HOUSE . . . . No. 2245

The Commonwealth of Massachusetts.

Department of the Attorney-General, Boston, May 1, 1912.

Hon. Grafton D. Cushing, *Speaker of the House of Representatives.*

Sir: — I have the honor to acknowledge the receipt of an order adopted by the Honorable House of Representatives on April 12th, requesting my opinion upon certain questions "in respect to the constitutional amendment, relative to the taxation of wild or forest lands, now pending in the House of Representatives and contained in House Resolve, No. 1982." This resolve, which was duly passed by the Legislature of last year, is as follows:

"Full power and authority are hereby given and granted to the general court to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the commonwealth."

The specific questions submitted to me by the Honorable House of Representatives are as follows:

"1. Does the amendment as at present drafted include all wood lots and wood lands irrespective of their size?

2. Does the amendment as drawn discriminate against small wood lots and include only large tracts of wood land?

3. Does the term 'wild land' include small wood lots?

4. Does the amendment as drawn permit the enactment of taxation laws by the Legislature with reference to wood lots and wood lands regardless of their size?

5. Does the term 'wild or forest lands' include a tract of woodland located within fenced premises whose principal use is for pasturage?

6. Is the term 'wild or forest lands' a term of well known legal signification established by any decision of any court of last resort in the United States?

7. Is the term 'standing wood and timber' a term of well known legal signification established by various decisions of courts of last resort in the United States?

8. Does the amendment as drawn permit the enactment of laws to tax the land and exempt or reduce the tax on the growing timber which stands upon it?"

The proposed amendment is broad in terms and is designed to afford the Legislature comprehensive authority to adopt for wild or forest lands such methods of taxation as in their judgment may best develop and conserve the forest resources of the Commonwealth. So far as I am aware, the term "wild or forest lands" has never been precisely defined by either the court or the Legislature of this Commonwealth, but the term "wild land" is well known to the law, and has been often discussed and its signification definitely determined in connection with writs of dower and writs of entry or actions of tort for trespass. In these connections it has been defined as land in a state of nature, and includes marsh land, sprout land and woodland. *Conner v. Shepherd,* 15 Mass. 164; *Webb v. Townsend,* 1 Pick. 21; *Richmond Iron Works v. Wadhams,* 142 Mass. 569. Such land does not cease to be wild land even when used as an appendage to a cultivated farm for the purpose of procuring fuel and timber. *White v. Willis,* 7 Pick. 143; *White v. Cutler,* 17 Pick. 248. The term "forest land" does not seem to have been directly considered by the court. As used in the proposed amendment, above quoted, however, it probably does not differ greatly in meaning from the term "wild land", which precedes it. The word "forest", alone, has been defined to be, —

> "A tract of land covered with trees; a wood, usually one of considerable extent; a tract of woodland with or without inclosed intervals of open and uncultivated ground."
>
> Century Dictionary & Cyclopedia.

In the case of *White v. Cutler,* 17 Pick. 248, Chief Justice Shaw, in discussing the right of dower of a widow in wild

and uncultivated land, uses the terms "forest lands" and "woodlands" interchangeably, —

"These reasons apply as well to the case of a woodlot situated in the midst of a cultivated country, as to forest lands in their original state. But the chief justice, in delivering the opinion of the Court in this case (*Conner v. Shepherd*, 15 Mass. 164), takes care in terms to limit its operation to the case of woodlands not used or connected with a cultivated farm, or other improved estate."

It is well established that wild land does not lose its character by being kept and used by its owners for the purpose of raising wood for profit. *White v. Cutler*, 17 Pick. 248. See, *Slater v. Jepherson*, 6 Cush. 128. *Morris v. Callanan*, 105 Mass. 129. In my opinion the term "wild land", as defined by the court, would include forest land, with the possible exception that the term "forest lands" may include land planted and cultivated for the purpose of producing trees in sufficient numbers to constitute such land forest land.

Replying specifically to the first, second, third and fourth questions submitted by the Honorable House of Representatives, I am of opinion that the amendment as at present drafted would permit the enactment by the Legislature of taxation laws with reference to wood lots and woodlands, without regard to their size, so long as said wood lots or woodlands were wild or forest lands within the definition already made; that is, land in a state of nature, and uncultivated except for the purpose of producing wood and timber. It is to be observed that the amendment as at present drafted is permissive only, and, strictly speaking, cannot be said to include or exclude any particular kind or class of wood lots or woodlands. The foregoing answer, however, is based on the assumption that the Honorable House of Representatives desires my opinion upon the question of whether or not said amendment would permit the enactment of laws which should include wood lots and woodlands without reference to their extent.

It has been held upon a writ of dower that wood and pasture land occupied as such and used in connection with a homestead should not be considered as wild and uncultivated

land (*Shattuck v. Gragg*, 23 Pick. 88), and it is, in my opinion, at least doubtful if the term "wild or forest lands" would be held to include a tract of woodland located within fenced premises, of which the principal use was for pasturage. The question presented is chiefly one of fact, to be determined by the circumstances in each particular case. Speaking generally, however, and upon the assumption that the principal use of the tract is for pasturage, which is more or less inconsistent with the production and growth of forests, I am of opinion that the fifth question of the Honorable House of Representatives should be answered in the negative.

In respect of the sixth question of the Honorable House of Representatives, I have already stated that the courts of this Commonwealth have never established and defined the technical signification of the term "wild or forest lands", and I am not aware nor have I been advised of any decision of a court of last resort in any other State which establishes a general legal signification of that precise term.

To the seventh inquiry submitted by the Honorable House of Representatives I reply as follows: The terms "standing wood" and "standing timber" have been frequently defined by courts of last resort in the several States, but such decisions have been directed to the construction of the respective terms in specific legislative enactments, in deeds or grants, or in contracts, and have defined such terms with reference to the context in which they are found and to the purpose which the instrument was designed to accomplish, and so do not establish for them fixed and definite legal significations which would be applicable wherever the words may be found. Thus, for example, in *Strout v. Harper*, 72 Me. 270, where it was held that in a deed a reservation of "all the standing wood upon the lot, together with the right to enter and remove the same at any time within three years" included trees suitable for timber as well as trees suitable only for fuel, the court saying (at page 273):

"True, the word 'wood' is often used to designate fuel. But when so used it means fuel wholly, or, at least, partially, prepared for the fire. The term 'standing wood' cannot be so used. It can apply

only to trees. And when there is nothing in the context, or in any other part of the deed, to indicate that it is used in a more limited sense, we think it must be held to include all the trees — trees suitable for timber as well as those fit only for fire-wood."

And see *Nash v. Drisko,* 54 Me. 417; *Shiffer v. Broadhead,* 126 Penn. St. 260; *Haskell v. Ayers,* 35 Mich. 88; *Wilson v. State,* 17 Tex. App. 393; *O'Hanlan v. Denvir,* 81 Cal. 60; *Donworth v. Sawyer,* 94 Me. 242. In this Commonwealth standing wood and timber are mentioned occasionally in the statutes. See R. L., c. 134, § 11; c. 208, § 7. St. 1869, c. 249. And more frequently in the decisions of the court. See *White v. Foster,* 102 Mass. 375; *Drake v. Wells,* 11 Allen, 141; *Fletcher v. Livingston,* 153 Mass. 388; *Worthen v. Garno,* 182 Mass. 243. But the term " standing wood and timber " has not received, either in the statutes or in the opinions of the court, a fixed or technical definition of universal, or even of general, application.

The eighth inquiry of the Honorable House of Representatives is so phrased as to leave me in some doubt as to the exact question upon which my opinion is desired. Limiting my reply to the precise terms of said inquiry, however, I have to advise the Honorable House of Representatives that the proposed amendment, which would confer upon the General Court full power and authority to prescribe for wild or forest lands " such methods of taxation as will develop and conserve the forest resources of the Commonwealth ", would doubtless authorize the enactment of laws to provide that wild or forest lands should be taxed without reference to the element of value contributed by the growth thereon, and that the tax upon the value of such growth might be reduced or altogether omitted in the determination of the tax to be assessed upon said lands.

Very truly yours,

JAMES M. SWIFT,
Attorney-General.