

They sought to protect trees of all sizes, and they used the terms “tree” and “timber” interchangeably. The delegates to the 1915 convention whose speeches the State relies upon to bolster its arguments were actually lobbyists for Adirondack lumber interests who sought to reopen the forest preserve to logging. Few, if any, delegates supported their views.

THE 1894 CONSTITUTIONAL CONVENTION

3. Remarks by David McClure and other delegates at the 1894 constitutional convention show that their aim in promoting Article VII, Section 7 (now Article 14, Section 1), was far more than preventing "commercial removal of timber" from the Forest Preserve, as the Defendants claim (Def.Mem.Law p. 2). The record, moreover, shows that the word "timber" was often used interchangeably with the words "forest" or "forests." As cited by the State (Def.Mem.Law p. 3), McClure himself said “We should not sell a tree or a branch of one... our timber should not be sold...” (*Revised Record 1894*, vol. 4, pp. 139-140). Thus, McClure did not distinguish between “trees” and “timber” based on their size.

4. McClure, e.g., insisted that "it was necessary for the life, the health, the safety, and the comfort not to speak of the luxury of the people of this State, that our forests should be preserved” (*Revised Record 1894*, vol. 4, p. 128) (A copy of the *Revised Record 1894* is Exhibit D to the Terrie Aff.). The combination of the words "forests" and "preserved" reveals a concern with the protection of the larger forest system, not just a prohibition on the removal or destruction of marketable logs.

5. In speaking in favor of the McClure provision, Delegate Mereness waxed eloquent and demonstrated clearly that he understood the aim of the McClure's proposal to be far greater than simply preventing the removal of marketable logs: "I have traversed this great forest in true

aboriginal style, with my boatman and skiff, and a pack on my back from Long Lake and Blue Mountain on the southeast to Paul Smith's on Lake St. Regis on the north; from the Fulton chain on the southwest to the lower Saranac on the north, and have visited a large number of the beautiful lakes and ponds in that region, of which there are not less than one thousand. I have stood on the highest mountain peaks and admired the beauty of the green leafage stretching out as far as the eye could reach, and where none of the ravages of man were discernible, and have frequented the places inhabited for centuries, and until recently by the denizens of the forest; where the deer, the moose, the black bear, the beaver and many smaller animals flourished, notwithstanding the presence of panthers and wolves. ... The screech of the locomotives, introduced into that lovely section by Doctor Webb and others, can now be heard, and the time is fast approaching when the whole region will be made desolate and barren, unless the hand of the despoiler is stayed. We have already waited too long, but I implore you, do not longer hesitate to take measures to stop this outrage. ... Let us recommend to the people that they put into the organic law the declaration that our forest preserve and the timber thereon shall be inviolate forever" (*Revised Record 1894*, vol. 4, pp. 147-148).

6. I note that Delegate Mereness understood the McClure provision to protect the forest preserve *and* its timber; i.e., protecting the timber, whatever that word meant to this delegate, was but one of the aims of the McClure provision. Preserving the "timber" was included within a broader goal of preserving the forest itself, regardless of whether or not it was to be removed from the Forest Preserve. Mereness's understanding is clearly that the McClure provision would protect wilderness, in all its spiritual and ecological complexity (*Revised Record 1894*, vol. 4, p. 148). Mereness pleaded with the delegates to adopt this provision, "to the end that the State may acquire and forever hold our yet beautiful forests for the benefit of our people" (*Revised Record*

1894, vol. 4, p. 149). What can "our yet beautiful forests" mean other than an intact forest, unviolated by human interference, and not merely the merchantable trees found there?

7. A Mr. Brown, speaking of his wish to protect the Forest Preserve, argued that the state must protect "this great water supply, this great sanitarium, this great health resort of our State that is known from ocean to ocean, and from land to land (*Revised Record 1894*, vol. 4, p. 156). The watershed argument was but one of three concerns vital to Delegate Brown.

THE 1915 CONSTITUTIONAL CONVENTION

8. As was the case with the 1894 Convention, the remarks of various delegates to the 1915 Convention show a concern for intact forest ecosystems, not just marketable logs. The primary source on this convention is the *Revised Record of the Constitutional Convention of the State of New York: April Sixth to September Tenth, 1915* (hereafter cited as *Revised Record 1915*). Copies of the pertinent pages of the *Revised Record 1915* are attached hereto as Exhibit A.

9. As in 1894, the delegates used the words "trees" and "timber" interchangeably. These included Delegate Byrne (*Revised Record 1915*, vol. 2, p.1468), Delegate Dunlap (*Revised Record 1915*, vol. 2, p.1491), Delegate Cobb (*Revised Record 1915*, vol. 2, p. 1497), Delegate Austin (*Revised Record 1915*, vol. 2, p. 1529), and, notably, the eminent attorney Louis Marshall (*Revised Record 1915*, vol. 2, p. 1536).

10. Mr. Dow, a member of the Conservation Committee, addressing the convention concerning that committee's recommendations, stated that: "To-day ... we are awake to the truth that it is necessary to the maintenance of living waters and their economic flow, touching vitally every interest of the State, that the forests -- the one product which the towering hills may grow -- shall be preserved inviolate forever" (*Revised Record 1915*, vol. 2, p. 1329).

11. Mr. Dow also asserted that the state's interest in maintaining and protecting its forests had deep historical roots and that this history involved protecting forests, as such, not just the marketable logs thereon: "It thus appears that more than a hundred years ago the people, by their representatives, recognized the policy of conservation; that they recognized in the growth of the public forests a peculiar value, different from that which attached to mere private wood lands..." (*Revised Record 1915*, vol. 2, p. 1329).

12. Mr. Dow, furthermore, insisted on "the importance to all the people of the State of conserving the forests--the value of forests to the State, as distinguished from their value as timber upon the stump in remote places" (*Revised Record 1915*, vol. 2, p. 1334). His point was that the importance of intact forests, which were protected by Article VII, Section 7, was far greater than the market value of any timber in the forest.

13. In discussing the elements of a legal case involving the value of timber salvage rights on the Forest Preserve, Dow cited People v. New York Central & Hudson River Railroad Company (161 App. Div. 322) and quoted the opinion of Justice Woodward: "The value is found in the timber as such, not in the land, as land, but in the combination of land and forest, conserving the water supply and preserving the game and the opportunity for recreation and this Forest Preserve as a value just because it is forest; because of the number of trees, their kind, their age, their healthfulness, etc., in conjunction with the land, and not because of any particular price that the trees would bring is taken to a saw mill. *** It is not the land nor the trees, as such; it is the "wild forest lands" which have the value to the State" (*Revised Record 1915*, vol. 2, p. 1334). Dow also discussed how, in pursuing this distinction, the court went on to declare that the "timber" on state land "in the law as it now stands, is not timber, but an ingredient of the "wild forest lands" which it is the policy of the State to preserve ..." (*Revised Record 1915*, vol. 2, p.

1335). (I have been advised by Plaintiff's counsel that this decision was reversed by the Court of Appeals, but that does not affect the intentions of Delegate Dow in quoting this language regarding the need to protect the entire forest, and not just the marketable timber.)

14. The State argues that some delegates objected to a proposed rewording of Article VII, Section 7, and asserts that the nature of their objection demonstrates that they saw primary concern behind the original Article VII, Section 7, was to prevent the removal of marketable logs from the Forest Preserve (Def.Mem.Law, p. 3). The State quotes Delegate Angell on this matter (Def.Mem.Law, p. 3, quoting *Revised Record 1915*, vol. 2, p. 1448). What the State does not note is that this was Edward M. Angell, who was an attorney for the Santa Clara Lumber Company, one of the largest wood-products companies active in the Adirondacks at that time (*Revised Record 1915*, vol. 2, pp. 1472, 1533). His primary purpose at the convention was to convince the delegates to open extensive portions of the Forest Preserve to commercial logging (*Revised Record 1915*, vol. 2, pp. 1448-1455).

15. In addition to advocating for logging on the Forest Preserve, which he did at great length, Angell also advocated building highways through, and leasing campsites on, the Forest Preserve (*Revised Record 1915*, vol. 2, pp. 1448-1455). Unsurprisingly, the only delegate who seriously favored Angell's arguments was Ferris J. Meigs, whom the State also cites (Def.Mem.Law, p. 3, quoting *Revised Record 1915*, vol. 2, p. 1511). Meigs just happened to be the President of the very same Santa Clara Lumber Company (*Revised Record 1915*, vol. 2, p. 1533). Meigs argued at equally great length that the state should open up the Forest Preserve to logging (*Revised Record 1915*, vol. 2, pp. 1507-1523).

16. The convention rejected Angell's and Meigs's position (*Revised Record 1915*, vol. 2, pp. 1537-1539). Neither Angell or Meigs is a credible source on the meaning of the word "timber," or any other proposition, for either the 1894 or the 1915 constitutional conventions.

Philip G. Terrie, Ph.D.

Sworn to before me this _____
day of September, 2016.

NOTARY PUBLIC