

Taxation—Timber Reservation.

The right to enter, cut and remove standing timber is an estate in real property and should be assessed to the owner of the timber estate as real property, and should be sold as other real property where the taxes are not paid.

E. J. Cummins, Esq.,
County Attorney,
Deer Lodge, Montana.

My dear Mr. Cummins:

You have submitted to this office for my opinion the question: How should the treasurer proceed to collect taxes due on timber where the land had been sold and the timber reserved?

The question of whether standing timber, which has been conveyed by separate instrument, is real or personal property, was before the court in the case of *France v. Deep River Logging Co.* (Wash.), 140 Pac. 361. The court, after extensively reviewing the cases, said:

"No decision has come to our notice, rendered by any court in this country within the past 70 years, holding that such a grant of standing timber, with right of entry upon the land, converted the property right thereby created into personal property, nor are there any early decisions which we regard as controlling authority here to that effect. Not only is this the meaning of the language of the conveyance; but the acts of all parties concerned point with equal certainty, by their acts and admissions, to this construction by them of the language of the grant, as evidenced by the fact that more than 17 years elapsed from the making of the grant, when it is claimed that the property was converted into personal property, until it was removed by the grantee's successor, this appellant, that appellant has never returned or listed the timber as personal property, that appellant has never paid any taxes upon the timber in any form, and that appellant has never requested the taxing officers of Pacific county to assess the timber separate from the land. Even if we regarded the question as doubtful, we would resolve each doubt in favor of the view that the timber, for the purpose of taxation, has been at all times real property, since, viewed in its physical aspect alone, it is real property, and will be presumed to be such until clearly shown to be otherwise."

You do not state in your communication whether the timber reserved was to be immediately removed from the land, or whether any time limitation was placed upon the removal. The court intimates in this case that where the right of entry upon the land is to continue for more than one year, that the timber would continue to be real property. The weight of authority is to the effect that timber is real property, and should be assessed and sold as such if the taxes are not paid.

This conclusion finds support in 32 Cyc. 664, and the cases under Note 25, and *Nelson v. Bergman*, 242 S. W. 387.

It is, therefore, my opinion that the standing timber which has been reserved with the right to enter, cut and remove the same, is an estate in real property, and should be assessed to the owner of the timber estate and this interest or estate in the real property should be sold for delinquent taxes as other real property.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.