land held by any farmer under occupation license for pastoral purposes, etc., and cut and remove timber (except kauri or reserved trees) for fencing and their own

domestic use, for props, caps, laths, sluice-boxes, etc., in connection with claims held by them. Here we find the first allusion to the reservation of trees other than kauri from cutting under exercisable timber rights. Regulations of 1878 provided expressly that all trees situated on any mining claim were the property of the owner of the claim. This provision remained unaltered until 1899, excepting that it was amplified in regulations of 1887 when the owners of claims were given authority to cut and use for mining purposes all timber (other than kauri) growing on their claims, and were further authorised to cut for their own mining purposes any timber (except kauri) growing on unoccupied ground. Permission to cut kauri could be granted by the Warden on application.

State Forests.—The position as set out above applied to Crown land throughout the period 1877 to 1899. The State Forests Act, 1885, provided for the dedication of State forests, and from the date of that Act until the passing of the Mining Amendment Act, 1887, State Forests were not open for mining. In the latter year they were, however, made subject to all laws and regulations relating to mining on Crown lands ; but the exclusion of State Forest timber from the operation of exercisable mining timber rights was again made clear beyond all doubt in the Mining Act of 1891, when it was enacted that, although State Forest lands were open to mining, the felling or removing of any timber upon State forests within a mining district was unlawful except under authority of the State Forests Act, 1885. This provision remained unaltered until 1899. The fourteen-year period 1885 to 1899, when **by statute** State Forest timber was not subject to rights under the Mining law, was therefore in a sense the grand climacteric from the viewpoint of forestry in relation to mining law in New Zealand.

(c) **Period 1899 to 1916.**—The mining law, largely as the result of a conference of representative interests convened in Wellington in 1898, was revised, re-arranged, and codified. The conference sat for several months, and its recommendations were embodied in the Mining Act of 1898 and Regulations thereunder. This Act and its Regulations which came into operation early in the year 1899, form the basis of the present mining law. The proviso of 1891 prohibiting the cutting or removal of State Forest timber under the Mining law was amended by adding after the word "timber" the words "for other than mining purposes." Statutory timber rights conferred on the holder of a miner's right were reduced to the following simple terms ; "Subject to Regulations under this Act, to cut timber for his own use from unalienated Crown land open for mining." In amplification of this, a Regulation of 1899 entitled the holder of a miner's right to cut and use for his own domestic purpoes, or for the purpose of erecting any building or fence on any mining privilege held by him (but for no other purpose) any timber growing or standing on unalienated Crown land in a mining district ; but such rights were not exercisable

respecting kauri trees or any such trees as are reserved by the Warden or the Commissioner of Crown Lands. By amending Regulations of 1900 "unalienated Crown land in a mining district" was amended to "any available unalienated Crown lands open for mining," and this Regulation as thus amended, was in force until 1935. It should be noted that the term "available" was not defined, and was therefore interpreted in the broadest sense, the State Department administering the Crown land having no authority to say what land is or is not available. Provision for the reservation of trees by the Commissioner of Crown Lands was, in 1900, deleted from the law.

As to timber rights exercisable by holders of mining privileges, the statutory provision in the 1886 and 1891 Acts for the making of Regulations prescribing the rights and obligations subject to which any claim, licensed holding, race, residence-site, etc. "shall be held, occupied, used, worked or enjoyed" was simplified in the 1898 Act to the prescribing of "the rights, privileges, duties, and obligations" of the holders of mining privileges in general. This provision is still in force, and a Regulation of 1899 (when it appeared for the first time) gave to the holder of a mining-privilege the same timber rights as those already mentioned exercisable by the holder of a miner's right, but restricted as to area to the land comprised in the mining privilege, and extended as to the uses to which the timber could be put, namely to the carrying on of mining operations on the mining privilege. In Regulations of 1900, the rights were extended to embrace timber on any other available unalienated Crown land open for mining, insofar as suitable timber was not obtainable on the actual mining privilege. This provision, as amended in 1916 and again in 1926, is still in force, and the Full Court has held that State Forests are included in "unalienated Crown lands."

State Forests.—A very important provision from the viewpoint of forestry was that of the Regulation of 1899 limiting the exercise of the above-mentioned timber rights to lands other than State Forests set apart under "The New Zealand State Forests Act, 1885." This provision was in force until deleted from the law in 1926. It has been suggested that this regulation was *ultra vires* in that it took away statutory rights implied in the Act of 1898, where that Act appeared to authorise under the Mining law the cutting or removal of State Forest timber for mining purposes ; but the statute did not without doubt authorise such cutting or removal, as it is questionable whether the insertion of a proviso authorised substantive rights. In any event, the validity of the Regulation was supported in some legal opinions, but as it no longer appears in the mining law, this question need not be pursued further, excepting that it should be noted that the Regulation of 1899 was copied from the statute of 1891 (see section "State Forests" period (b) above).

(d) **Period 1916 to 1935.**—Early in 1916 the position was that timber for domestic purposes, etc., or for use in connection with

mining operations on a mining privilege could be cut and removed from available unalienated Crown land open for mining, only by the holder of a miner's right or the holder of a mining privilege. From the earliest Mining Regulations of 1859 (issued for Massacre Bay Goldfield) the mining rights of a servant in relation to those of his employer had received consideration in the mining law. From 1877 at least, persons desiring to cut and remove timber for their own domestic uses, etc., were required to hold a miner's right, and this requirement is at present in force. In regard to timber to be used for mining purposes on mining claims, we find it expressly stated in Regulations from 1893 till 1899, that such timber could be cut by the claim-holder personally, by his partners, or by his or their wages men. All, however, including the wages men, were required to hold miners' rights. From 1899 till 1916 cutting of mining timber by wages men in the employment of a claim-holder was not expressly provided for ; but a regulation issued in 1916 made it clear that a claim-holder was entitled to have his timber-cutting done either on wages or by a contract for the cutting and delivery of the timber, adding a proviso however that where cutting is done by contract the contractors shall be employed solely by the mining privilege holder, and that for each separate contract the mining privilege holder shall obtain a **granted** timber right, and pay fees in accordance with the mining regulations. Apparently it was thought necessary to prevent illicit sales of timber cut ostensibly for mining purposes and to make the claim-holder and not the contractor, responsible in this regard.

(e) **Period 1935 to Date.**—By an amending statute of 1935, the rights to free mining timber exercisable by bodies corporate by virtue of miners' rights held by them were removed, except with the consent of the Ministers of Mines and Forests, and subject to terms and conditions agreed upon by those Ministers. This provision is of great moment to forestry, for reasons adequately advanced in the Editorial of Vol. 3 No. 5 of this Jourual (1935).

Trees Reserved from Cutting.—In 1887 kauri trees were reserved from cutting under exercisable timber rights conferred by the mining laws. Persons desiring to cut kauri trees were required to obtain a granted right and to pay a royalty. In 1892 timber rights exercisable by holders of miners' rights were further limited so as to exclude the cutting of reserved trees other than kauri, though the owner of a claim still possessed the right to cut and use all timber other than kauri, growing upon his claim.

No provision was made for any particular authority to reserve trees from cutting, until in 1899 the Warden and the Commissioner of Crown Lands were made the reserving authorities. Reserved trees could be cut after a granted timber right had been obtained and royalty paid. In 1900 a procedure was laid down for the reserving of trees from being cut, the Warden to reserve them by written order.

The exclusion of kauri trees or any trees reserved by the Warden from being cut under exercisable timber rights is still in force, though the procedure for reserving trees was deleted from the mining law in 1926. A Warden therefore recently held that he had now no authority to reserve trees, though the phrase "trees reserved by the Warden" occurs in the regulations.*

(2) Granted Timbers Rights.

(a) **Period 1886 to 1900.**—Until the year 1891, the mining statutes provided that within proclaimed goldfields or mining districts the issue of leases or licenses for (*inter alia*) the cutting and felling of timber on Crown lands was to be effected under the land laws. In spite of this a Regulation of 1887 provided for the issue of certificates by the Warden entitling applicants to cut timber **for sale,** on any Crown land within a mining district ; apart from timber for mining purposes, this provision was probably invalid. Kauri or reserved trees were excluded from cutting, certificates had a currency of twelve months, a fee of not less than £3 was payable (including royalty), every certificate-holder and timber-cutter employed by him was required to hold a miner's right, applications were not granted if there were valid objections, and the Warden could impose conditions as he thought fit. Forms of application and of timber certificates were prescribed.

In the statute of 1891 the making of regulations was authorised for regulating the felling or removal of timber within any mining district, except on State Forest lands, and the price to be paid for the timber ; and at the same time the provision for issue of licenses under the Land Laws to cut and fell timber in mining districts was repealed.

Regulations of 1892 made provision for the grant by the Warden of hand-sawyers', splitters', and wood-cutters' certificates, entitling the grantees to cut timber **for sale for bona-fide mining purposes** on Crown land within mining districts but not on proclaimed forest reserves. At that date, a forest reserve was not necessarily a State Forest. The term was either six or twelve months. The Warden could also grant sawmill timber certificates, under a regulation commencing as follows :—"Any person, being the owner or lessee of any sawmill and sawmill plant, or (*sic*) desirous of cutting timber for sale for *bona fide* mining purposes, or any purpose incidental or conducive thereto, or for sale to such sawmill owner or lessee, shall make application to the Warden, etc." Seemingly the word "or" was a misprint for the word "and," as otherwise the meaning becomes absurd. It is true that applicants were required to state in their applications whether they desired to cut timber for sawmilling or other purposes. But this obviously meant sawmilling or splitting (or handsawing) purposes, because only one form of application was prescribed.

*(This legal decision, given since our last issue, frustrates our hope therein expressed that Mining Wardens' powers of reservation might be the means of salvation for areas of second growth beech.—Editor).

Curiously, the apparent misprint was not corrected in new regulations of 1893, though it was corrected in those of 1899. Can it be that during the seven years during which this confusing provision was in force, a number of titles was granted to cut timber for any purpose and that, notwithstanding that the 1899 regulations clearly restricted the timber use to mining purposes exclusively, in 1900 this restriction was absolutely removed in order to regularise otherwise faulty titles ? It is not suggested that this is probable, in view of the provision of 1900 for Wardens' timber-areas and Land Board timber-areas, but it is just possible.

For the first time, the 1892 regulations provided for payment of royalty at per 100 superficial feet. No timber could be cut on proclaimed forest reserves, and the maximum area granted was 200 acres.

In 1893 provision was made for a timber reservation not exceeding 200 acres to be held in conjunction with a sawmill timber certificate.

Under the 1898 Act, regulations were authorised prescribing the mode in which and terms, conditions and restrictions subject to which, timber on Crown lands may be felled and removed, fixing the prices to be paid, and preventing the unlawful felling or removal of timber. This provision is still in force.

Regulations of 1899 empowered the Warden to grant, upon application, sawmill licenses to cut timber (other than kauri or reserved trees) and **sell or otherwise dispose of the same exclusively for mining purposes.** As previously, the area was limited to 200 acres. An annual acreage rent of 1/- per acre was payable, rent to be in satisfaction of royalty which was payable at prescribed rates according to species of timber. Certificates of reserved timber areas, not exceeding 200 acres, were provided for, and these paid rent at the same rate as license areas. Hand-sawing and splitting timber warrants could also be issued, **to cut and sell or otherwise dispose of timber exclusively for mining purposes.** Though the statute section of 1898 no longer excluded State Forests from these grants, a special clause was inserted in these Regulations of 1899, so excluding State Forests.

When considering the important question of the permitted uses of timber cut under granted timber rights, it is very interesting to note that by Regulations of 1893, mining registrars were authorised to issue monthly licenses to cut timber "in any part of any bush or forest that may be named therein on application" in prescribed form, entitling licensees to cut timber **exclusively for mining purposes and domestic use.** The monthly fee was ten shillings, and no license was to be issued to any person twice convicted of a breach of any of the mining regulations for the issue of licenses to cut timber. This provision was dropped in 1899 and has not since re-appeared in the mining law.

(b) **Period 1900 to 1926.**—Up to this time, it is fairly safe (see above) to assert that the Warden had clearly expressed authority to grant rights to cut timber only for mining purposes exclusively, but regulations issued in 1900 extended this to timber **for any purposes.** This provision of 1900 has quite naturally proved to be directly opposed to sound forest administration, leading as it did to aggregation of timber holdings. Again, the cost of boundary surveys of timber areas was not permitted by law to exceed £5, and it was but natural that for this figure boundaries of all large areas should be very ill-defined ; and that in consequence "paper" boundaries were seldom adhered to on the ground. Wardens, moreover, had no field staff to supervise the operations under these licenses, and to ensure adherence to boundaries.

A statute which, in conjunction with the extension of the Warden's power to grant licenses to cut timber to be used for any purposes, was to have a very important effect upon the administration of certain forest areas, more particularly those of the West Coast of the South Island, was the Mining Amendment Act of 1900 which empowered the Governor to define in any mining district Warden's timber-areas and Land board timber-areas, within which respectively timber licenses and other timber cutting rights may be granted under the mining law exclusively, and under the land laws exclusively. However, where the Governor was of opinion that applications for timber-cutting rights in a Land Board timber-area could be dealt with more conveniently by the Warden than by the Land Board, the Warden could be authorised to deal with such applications. The Warden in such a case was to issue licenses as "the Warden acting on behalf of the Land Board," such licenses were to operate as if granted under the mining law, and the Land Board was not empowered to grant any licenses within that area. In 1900 the mining districts of Karamea and Westland were defined as Land Board timber-areas, administered by the Warden. In 1902 there were defined in the Hauraki mining district fourteen Warden's timber-areas and six Land Board timber-areas.

The statute amendment of 1900 which has just been mentioned, and which was not repealed until 1926, had been passed in less complete form in 1899, but no special timber-areas were defined by the Governor until 1900.

Crown forest lands (as distinct from State forests) outside mining districts have always been administered under the land laws. Up to the year 1886 authority for the grant of timber rights within mining districts was provided by the land laws, and for another five years this was also true in respect of timber required for general purposes, but as from 1886, timber for exclusively mining purposes was dealt with under the mining law. Broadly speaking, from 1891 to 1926, Crown forest lands in mining districts have been administered under the land laws or under the mining law, depending upon whether they were outside or within specially defined areas. Up to 1900, the criterion was, whether the areas were situated outside or inside defined

mining reserves. From 1900 to 1926 this criterion continued in force with respect to mining reserves within a wider area on the West Coast of the South Island reserved under a contract of 1888 between the Crown and the N.Z. Midland Railway Company Limited, and the whole of this wider area was reserved for mining purposes between 1901 and 1904. Between 1900 and 1926, also, all Wardens' timber-areas, and certain Land Board timber-areas, were administered under the mining law, while other Land Board timber-areas were administered under the Land Act. From 1922 to 1926, the true legal position was that Wardens had no power to grant rights to timber in Crown land forests for other than strictly mining purposes, but in some cases Wardens interpreted the laws of 1922 otherwise. About the middle of the year 1922 it was stated on legal authority that over the Crown lands on the West Coast of the South Island (one of the most heavily-timbered parts of the Dominion) no one was at the time authorised to grant timber-cutting rights for other than strictly mining purposes.

That confusion should arise was almost unavoidable, and it was perhaps increased by the statutory definition of all timber-cutting rights as **mining privileges.** The grant of timber rights by the Wardens became, as time went on, more or less a routine court process with little or no foundation on sound forestry principles, and in many instances Wardens granted timber rights invalidly in Land Board timber-areas. That the system of control by the Wardens was unsatisfactory soon became evident, and three Commissions came to this conclusion in their findings, viz : The Royal Timber Commission of 1909, the Royal Forestry Commission of 1913 and the West Coast Timber and Land Commission of 1915. The system was not to be abolished, however, until 1926.

Strictly speaking, Wardens have never had any power to grant timber rights in State Forests, excepting possibly for exclusively mining purposes in the two periods 1899 to 1922, and 1922 to 1925. In the first of these periods as at the present time, the term "mining" (State Forests were open to mining) included, in its statutory definition, operations conducive or incidental to mining, and in consequence timber-cutters whose operations were strictly conducive to mining were entitled, from this viewpoint, to a grant of timber-cutting rights in State Forests. In the other period, the Warden was apparently authorised in the forest law, to grant timber-cutting rights in State Forests for strictly mining purposes. Large areas of forest were proclaimed Provisional State Forests in 1920 under the provisions of the War Legislation and Statute Law Amendment Act, 1918, and these were held to be exempt, like the permanent State Forests, from grants of timber rights under the Mining law. However, numbers of rights were granted by the Wardens, and in spite of legislation of 1922 and 1925 (see next paragraph below) it was not until 1926 that the grant of timber rights was once for all confined to the forest law (State Forests) and the land law (Crown land forests).

Early in 1922, the Forests Act, 1921-22, definitely took away the Warden's authority to grant timber rights for other than strictly

mining purposes on any Crown forests in mining districts, excepting on timber reservations previously granted. Where any timber rights and reservations had been previously granted under the mining law in State Forests (whether such State Forests had been constituted before or after the grant of the rights) the Minister of Forests was empowered to enforce conditions of these rights, and in his discretion to claim forfeiture of the rights in respect of any breaches of conditions subject to which the rights had been granted. The Forests Act also took away the power of Wardens to grant purely mining rights in State Forests, but this power was restored by a Mining Amendment Act passed later in 1922. This short period of nine months in 1922, and that of 1885 to 1887 already mentioned, have been the only times when State Forests were not open to the grant of purely mining rights. The Mining Amendment Act of 1922 also obviously intended to restore to Wardens their power of granting rights in Crown lands forests to timber to be used for any purposes, but its purport did not give effect to this intention. However, numbers of timber rights over Crown lands forests were granted by Wardens up to the year 1926.

In the Forests Amendment Act of 1925 it was made clear that no timber rights were to be granted by a Warden in any Crown or State Forests except for strictly mining purposes to the holder of a miner's right, and that before renewals of timber reservation certificates or new licenses over reservation areas were granted, notice was to be served upon the Minister of Forests. Applications pending at the time respecting Crown forests could be consented to by the Ministers of Forests and Lands.

(c) **Period 1926 to Date.**—In 1926 these provisions were repealed, the power of Wardens to grant timber-cutting rights of any description were definitely taken away, rights granted invalidly by Wardens in Land Board timber-areas were validated, and all timber rights granted by Wardens were passed over to be administered by the State Forest Service (Forests Amendment Act, 1926). Conditions of original grant of such timber rights under the mining law continue until termination of the rights : thus, rights of renewal, of conversion of timber reservations into sawmill licenses, and of payment of royalty on timber output, are preserved, but royalty rates on new licenses over timber reservations are determined by the Minister of Forests. Large areas are still held under these rights, and the holders have obtained under the mining law a vested interest in the timber, but eventually on the termination of these rights the granting of all future timber rights will be effected solely under the forest laws.

One reason why large areas are held under timber rights originally granted by the Wardens is the extension of maximum area of timber reservations appurtenant to sawmill areas from 200 acres in 1893 to 600 acres in 1900, and in 1912 to 1,600 acres per sawmill area. (The permitted size of a sawmill area, 200 acres in 1893, was later increased to 400 acres, and the maximum term of license was set at 42 years).

At the same time (in 1926) as the powers of Wardens to grant timber rights were taken away by the forest law, authority was provided in the latter for the Minister of Forests, at the request of the Minister of Mines, to grant timber rights in State Forests or other lands of the Crown not subject to the land laws, to the holder of a miner's right. The timber was to be used exclusively for mining purposes, and royalty or rent were to be at rates to be agreed upon by the two Ministers. The Minister of Forests might, however, in any particular case still delegate this authority in writing to a Mining Warden ; but in actual fact such delegation has never been made.

In 1926 the granted timber right which a claim-holder having his mining timber cut on contract was required (first in 1916) to apply for, was altered from a right granted under the Mining Act to one under the Land Act, and it became necessary for royalties specified under the Land Act to be paid. This is still in force. No provision is made for State Forests, but it seems that a license under the Forests Act would be satisfactory provided the royalties were those specified under the Land Act.

(3) Royalty Rates.

Originally (in 1887) only a flat fee was payable for a right to cut timber. In 1892 royalty was payable on the quantity cut, in addition to a license fee. Acreage rent became payable first in 1899, but so long as cutting was continuous, it was rebateable from the royalty. Excepting in early regulations where firewood paid not less than 1/- per cord, all royalties were on a flat rate according to species until 1918, when the new rates gazetted were **minimum** rates, the Warden having the power to impose royalty at higher rates. Royalty rates were amended from time to time, thus the more durable timbers paid 6d. per 100 super. feet in 1892, to 2/- and 2/6 (minima) in 1918 ; while rimu and kahikatea, which both paid 3d. per 100 ft. in 1892, and 6d. from 1899 till 1917, paid respectively 1/- and 9d. (minima) in 1918, when the last schedule of royalty rates was gazetted.

(4) Conditions attaching to Timber Rights, Forest Penalties, etc.

Until the year 1899 the occupation of Crown land in Goldfields or Mining Districts was not subject to the land laws excepting for purposes of depasturing, winning of coal, stone, flax, etc., and (until the year 1891) cutting and removing timber (excepting State forests as from the year 1885). In the early years, the holders of mining rights enjoyed full and free liberty of occupation, and later from 1877 till 1899 such holders were "deemed in law to be possessed of the land and the property therein" for mining and incidental purposes. In the early years at least, this was sufficient authority for the cutting and using of timber.

The reservation of kauri and other reserved trees from cutting has been provided for from the year 1886 to the present day. Wardens have always had authority to insert in mining licenses, leases,

etc., reasonable conditions as they deemed fit, and such conditions could include some that would protect forest growth from fire, over-cutting, and so on. It is very unlikely indeed that this course was taken prior to the recommending of such a course by the State Forest Service commencing about the year 1924.

Under the influence of the State Forests Act, 1885, and the small special staff that administered that Act (for all too brief a period of but three or four years) sound provisions for forest protection appeared in the Mining Regulations of 1891 till 1899, when they were dropped : for instance, cutting beyond boundary lines then first became a breach of regulations and led to liability for what amounted generally to double royalty ; sufficient surveys were enforceable at the cost of applicant ; penalties were prescribed for lighting forest fires and intentionally or negligently allowing them to spread ; for permitting any fire lit outside a forest boundary to spread into the forest ; also for unlawfully injuring or destroying any timber tree or shrub within the limits of any forest ; and for unlawfully felling or cutting timber for sale within any forest. These provisions all disappeared in 1899 or were whittled down to nugatory dimensions. Indeed the only specific provision since 1899 relating to forest fires has been a statutory one, still in force, for the protection of standing bush on prospecting areas from fire, **except on unalienated Crown land.** General provisions for protection of property are, of course, made, but only as ordinary and not as forest, property. Compensation for damage caused by miners to State Forest land and timber can be claimed by the Crown under a Mining Law Amendment of 1934.

(5) Summary.

(1) Prior to 1877 the mining law did not expressly provide for any timber rights, though the cutting of timber was without doubt encouraged, *e.g.* under the Waste Lands laws. In those days timber was super-abundant ; but in the present times the necessity for conserving indigenous timber and of growing exotic timber for mining purposes is admitted by many miners.

(2) Timber rights exercisable by right and without special application by holders of miners' rights or mining privileges have been conferred by the mining laws since 1877-1878. An exercisable timber right appears to comprise two joint and inseparable rights, **to cut and use** timber for specified purposes connected with mining. A right is not conferred to cut and waste timber, or to cut and sell timber.

(3) Kauri trees, first reserved in 1887 from cutting under these rights, and other reserved trees, first provided for in 1892, are still at the present day reserved from cutting under these rights ; but it seems doubtful whether Wardens have any longer, since 1926, authority to reserve further trees. In 1899-1900 the Commissioner of Crown Lands, as well as the Warden, had authority to reserve trees. Reservation of trees, of certain species, diameters, or in certain specified areas, is essential in the interests of forest management, and it

would seem that reservation by a Warden on the recommendation of a Conservator of Forests is still a feasible compromise, if it were legalised.

(4) The first State Forests Act, passed in 1885, had important effects on the mining law. From 1885 until 1887, State forests were not open to mining ; and from 1885 until 1899 at least, and possibly until 1926, rights to mining timber were not exercisable in State Forests. In 1899 the statutory provision of 1891 prohibiting timber-cutting in State forests under the mining law was relegated to a regulation and at the same time the statutes where they had prohibited timber cutting in State Forests under the mining law weakened the absolute prohibition by the addition of the proviso "for other than mining purposes." The view has been expressed that this phrase was intended to provide for the clearing of timber from State Forest land where essential for enabling the miner to reach the soil and mine for gold. A Full Court decision has ruled that since 1926, State Forest timber can again be cut under exercisable mining timber rights. Whether the Regulation of 1899-1926 prevailed during that period to prohibit such cutting of State forest timber is a matter for legal interpretation ; and has now merely an academic interest.

(5) Since the time (1887) when State forests have been open to mining, they have not been directly open to mining but have been been subject only to the provisions of the mining law relating to mining on Crown lands. More correctly, this applies not to State Forests in the widest sense, including lands purchased or compulsorily taken for forest purposes, but only to Crown lands **set apart** under the Forests Act "for forest lands or as reserves." Subject to limitations, all Crown lands in mining districts are declared in the Mining Act to be open for mining under the provisions of the Act. Mining has an extraordinarily wide meaning, including acts incidental or conducive to mining operations, and the Full Court has held that such acts must include timber-cutting.

(6) Mining rights are exercisable on available unalienated Crown land, including (for purposes of the Mining Act), State Forests, but the meaning of the term "available" has never been defined.

(7) The provision of 1916 that mining timber cut for a claimholder on contract must be cut under license and (from 1926) must pay current royalty, has an important bearing on forestry.

(8) As from 1935, bodies corporate holding miners' rights cannot thereby obtain free timber. This marks a very important step in the necessary process of breaking down customary rights under the mining law. A review of the mining laws clearly shows that free timber was only intended in reasonably moderate quantities for the average miner operating in a small way, and as stated in Parliament by the Minister of Mines in 1935, this is also disclosed in a review of mining policy during the past seventy years. Furthermore, in 1913 the Royal Forestry Commission recommended that the mining law should be overhauled in this respect, and that the indiscriminate

cutting of timber for miners' domestic fuel, etc., should be stopped by permitting cutting only in prescribed forest areas. The Royal Commissioners failed to see any reason why the mining industry should, more than any other industry, be subsidised at the expense of the State.

(9) Only timber to be used for strictly mining purposes can be cut under rights exercisable under the mining law, and this definition has remained clear-cut since 1877-1878. As for timber rights granted under the mining law it seems to the writer, that these were, until the year 1900, confined to timber to be used for mining purposes. In 1900 the uses of the timber were extended to cover any purposes. That the latter included mining purposes, and that timber cut for mining purposes under license was subject to royalties, seems clear from a Regulation of 1918 in which the Warden was empowered to impose a lower royalty rate on mining timber.

This provision was advantageous to miners using large quantities of timber, and where they held a granted timber right, in contrast to an exercisable timber right, they *ipso facto* held an exclusive right to a definite area of forest. (Once all the timber on a mining claim has been cut, the claim-holder is free under exercisable timber rights to take mining timber from broad acres of available forest, but his right is also held in common by other miners).

(10) Even the timber rights of the small miner under the mining law were seemingly not always inviolate, and the provision of 1893-1899 authorising mining registrars to issue monthly licenses to holders of miners' rights to cut timber "exclusively for mining purposes and domestic use" is frankly puzzling.

(11) One can realise that the management of the early goldfields should have been as fully as possible in the Warden's hands. Some of the goldfields are in timberless districts, and it may have been by way of mere bad luck for forestry that others of the goldfields are in heavily forested districts. The complete control of grant of timber rights by Wardens on the West Coast of the South Island from 1900 for over twenty years has left an aftermath of inequitable timber rights, which may persist in numbers for another half-century. However, the removal of the Wardens' powers in this respect in 1926 marked a milestone in the progress of forestry.

INSTITUTE OF FORESTERS OF AUSTRALIA.

The past year has seen the formation of an Institute of Foresters of Australia. The main objects of this new body are to encourage the study of the science and practice of forestry in all its branches, and to establish and maintain a high standard of qualifications in persons engaged in the forestry profession. The first number of the Institute's Journal, which is to be published biennially, is a welcome addition to scientific forestry and contains much of topical interest to New Zealand foresters.

We extend every good wish to our sister Institute in the Commonwealth.