TIMBER RIGHTS UNDER NEW ZEALAND MINING LAW.

Some further Notes on their history; and a summary of the present position.

by F. W. FOSTER.

An historical account of timber rights under New Zealand mining law was presented by the writer in the 1936 issue of this Journal. Results of subsequent historical researches and the effects of subsequent Court judgments are discussed in the following notes.

The First Exercisable Rights:

In the introduction to the original article, the writer stated that exercisable timber rights date from the year 1877, and he also referred in Section (1) (a) to the absence of any provision for such rights prior to that year.

Further research has revealed that exercisable timber rights date from the year 1870.

The Nelson Waste Lands Amendment Act, 1870, when providing authority for the grant of timber cutting rights under the land law, exempted gold miners requiring timber for their own use and holders of business licenses under the goldfields law from taking out timber rights under the land law.

The Westland Waste Lands Act, 1870, when authorising the grant of timber rights, specified that nothing prevented holders of miners' rights, miners' leases or business licenses from cutting timber upon waste lands of the Crown in the manner, to the extent, and for the purposes prescribed by the goldfields laws. This confirms the writer's remarks in Section (1) (a) (4) of the original review.

It is worth noting that exercisable timber rights were first provided for in the heavily forested West Coast districts of the South Island, forming at the time parts of Nelson and Westland Provinces, and that the same districts were later constituted land board timber areas in which timber rights were authorised to be granted under the land laws exclusively. As stated elsewhere, however, for twenty-six years the rights were granted in error under the mining laws, thus seriously retarding successful forest administration in such an extensively forested region. It is interesting to note also that exercisable rights under coaling laws were first authorised in the same district, and some years prior to their exercise being extended to the whole of New Zealand.

It seems illogical that the gold mining industry should be specially assisted with free timber because although it is a major industry, the timber industry ranks at least equal in importance even if we consider it in its primary stages alone. During the past five years the value of gold produced in the four main counties on the West Coast is £2,620,129, while the value of rough-sawn timber produced in the same
period is about £3,110,000. During the same period gold production employed on the average 1,735 persons per annum, while bush sawmills employed an annual average of 1,354 persons. To the latter, however, must be added large numbers employed in planing mills, in marketing, in transport, and in secondary industries such as building and the manufacture of wooden articles.

**Timber Cut by Contract under Exercisable Rights.**

In Section (1) (d) reference was made to a mining regulation issued in the year 1916 in terms of which a claim-holder who had his mining timber cut by contract was required to obtain a granted timber right under the mining regulations and to pay the prescribed fees. In mining regulations of 1926 this was further tightened up by requiring a license to be obtained under the land law and payment of royalties prescribed under the land law. In paragraph (7) of the summary of the original review, the writer emphasised the important bearing of this matter upon forestry.

In litigation of 1936, however, the Supreme Court ruled this regulation bad for repugnancy in that the Mining Act did not require any royalty to be paid on timber cut under miners’ rights, and made no distinction between cutting by wages and by contract. The Court held that the regulation sought to take away rights granted by the statute and that it was therefore void.

**Exercisable Rights Paramount over Granted Rights.**

At Section (5) (9) of the original article, it was mentioned that the holder of a miner’s right requiring considerable quantities of sawn timber generally took out a granted right, thereby enjoying a right that excluded from the particular area the ordinary miner seeking his timber from Crown lands or State forests at large. It was also deduced that royalties were payable under such a granted right though at lower rates in accordance with a mining regulation of 1916.

In 1936, however, in the course of litigation the Supreme Court ruled that two granted licenses, which were endorsed by the warden as subject to half rates of royalty on timber used for mining purposes were not subject to any payment of royalties on such timber. The authority stated was a mining regulation of 1892 and 1915, under which all timber licenses and reservations were granted and held subject to the right of miners to take timber from the areas in question by virtue of their exercisable timber rights.

This means that the thousands of acres held by sawmillers under granted rights are open to timber cutting by miners under their exercisable rights, and necessarily that the two licenses, the subject of the litigation, are themselves not secure in this respect.

It will now be readily acknowledged by all foresters—even those who have not as the present stage reached this conclusion—that timber rights under mining law present to the executive forest officer an exceedingly complex problem.
Extension of Granted Rights from Exclusively Mining to General Trade Purposes.

At the third paragraph of Section (2) (a) of the original review the writer hazarded an opinion that mining regulations of 1900 virtually validated the use for general purposes of timber legally utilisable for strictly mining purposes. Investigations since made show that in all probability the position was as stated. In the 1890's all rights were granted to cut timber for strictly mining purposes but before regulations were issued relaxing this restriction the timber found its way into ordinary trade channels without let or hindrance and this process was assisted by a sudden demand from the Australian timber market. It seems that this was an instance, and not the only instance in the mining law, of accepted usage preceding legal authorisation. Moreover a faultily worded mining regulation in force from 1892 until 1899 rendered the legal position open to legitimate doubt. The wording was corrected in 1899, as explained in the original article, but evidently this seriously restricted the trading activities of sawmills, and a few months later the Liberal Government of the day, noted for its progressive mining policy, legalised the sale of the timber for any purpose.

Invalidity of Granted Rights in West Coast District.

In section (2) (b) of the original article at the fifth paragraph, it was stated that between the years 1900 and 1926 mining wardens granted timber rights invalidly in land board timber areas. These rights, which are legally mining privileges and therefore freely transferable as chattels, were validated in 1926, the Crown thereby keeping faith with the right holders. In recent years as much as 16,000,000 board feet of timber has been cut annually under these rights, and although they have been administered by the State Forest Service since the year 1926 the long terms for which they were granted, the preservation of their almost perpetual rights of renewal, and the ease with which they are transferable, lead to such possibilities as timber aggregation and monopolies and exploitation of timber rights.

So forcibly do these possibilities tend to hinder good forestry control, that the subject merits some further discussion.

The invalidity in question arose out of grant of timber rights by the wardens as if their power to grant such rights was conferred by the mining laws without reference to the land laws "and the limitations of the authority conferred thereby" (Forests Amendment Act, 1926, Section 7). Timber rights in the land board timber areas could be granted only by the wardens acting on behalf of the land boards and under the authority of the land laws exclusively. The land boards themselves were prohibited from granting any timber rights, but the wardens were by law virtually appointed agents of the land boards. The wardens were authorised to deal with applications for timber rights under the same procedure as that for dealing with
applications for mining claims, etc., namely, through the Warden's Court, while it was also provided that timber rights should operate as if granted under the prescriptions of the mining law. But as agents of the land boards the wardens were not entitled to exceed the powers of their principals.

The latters' powers under the land laws were limited to grants over maximum areas as follows (the relevant particulars under the mining law being shown in brackets):—Sawmill license, 200 acres (400 acres); timber reservation, 1500 acres (1600 acres). The maximum terms laid down were as follows:—Sawmill license, 4 years with conditional extension for six months (42 years with rights of renewal for 42 year periods); timber reservations, 21 years from date of sawmill license (5 years, then renewable year to year, and convertible into successive sawmill licenses of maximum area 400 acres and term 42 years, with rights of renewal for 42 year periods). The position regarding ground-rent was as follows:—under the land laws, no rental payable (under the mining laws a rental of one shilling per acre per annum which with respect to sawmill licenses, however, was rebateable from royalties paid). Readers are reminded that prior to 1900, when the invalid grants commenced, the maximum areas grantable under sawmill licenses and timber reservations under the mining law itself were in each case 200 acres. Approximate details of the rights taken over by the State Forest Service in 1926 are as follows:—94 sawmill licenses, area 27,500 acres; 155 timber reservations, area 51,500 acres; total area 79,000 acres. If it is assumed that one half of the area under sawmill licenses had been cut over, the area of uncut forest locked up in 1926 under these rights was about 65,000 acres.

The corresponding position at present is approximately as follows:—34 sawmill licenses, area 10,000 acres; 36 timber reservations, area 11,000 acres; total area 21,000 acres; and of this the total area of uncut forest held probably exceeds 17,000 acres. As already stated the Crown in 1926 protected the rights of 249 rightholders over about 79,000 acres by validating the erroneously granted rights. Upon validation the rights were transferred to the administration of the Minister of Forests as if they were granted under the forest law. Cancellation of all these rights would obviously have created severe hardships.

Earlier in 1926, however, the Full Court had decided that one license and two reservation certificates were void, and issued an order quashing them. In its judgment the Court pointed out that the land boards were authorised with the approval of the Lands Minister, 'on the application of any person to (1) set aside any area or areas of timber-bearing land not exceeding 1,500 acres; (2) with such approval to grant licenses to cut and remove timber over areas not exceeding 200 acres at any one time; and (the land laws provide) (3) that no license after the first shall be issued without a certificate of a Ranger, or person appointed in that behalf, that the marketable timber
has been properly cut and cleared off the areas included in the previous licenses. In this case the warden has purported to grant the license and certificates (of reservation) without the approval of the Minister, and to grant the license before making the reservation, and for an area of 382 acres. The Warden had no jurisdiction to do this and the license and certificates are therefore void."

The judgment went on to say that in granting these rights the warden took the view that a section of the Forests Act 1921-22 is limited in operation to lands in a State forest (see original article, section (2) (b), seventh paragraph), but it pointed out the error of such a view and referred to a forest law amendment of 1925 (see ibid, eighth paragraph) which however was enacted after the rights had been granted.

One further point in the Court judgment merits quoting: "The history of the legislation shows that the object of the legislature in relation to forest conservation has been progressive, and it is not surprising to find that in the Forests Act 1921-22 the restrictions upon timber cutting have been extended."

It must perhaps be admitted that prior to 1926 the mining law was a quite equitable authority for the grant of rights to cut timber for mining purposes exclusively. At the present time two sawmill license only are held and operated by holders of miners’ rights, but their timber output is very small.

Had not the great remainder of these timber rights however, (namely those to cut timber for general trade purposes) been granted in error by the mining wardens, they would all necessarily have expired by the year 1947 at the latest, when the timber remaining on them would be sold under the normal method of prior appraisal and application of full stumpage values instead of payment “off the saw” and at royalty rates that tend to be nominal. Moreover the forest income would be paid into forest revenues, instead of goldfields revenues benefiting the general purposes of county councils, purposes over which the Crown has no control.

Actually some of the timber rights may continue for another 40 or 50 years, although by that time the ground rentals (which are also goldfields revenues) will have absorbed very considerable sums of money. Roughly 75 per cent. of the rights have disappeared since 1926, and it may be thought that the current rights will disappear at a proportionate rate. But it must be remembered that under State Forest Service administration many rights soon lapsed or were forfeited for breach of conditions. In consequence the rights that are still current are, generally speaking, the most valuable ones.

Actually these rights have never been administered under the land laws excepting that prior to 1926 a Crown lands ranger used to make a report on each Court application for the information of the warden and also used periodically to collect particulars of timber output for the information of the goldfields revenue receiver.
To the legislature of 1900 credit is due for creating the West Coast of the South Island a land board timber area, thus recognising it as an important timber region. It is perfectly obvious that that was the legislature’s intention, but unfortunately the intention was not fulfilled in practice: on the contrary, by a curious twist of administration the forests of the West Coast at once became to be controlled as a warden’s timber area. However, so far as the forest law regulations are concerned, these are almost identical with the forest regulations under the land law, and no real hardships have therefore been imposed on the validated-right holders by bringing the rights under the forest law regulations instead of the land law regulations.

The Present Position.

The position at the end of 1939 is here brought to date and outlined as briefly as possible, important Court decisions having been published since the 1936 issue of this Journal appeared.

1. Exercisable Timber Rights:—These timber rights are available to holders of miners’ rights and mining privileges and are implied in the mining rights. All Crown lands within any mining district are open for mining under the provisions of the Mining Act. All Crown lands set apart for forest lands under the Forests Act are subject to the provisions of the Mining Act relating to mining on Crown lands, and therefore State forests situated within mining districts are open to mining (Mining Act 1926 and Full Court 1935).

Portions of such lands may, however, be specifically exempted by Gazette notice. Defined portions may be exempted from mining altogether, or from any specified mining purpose or from the Mining Act or any specified provisions of that Act (Mining Act 1926). For example, portions may be exempted from the provisions relating to exercisable timber rights. In some cases of exemption State forest areas have been completely exempted, while in a few others the land remains open to mining but no timber rights are exercisable under the mining law, thus making silvicultural operations and forest management possible.

State forests that have been purchased or otherwise acquired, or taken under the Public Works Act are not open to mining.

(a) Miners’ Rights.—Miners’ rights are annual rights entitling the holders to prospect on any Crown lands open to prospecting. “Mining” includes “prospecting” and therefore State forests within mining districts are open to prospecting, but those outside mining districts are open to prospecting only with the consent of the Minister of Forests, and evidently a necessary preliminary to any prospecting thereon would be the lodging of an application for a prospecting license or warrant. In any case no timber rights are exercisable in State forests outside of mining districts. Miners’ rights are issued by any wardens, mining registrars, or authorised postmasters.

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The holder of a miners’ right is entitled to cut and use timber for his own use from lands of the Crown, excepting timber on any other person’s mining privilege, and any kauri trees or trees reserved by the Warden (“Mining Act and Regulations, 1926”). By a Mining Amendment Act of 1935, corporate bodies may not exercise this timber right.

Every timber right granted under the mining law (up to the year 1926—see (2) below) was granted and deemed to be held subject to any miners’ right holders availing themselves of their exercisable timber rights over the area of forest comprised in the granted right (Mining Regulation of 1915 and Supreme Court judgment of 1936).

Gold fossicking by miners holding simply the miner’s right is often difficult to locate, and is frequently unsuspected until stumbled upon in the forest. Intensive local knowledge of the forest district is the only means of gaining intelligence of minor gold prospecting operations in State forests.

(b) Mining Privileges.—Regulations may be made prescribing the rights, privileges, duties, and obligations of the holders of Mining privileges (Mining Acts). The exercisable timber right under (a) above is also exercisable by the holder of a mining privilege in respect of timber (other than kauri or reserved trees) on his mining privilege or, where suitable timber is not obtainable thereon, then on any other available Crown land or State forest open to mining, but for the purposes only of his own domestic use or for the erection of buildings or fences on his mining privilege or the carrying on of his mining operations thereon (Mining Regulation, 1926).

Mining is defined to include all lawful acts incidental or conducive to any mining operations or purposes (Mining Act, 1926), and this has been emphasised by the Full Court (1935) though degrees of remoteness of incidental or conducive acts have been recognised by the Courts.

Timber that may be cut under this type of right includes not only firewood, propwood, etc., but also milling timber in large quantities (Full Court, 1935).

Equally with the timber right discussed under (a) above, the one now being dealt with is exercisable over and supersedes any granted timber right taken out under the mining law.

No royalties are payable on timber cut by the mining privilege-holder himself or by his wagesmen, but timber cut by contract requires a granted right and payment of royalties (Mining Regulation, 1926). The Supreme Court ruled, however, in 1936, that this regulation is unreasonable and repugnant to a statute section dealing with miners’ rights.

It was very difficult for the forester, with his natural bias towards the forestry viewpoint, not to entertain an idea that the timber right exercisable under miners’ right and the one exercisable under
mining privilege are quite distinct, and that the regulation of 1926 dealing with timber cutting by contract is consonant with another section of the Mining Act, 1926. This section empowers regulations to be made prescribing the mode in which, and the terms, conditions and restrictions subject to which, timber on Crown lands (and State forests) may be felled and removed, fixing the prices to be paid for the timber, and preventing its unlawful felling or removal. Every license for a mining privilege is deemed to be granted and held subject to such terms, conditions, reservations, and provisions as are prescribed by the Act or by regulations under the Act (Mining Act, 1926). Moreover, it is not necessary for the holder of a mining privilege to hold in addition a miners’ right (Mining Regulation, 1926). The Court decision, however, converted such an idea into nothing but a vain hope.

To the reader bearing in mind the legal right to cut timber from State forests at large it will be obvious that it would be unsafe to commence any silvicultural operations in any State forest within a mining district (and mining districts are very extensive indeed) until it has been exempted from the exercise of such a sweeping right. Otherwise forest revenues required to recoup the cost of thinning and other silvicultural operations may be nil, even where such operations would be for the benefit of the mining industry itself.

Difficulties of forest control are further increased by certain unregistered mining privileges. The holder of a miners’ right, which in itself confers no element of title to any land, is entitled to peg out and hold an ordinary alluvial claim not exceeding 100 feet square and also tent or hut ground up to 24 feet by 48 feet, and such mining privileges need not be registered. Within mining districts, however, they nevertheless confer exercisable timber rights and since they are generally unregistered, it will be obvious that the forest officer often becomes aware of their existence only in the course of forest patrolling.

Before they may be granted in State forests within mining districts, certain mining privileges require the consent of the Minister of Forests and are subject to conditions imposed by him. These privileges are licenses for tramways, branch-races, flood-races, and by-washes, diversion of streams, tunnels, roads, bridges, and others not specified (Mining Act and Regulation, 1926).

Similar consent is required to the grant of a few mining privileges that are grantable outside mining districts, as State forests outside mining districts are not open for mining. Such privileges are prospecting licenses, prospecting warrants, mineral prospecting warrants, mineral leases, and mineral licenses. The first two may be granted by wardens over any land (except Native land) whether within or outside a mining district, and also by Crown lands commissioners outside of mining districts. The next two mentioned may be granted by Crown lands commissioners over any Crown or other lands outside mining districts, while mineral licenses are grantable by wardens over any Crown land within or outside mining districts.
While it is true that Crown lands set apart under the Forests Act are subject to the provisions of the Mining Act relating to mining on Crown lands, there is also the provision that Crown lands (and State forests) are declared open for mining under the provisions of the Act in mining districts. The inference is that with the consent of the Minister of Forests certain mining privileges may be granted outside mining districts, and granted and administered under the provisions of the Mining Act.

In any event no exercisable timber rights are available outside of mining districts as such rights are expressly applicable within mining districts alone.

A mining privilege which presents some difficulty to forest management by reason of land occupation for long periods (often 42 years) and which also confers the usual exercisable timber right is the residence-site license. These privileges were commonly granted not only to miners but also to persons not even remotely connected with mining. In one case of the latter kind however a warden decided that he had no jurisdiction to deal with applications of this sort, because, in effect, "residing" is not "mining." Later another warden adopted this ruling for an application by a mining company for residence-sites for its servants, but the Supreme Court (in 1936) ruled that the warden must hear this application. The court however expressed difficulty in adopting a view that was put forward that persons not connected with mining, such as persons who have retired from business, are entitled to be granted these privileges.

(c) Timber Destroyed during Mining Operations.—The right of miners to clear and destroy timber in order to facilitate their mining operations is recognised, but land (including timber standing thereon) vested in the Crown and destroyed by miners may be the subject of compensation by the Crown, and State forests come within the scope of this provision (Mining Amendment Act, 1934).

(2) Granted Timber Rights:

(a) Granted under the mining law: timber for general purposes including mining purposes.—(These rights have been administered under the forest law since the year 1926). Between the years 1900 and 1926 timber rights over large tracts of Crown land forest situated within proclaimed land board timber areas could be granted by the mining wardens alone but on terms, conditions, etc., prescribed by the land law exclusively. Wardens, however, erroneously granted them under the prescriptions of the mining law. Numbers were even granted in this way over State forests. In a test case early in 1926, the Full Court ruled that three of these rights granted in 1925 were void, and ordered that they be quashed.

Later in 1926 the large number of rights current at the time were validated and the forest land affected, that was not already in State forest, was by statute declared to be State forest (Forests Amendment Act, 1926).
The rights were declared to have been as validly granted as if they had been comprised in a warden's (instead of a land board) timber area, thus preserving the terms and conditions under which the rights purported to have been granted.

The validated rights were thereafter to be administered by the Minister of Forests as if granted under the Forests Act. Rights of appeal against any decision of the Minister were preserved on the same basis as previous rights of appeal against like decisions of the wardens.

Existing rights with respect to payment of royalties assessed on timber output; to royalty being credited in satisfaction of rent; to maximum license areas; to term of years for which licenses were to be held; to surrender of cut-over license areas and simultaneous conversion of reservations into new licenses; and so forth, were preserved.

The only change made was that under new licenses the royalties were to be computed on a basis and at rates to be fixed by the Minister of Forests.

Revenues from these rights are allocated as previously, but 10 per cent. is paid to forest revenues for expenses of administration.

Summed up, the position is that these rights should have been granted under the land law but they were granted under the mining law: in 1926 they were deemed by statute to have been granted under the forest law. They are therefore administered under the Forests Act and Regulations. But as each new license granted over a timber reservation is expressly granted subject to the same terms and conditions as the previous license, foresters controlling these rights require some knowledge of the Mining Act, 1908, and Mining Regulations of 1915. The latter concern mainly such matters as renewal, assignment, etc. Assignments are still registered in the office of the Warden's Court, and the wardens still exercise their judicial functions respecting these timber rights. For example, a sawmill license whose conditions have been infringed can be cancelled only by means of a decree of forfeiture in the Warden's Court following the bringing of suit to that end.

As mentioned under (1) granted rights of this class which are operated by holders of miners' rights and for cutting mining timber exclusively are not subject to any payment of royalty as the Supreme Court ruled in 1936 that the holder's exercisable timber right prevails over his granted timber right.

All timber rights, too, that were granted under the mining law are open to timber-cutting under timber rights exercisable by holders of miners' rights (other than corporate bodies) and by holders of mining privileges respectively. As mentioned under (1) above, this provision, which appeared in mining regulations of 1915, was the basis for an important Supreme Court judgment delivered in 1936.
should be noted that although granted timber-cutting rights are themselves included within the definition of mining privileges (Mining Acts), evidently the regulation of 1915 is interpreted as specifically nullifying in this regard the provision mentioned under (1) (a), namely that holders of miners’ rights may not take timber from other persons’ mining privileges.

In this particular connection, it is provided (Mining Act, 1926) that all mining claims comprising land over which any validly created right is held to cut, remove, or float timber are deemed to be held and granted subject to the condition that the holder thereof will so carry on his mining operations as not to prevent the reasonable exercise of any of the timber rights mentioned. In disputed cases, the warden decides what constitutes reasonable exercise of the timber rights, and he may impose special conditions for the carrying on of the mining operations. The Governor-General may make regulations for giving effect to this provision, and for enabling the mining and timber industries to co-exist on the same land. The regulation of 1915 (see previous paragraph) contained a proviso to this effect, but it was revoked in 1926.

The only land board timber areas of any importance proclaimed under the mining law comprised four counties on the West Coast of the South Island, in the Westland and Karama mining districts. In consequence this class of granted timber rights is now peculiar to the Westland and Nelson Forest Conservancies. The four counties in question comprise one of the most heavily forested regions in the Dominion, and the only region where the podocarp timber trees show an abundant natural regeneration. In two of the counties in particular, considerable areas of beech (Nothofagus) forest are suitable for management under forest working plans, chiefly for the production of mining timber: the cutting of which must, however, be controllable under rights to be granted under the forest law alone.

(b) **Granted under the forest law over timber reservations held under (a):** Licenses in this class have been dealt with under (a) above. One provision there referred to, namely that the royalty rates as are fixed by the Minister of Forests (who actually grants these new licenses) has been considered by rightholders to inflict a hardship contrary to their interests and to the customary practice of the wardens prior to the year 1926. The new rates are more in line with stumpage values adopted in assessing the sale value of State forest-timber in normal sales of appraised standing timber by public competition. In 1926, they amounted to an increase of about 50 per cent. on the royalty rate customarily applied at the time by the wardens. But the warden’s rates had been increased about 100 per cent. in the year 1918, and previously by a like amount in the year 1899. Up to 1918 the rates prescribed under the mining regulations for the different timber species were fixed ones, but in 1918 the new rates prescribed were expressed as minimum ones, and in some instances the wardens inserted higher rates in the licenses granted by them. In other words,
the provision complained of was not really a new one. In any event under the system of allocating revenues, the county councils and not the central government reap the largest share of benefit from any increase in royalty rates.

(c) Granted under the forest law: timber for strictly mining purposes.—The Minister of Forests is vested with authority to grant rights to cut timber in State forests for mining purposes (Forests Amendment Act, 1926). Such rights are granted to holders of miners’ rights at the request of the Minister of Mines. They are granted to cut timber for exclusively mining purposes and upon such terms and conditions as to payment of rent or royalty or other fees as may be agreed on by the two Ministers. These rights also cover other lands of the Crown excepting land subject to the Land Act. In any particular case a right may be granted by a warden under written delegated authority, but no such delegations have been made.

In the section of the Mining Act, 1926, where State forests in general are made subject to the provisions of that Act relating to mining, the Act provides that nothing in the section is to be construed to authorise the felling of timber on State forests for other than mining purposes except under the provisions of the Forests Act. The felling of timber for mining purposes implied here comprises felling of timber for miners’ use under the exercisable timber rights described under (1) (a) and (1) (b) above, and felling of timber that impedes mining operations (see (1) (c) above). The only granted right that could be implied is that provided to cover contract timber-cutting by mining-privilege holders under their exercisable timber right: that provision, made in a regulation, has however been held by the Supreme Court to be unreasonable and repugnant to the statute (see (1) (b) above).

(d) Granted under forest law: timber for general purposes including mining purposes.—In practice State forest timber for mines is generally cut under ordinary rights granted under the Forests Act. Such rights are of course the only ones available to persons who do not hold miners’ rights, such as sawmillers and timber splitters who sell part of their output to the mines. Timber for mines is also of course cut from private land and Crown land.

The following table shows the relative quantity of sawn timber for all purposes cut under the different classes of granted rights. The figures relate to Westland Forest Conservancy alone. The portion of Nelson Conservancy within the old land board timber areas produces about one-seventh of the quantity produced in Westland Conservancy. One or two rights of class (c) have been granted in Nelson Conservancy.

<table>
<thead>
<tr>
<th>Five year Period Ended March</th>
<th>Class (a) (b) Valuated Wardens’ Rights</th>
<th>Class (c) Forests Act (Mining Rights)</th>
<th>Class (d) Forests Act (Ordinary Timber Licenses)</th>
<th>Private Timber and Land Act (since 1926)</th>
<th>Total</th>
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</thead>
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<td>1926</td>
<td>55.0%</td>
<td>—</td>
<td>15.8%</td>
<td>29.2%</td>
<td>100%</td>
</tr>
<tr>
<td>1939</td>
<td>18.0%</td>
<td>—</td>
<td>44.5%</td>
<td>37.5%</td>
<td>100%</td>
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</table>

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The increased cut of private timber is due to kahikatea timber being in great demand a few years ago, and to the commencement of milling on private lands in mid and south Westland, where practically no State forests have so far been opened to milling.

The percentage cut under (a) and (b) fell from 63.6 in 1922 to 19.9 in 1939 while that cut under (d) rose from 6.9 to 52.8.

PREPARATION OF THE FOREST FLOOR FOR SEED RECEPTION.

With the object of creating a stand of beech pole forest for the partial future supply of mining timber for Reefton district, an area of 1200 acres in P.S.F. 132 was demarcated and silvicultural treatment commenced in 1936.

The forest is a beech taxad association with a lower storey of secondary species common to this type of forest in districts of abundant rainfall. Nothofagus fusca, largely overmature, is the principal species N. truncata, N. menziesii and taxads rimu, miro and kahikatea being present in small clumps or as individual trees. Regeneration was poor owing to a thick layer of “duff” and debris on the forest floor. Treatment consisted of underscrubbing and felling of all undesirable species up to 6 inches diameter, and the ring-barking of larger diameter useless species and overmature beech, leaving as seed trees a light stand of healthy well-formed beech.

From previous observations it was known that where duff is present on the forest floor seedlings fail to reach the mineral soil and die off completely in the early summer. Seed trenches were therefore prepared over a trial area of several acres by grubbing away surface litter and duff, and exposing the mineral soil in preparation for an indicated good seed year in 1936. The success of this trial was such as to warrant its continuation on a larger scale (see photograph opposite), by a less expensive method. Some 87 acres was therefore treated in the summer of 1938-1939 by the preparation of small patches of ground, 2 feet to 3 feet in diameter at approximately 6 feet spacing, at a cost of £2 per acre.

Regular spacing could not of course be obtained, nor was it necessary to cover the whole of the area, as patches of sapling stand of the desired species already exist. Though the seed fall was much lighter than anticipated, and the strike obtained from patch preparation of the forest floor much less than in actual trenches, indications are that more than a full stocking of the forest is assured by the cheaper means of soil preparation.

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