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## TIMBER RIGHTS UNDER NEW ZEALAND COAL MINING LAWS.

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### Summary.

Coalmining laws are distinct from mining laws. Exercisable timber rights are implied in coal lease grants. Timber on a coal lease, if not required by the Crown, may be used in and about the coalmine on the lease, and no timber royalties are payable. Such rights were first provided for three coalfields in the year 1877, and were extended to the whole country in 1886. They are less complex than those exercisable under the mining law, and less obstructive to forest management. Coal leases conferring these timber rights were granted under the land laws up to 1886 and since then under the coalmining laws.

State forests were not open to coalmining until 1922, and the prior written consent of the Forests Minister is necessary.

Granted rights to coalmine timber date from 1925, coalmine timber being previously obtainable under rights to cut timber for general purposes. Actually most coalmine timber is obtained (1) under general timber rights under forest or land laws or (2) from private timber owners.

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In the 1936 issue of this Journal the writer outlined the history of timber rights under the mining laws and mentioned the clear legal distinction between mining and coalmining.

Timber rights under coalmining laws, like those under mining laws, may be considered under two headings: (1) Exercisable rights, and (2) Granted rights.

Exercisable timber rights were first provided for in the year 1877, but only in respect of three coalfields on the West Coast of the South Island. The legislation of 1877 also in effect validated any timber-cutting that had taken place on coal leases within one of those coalfields subsequently to the year 1863. Not until 1886 did exercisable timber rights become available over the whole colony.

Timber rights granted specifically for coalmining purposes date from the year 1925, prior to which period timber not obtained under exercisable rights was obtained under ordinary rights to cut timber for general uses.

The first bituminous coalfield was discovered in 1859 on the West Coast of the South Island. Coal was worked on some considerable scale in several parts of New Zealand during the 1860's, and probably earlier. It seems probable that lignite was being worked in the 1850's.

### (1) **Exercisable Timber Rights :**

A colliery proprietor who is granted a coal lease on Crown land or State forest is entitled without any further application to exercise rights to timber growing on the surface of his coal lease. The uses of such timber, however, are limited to strictly coalmining purposes. Usually no royalty is paid on timber cut and used under these conditions, though the Minister of Mines may require royalty to be paid. If the lease carries no timber or the timber is unsuitable, application must be made, under the forest or land laws, for grant of a right to cut timber elsewhere, and in such cases timber royalty is payable. Alternatively, of course, coalmine timber can be obtained from private landholders.

**(a) Period to 1877**—Coalmining rights in general were granted by Waste Lands Boards under authority of Provincial Waste Lands Laws. They came within the category of licenses and leases to occupy waste lands of the Crown for the purpose of "raising lignite or coal." There were no State forests during this period. Provisional licenses were convertible into leases of a term not exceeding 21 years. The area of land to be occupied was determined in each case by the Waste Lands Board.

No timber rights were expressly authorised during this period, but it seems fairly certain that timber-cutting by holders of coal licenses and leases was not regarded as illegal. No other interests were affected, timber was over-abundant, the clearing of waste lands for farm settlement was encouraged by all means that were possible, and the young coalmining industry was being assisted with royalty-free timber. Timber seemed so plentiful in some parts of the Colony that any suggestion towards conserving timber supplies not only for general purposes but even for the mining industry itself, met with opposition on the grounds that the Colony was too young for the application of forest conservation and forest management as practised in Europe.

It seems that timber on coal leases granted by the Nelson Provincial Waste Lands Board in the Buller Coalfields was being cut and used by the leaseholders, but any timber-cutting of this kind was not dealt with as timber trespass, but in 1877 was validated retrospectively to the year 1863.

(b) **Period 1877 to 1925**—No exercisable timber right applicable to the whole of New Zealand was provided for until the year 1886. Upon the abolition of the Provinces at the end of 1876, the General Assembly in Wellington provided for the control of three coalfields on the West Coast of the South Island in the Westland and Nelson Coalfields Administration Act, 1877. This was a local Act, and covered (1) the Buller coalfield in Westport district (previously administered by Nelson Provincial Government under its Buller Reserves Administration Act, 1863), (2) the Nelson-Grey coalfield, north of the Grey river, and (3) the Westland-Grey coalfield, south of the Grey river.

The 1877 Act empowered the Land Boards of the two respective land districts (no longer provincial waste lands boards) to grant coalmining rights within the three coalfields mentioned.

The first exercisable timber right under the New Zealand statutes appears in this local Act of 1877, and its substance was as follows:—“All timber trees and trees likely to be timber, now standing, growing or being” on the leased land or likely to stand, etc., on the leased land during the currency of the lease were reserved to Her Majesty the Queen and the Crown or its authorised agents could “fell, cut and carry away the same at fit and reasonable times : provided nevertheless that every lessee of a coalmining lease shall and may cut down any timber trees for the purpose of constructing any tramway or railway thereon, or rolling stock for such railway or tramway, or any buildings, or for propwood or firewood, or other necessary purposes incidental to the proper working of any coalmine, railway or tramway.”

From the year 1863, coal leases could be granted in Buller coalfield up to an area of 1280 acres and for a term up to 21 years, extended in 1866 to 5,000 acres conditionally and up to 99 years' term. The 1877 Act provided for leases covering such area as was prescribed by any law or regulation in force in the land district affected, and for a lease term up to 99 years. It is possible that some of these old leases are still in existence.

It should be noted particularly that exercisable timber rights under both coalmining and mining laws were first instituted on the heavily forested West Coast of the South Island : the former in Nelson in 1863, extended to Westland in 1877, and the latter in both Nelson and Westland in the year 1870.

As for the coalfields in other parts of the Colony, district land boards (formerly provincial waste lands boards) continued as the sole authority, and under the land laws, for granting coalmining

rights, but excepting the three West Coast coalfields mentioned above, no coalmining rights issued by the land boards covered any expressed timber rights. Under the Land Act 1877, coalmining occupation licenses could be granted up to seven years over an area up to 80 acres, and were convertible into leases of a term up to 21 years. Provisional occupation licenses could be granted up to three years, maximum area 200 acres, and these also were convertible to leases, term up to 21 years.

The first Coal Mines Act was that of 1886, and its exercisable timber right was almost identical with that of the local Westland and Nelson Coalfields Administration Act, 1877. For the first time this timber right became applicable over the whole Colony.

Under the 1886 Act, district land boards remained the sole authority for the grant of coalmining rights: no longer, however, under the land laws, but solely under the new coalmining law. The authority for granting licenses or leases under the land laws for raising lignite or coal was repealed. Under the new law, land boards could grant coal leases in substitution for licenses and provisional licenses already granted under the land law, and could also grant lignite raising licenses, which were convertible into leases if required. Coal leases were of a maximum area of 640 acres and term 30 years, which could be extended to 99 years. Crown lands commissioners were required by the new law to inform the Minister of Mines monthly of particulars of all grants, transfers, surrenders, forfeitures and refusal of grants.

The authority of the Nelson and Westland land boards to grant coalmining rights within the three West Coast coalfields was unaffected.

In 1890, however, an amendment to the coalmining law brought the administration of the three West Coast coalfields by these two land boards under the control of the Minister of Mines. All coalmining grants were now governed by the coalmining law alone. At the same time the maximum area of coal leases was increased to 2,000 acres.

The Coal Mines Act of 1891 finally took away the authority of land boards to grant coalmining rights and vested such authority in the Minister of Mines and the mining wardens appointed under the mining law. Crown lands commissioners, however, were empowered to grant rights over land outside mining districts proclaimed under the mining law, while mining wardens granted them within such mining districts. The maximum term of coal leases was reduced to 66 years.

The divorce of administration of grants etc., of coalmining rights from the land laws, begun in 1886, was now complete. Though not germane to a discussion of timber rights, it is of interest that from early times rules of working the collieries were administered by the Mines Minister under authority of Coal Mines Regulation Acts. That function was incorporated in the first Coal Mines Act of 1886.

From 1891 to the present time coal leases have been granted over land not exceeding 2,000 acres and for a maximum period of 66 years.

Exercisable timber rights conferred by Coal Mines Acts of 1891, 1905, and 1908, were almost identical with those of the 1886 Act and the local 1877 Act, but from 1905 on, the timber could be used only in and about the coal mine situated on the coal lease concerned.

**State Forests**—State forests, first constituted in the year 1885, were not open to coalmining until the year 1922, but by a coalmining law amendment of that year the grant of any coal rights in State forests has required the prior written consent of the forests Minister.

(c) **Period 1925 to date**—In the Coal Mines Act of 1925, the existing law on coalmining, the exercisable timber right was restricted to a conditional residuary right by the reduction of the phrase “shall and may” to “may, subject to any conditions imposed by the Minister” . . . . . (cut down any trees timber, etc.)

The two essential points of difference between exercisable timber rights under mining law and under coalmining law can be emphasised at this stage : (1) The holder of a gold claim may cut and use for his mining purposes any timber within his claim boundaries : a coal lessee may cut and use for his coalmining purposes only such timber on his coal lease as the Crown does not require ; (2) the gold miner may cut timber on any other Crown land or State forest when there is no timber at all or no suitable timber on his claim : the coalminer’s right is restricted to timber actually on his coal lease.

**State Forests**—As already mentioned, all coal rights to be granted in State forests require the prior written consent of the Minister of Forests. This distinguishes them sharply from all but a small number of mining rights. Of the three kinds of coal rights only coal leases confer exercisable timber rights: coal prospecting and tramway licenses carry no timber rights.

Not only timber, but also the surface of the soil and all metals and minerals other than coal have (since 1877) been reserved to the Crown out of coal leases, and conditional rights to mine such minerals on coal leases can now be granted under the Coal Mines Act alone. Such rights, however, are not coal rights and if in State forest do not require the consent of the Minister of Forests, but they confer no timber rights, and where necessary, conditions for encouraging the protection of State forests are inserted in such grants by the Mines Minister on the recommendation of the Forests Minister. Similar conditions are also inserted in grants for coalmining rights.

## (2) **Granted Timber Rights :**

Under the mining laws, wardens were authorised in 1900 to grant, in mining districts, rights to cut timber to be used for any purposes, which of course included coalmining.

By the Forests Amendment Act, 1925, however, the wardens were prohibited from granting timber rights in mining districts, whether on State forest lands or not, except for mining purposes to the holder of a miner's right, and for necessary purposes of a coalmine with the consent of the Minister of Mines. No differential royalty rates were provided.

This was repealed by the Forests Amendment Act, 1926, under which the Minister of Forests has authority, at the request of the Minister of Mines to grant timber licenses or permits over any lands vested in the Crown, except Crown lands subject to the land laws. Such rights are granted to the holder of a coalmining right, and conditions as to rent or royalty are decided by the two Ministers. The Minister of Forests may delegate his authority to a mining warden, but this has not been done in practice.

The granted rights just mentioned are special rights open to application by holders of coalmining rights : actually the timber used in and about most coal mines, and necessarily those mines under barren or excessively steep land has been, and is, cut under ordinary timber rights granted for the cutting of timber to be used for general purposes.