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W.P. 13 / 35  
43

S. C. OF B. C.

IN RE

JAPAN AND CANADA TRUST  
SAVINGS COMPANY

AND

ONOSUKE AKIYAMA et al

CHAMBER SUMMONS

WALSH BULL HOUSSEY TUPPER  
RAY & CARROLL.

---

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF "THE MORTGAGORS' AND PURCHASERS' RELIEF ACT 1934", being Chapter 49 of the Statutes of British Columbia 1934.

AND IN THE MATTER OF AN INTENDED ACTION

BETWEEN:

JAPAN AND CANADA TRUST SAVINGS COMPANY

INTENDED PLAINTIFF

AND

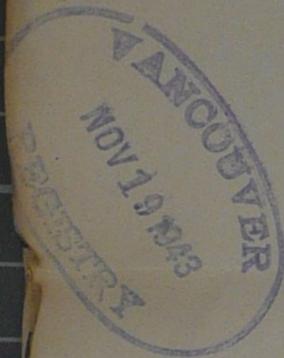
ONOSUKE AKIYAMA and TORU TAMURA

INTENDED DEFENDANTS.

I, MARION FRANCES BULL, of 675 West Hastings Street, in the City of Vancouver, in the Province of British Columbia, Student-at-law, make oath and say as follows:

1. That I did on Tuesday, the 16th day of November, 1943 serve Onosuke Akiyama with the Chamber Summons herein dated the 16th day of November, 1943, and the Order of the Honourable Mr. Justice Macfarlane dated the 9th day of November, 1943, and the Registrar's Certificate dated the 27th day of October, 1943, true copies of which are now produced and shown to me and marked exhibits "A", "B" and "C" respectively, at 675 West Hastings Street, in the City of Vancouver aforesaid, by handing to and leaving with W. L. Wright, Esq., Counsel for the Custodian of Enemy Property, true copies of the same.

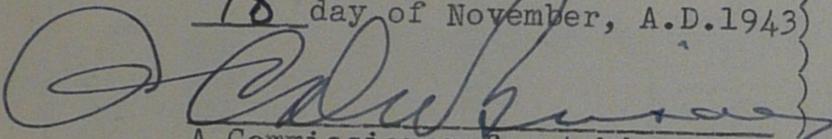
2. That I did on Tuesday, the 16th day of November, 1943 serve Toru Tamura with the Chamber Summons herein dated the 16th day of November, 1943, and the Order of the Honourable Mr. Justice Macfarlane dated the 9th day of November, 1943, and the Registrar's Certificate dated the 27th day of October, 1943, true copies of which are now produced and shown to me and marked exhibits "A", "B" and "C" respectively, at 675 West Hastings Street, in the City of Vancouver aforesaid, by handing true copies of the same to and leaving them with Frederick Field, Esq., local



representative of P. S. Ross and Sons, duly appointed  
Controllers of the Intended Defendant Toru Tamura's  
affairs.

SWORN before me at the City  
of Vancouver, in the Province  
of British Columbia, this

18<sup>th</sup> day of November, A.D. 1943



A Commissioner for taking  
affidavits within British  
Columbia

Francis Bull

35143  
M.P. 13 / 35  
42

S. C. OF B. C.

IN RE

JAPAN AND CANADA TRUST  
SAVINGS COMPANY

AND

ONOSUKE AKIYAMA et al

CHAMBER SUMMONS

WALSH BULL HOUSSER TUPPER  
RAY & CARROLL.

---

ENTERED ON CHAMBER LIST

35/3

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE MORTGAGORS' AND PURCHASERS' RELIEF ACT 1934"  
being Chapter 49 of the Statutes of British Columbia 1934.

AND IN THE MATTER OF AN INTENDED ACTION

BETWEEN:

JAPAN AND CANADA TRUST SAVINGS COMPANY

INTENDED PLAINTIFF

AND

ONOSUKE AKIYAMA AND TORU TAMURA

INTENDED DEFENDANTS.



LET ALL PARTIES CONCERNED attend before the Presiding Judge in Chambers at the Court House, Vancouver, British Columbia, on Fri day the 19<sup>th</sup> day of November 1943, at the hour of 10 o'clock in the forenoon, or so soon thereafter as Counsel may be heard, on the hearing of an application by the Intended Plaintiff for an order granting it leave to commence proceedings to exercise the power of sale contained in a certain Indenture of Mortgage dated the 24th day of October 1914, in writing and under seal, made in pursuance of the Act regarding Short Forms of Mortgages, between the Intended Defendant Onosuke Akiyama as mortgagor, and the Intended Plaintiff as mortgagee, for securing the sum of \$55,000 together with interest thereon at the rate of 7% per annum (reduced to 6% in the year 1931, then to (4%) in the year 1932, and finally to 2% in the year 1933) by which said mortgage the mortgagor did grant and mortgage unto the mortgagee

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Vancouver in the Province of British Columbia, and being more particularly known and described as Block 87 (now known as Blocks "B" and "C") of Lot (now District Lot) 2027, Group 1, New Westminster District, according to the map or plan thereof deposited in the Land Registry Office at the said City of Vancouver and numbered 980 (now referred to as Map 5702)

AND for an order that personal service of the proceedings herein upon the Intended Defendants be dispensed with, and that service on such Intended Defendants be permitted to be effected by serving the Custodian of Enemy Property and his duly appointed Controller, P. S. Ross & Sons, both of 675 Hastings Street West, Vancouver, British Columbia.

Dated at Vancouver, British Columbia, this ~~16th~~ day of November, 1943.



**J. E. MATHER**

DISTRICT REGISTRAR

*1.9*

TAKE NOTICE OF THE ABOVE.

AND TAKE NOTICE that in support of this application will be read the Report of the Deputy District Registrar of this Honourable Court made herein the 27th day of October 1943, and the affidavit of Frederick Field sworn herein the 8th day of October 1943 and filed, and the Exhibits therein referred to.

*W. W. Walsh*

SOLICITOR FOR THE INTENDED PLAINTIFF.

This Summons is issued by Walter William Walsh, Solicitor for the Intended Plaintiff, of the firm of Walsh Bull Housser Tupper Ray & Carroll, whose place of business and address for service is 1500 The Royal Bank Bldg., Vancouver, B. C.

TO THE INTENDED DEFENDANTS:

W.P.R. 35  
S.C. +3

vs.

PRÆCIPE

—FOR—

Solicitor for

ENTERED ON CHAMBER LIST

No. \_\_\_\_\_

IN THE SUPREME COURT.

*M. P. R. Act.*

*Japan & Canada Trust*  
AND

Plaintiff,

*Akiyama & al*

Defendant.



REQUIRED

*to set down application  
for directions as to service of Notice  
of an application for leave to exercise  
the power of sale contained in a  
Mortgage for Tuesday, November 9, 1943  
at 10: am*

Dated this

*8<sup>th</sup>*

day of

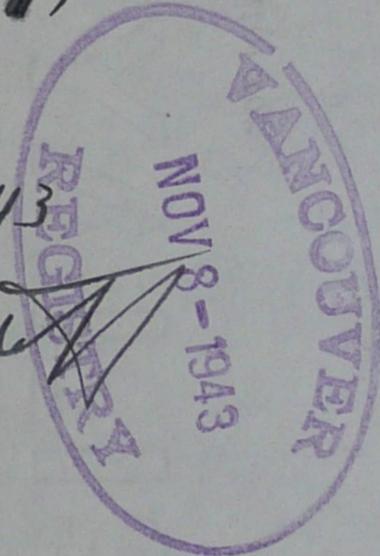
*Nov.*

, 1943

*W. W. Wash*

Solicitor for

*intended Plaintiff*



W.P.R. 35  
43  
S. C. OF B. C.

IN RE

JAPAN AND CANADA TRUST  
SAVINGS COMPANY

AND

ONOSUKE AKIYAMA et al

AFFIDAVIT OF R. D. J. GUY

WALSH BULL HOUSSER TUPPER  
RAY & CARROLL

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE MORTGAGORS' AND PURCHASERS' RELIEF ACT 1934<sup>m</sup>  
being Chapter 49 of the Statutes of British Columbia 1934.

AND IN THE MATTER OF AN INTENDED ACTION

BETWEEN:

JAPAN AND CANADA TRUST SAVINGS COMPANY

INTENDED PLAINTIFF

AND

ONOSUKE AKIYAMA and TORU TAMURA

INTENDED DEFENDANTS.

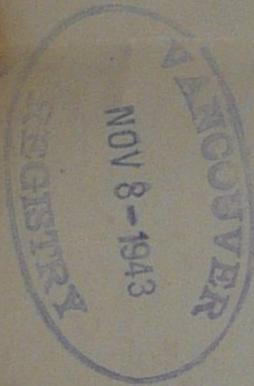
I, R. D. JORDAN GUY, of 675 Hastings Street West, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. That I am a solicitor in the office of Messrs. Walsh, Bull, Housser, Tupper, Ray & Carroll, solicitors for the Intended Plaintiff above named, and I have personal knowledge of the matters hereinafter deposed to by me save and except where the same are stated to be upon information and belief.

2. That the Mortgage in Fee, the subject matter of these intended proceedings, was executed on October 24th 1914 by one Teigo Noritake as attorney-in-fact for Onosuke Akiyama the above named Intended Plaintiff.

3. That I am informed by Frederick Field, Controller for the Intended Plaintiff, and verily believe that the whereabouts of the said Teigo Noritake are unknown, and that the Intended Defendant Onosuke Akiyama is now and always has been resident in Japan.

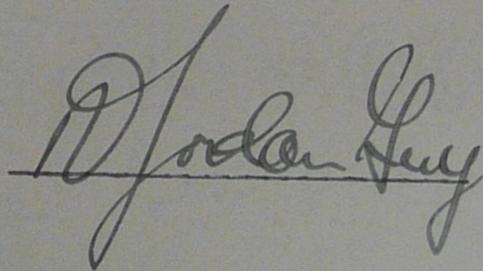
4. That I am further informed by the said Frederick Field and verily believe that the Intended Defendant Toru Tamura is also resident in Japan, having returned to his native country a few years before the commencement of the present War, and that his affairs are being administered by P. S. Ross & Sons, as Controllers, pursuant to an Order of the Secretary of State.



5. That title to the lands and premises covered by the Mortgage in Fee aforesaid has vested in the Custodian.

6. That it would appear to be just and proper under the circumstances for this Honourable Court to direct that service of the proceedings in this intended action be made upon the Custodian and P. S. Ross & Sons, both of 675 West Hastings Street, Vancouver, B. C., on behalf of both the above-named Intended Defendants.

SWORN before me at the City of :  
Vancouver Province of British  
Columbia, this 3rd day of November  
1943. :



A. J. McMaster  
A Commissioner for taking  
affidavits within British  
Columbia.

*M.P.R.* *35/32*  
S. C. OF B. C.

IN RE JAPAN AND CANADA  
TRUST SAVINGS COMPANY

AND

ONOSUKE AKIYAMA

REGISTRAR'S CERTIFICATE

WALSH BULL HOUSSEY TUPPER  
RAY & CARROLL.

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE MORTGAGORS' AND PURCHASERS' RELIEF ACT 1934"  
being Chapter 49 of the Statutes of British Columbia 1934.

AND IN THE MATTER OF AN INTENDED ACTION

BETWEEN:

JAPAN AND CANADA TRUST SAVINGS COMPANY  
INTENDED PLAINTIFF

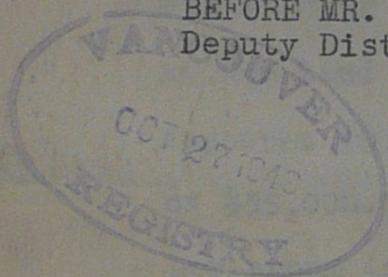
AND

ONOSUKE AKIYAMA and TORU TAMURA  
INTENDED DEFENDANTS.

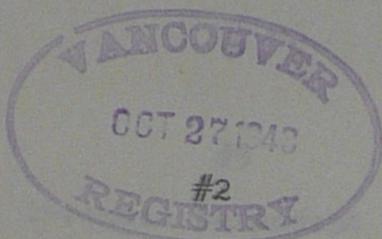


BEFORE MR. A. L. RODWAY,  
Deputy District Registrar

:  
: Friday the 22nd day of October  
: 1943.  
:



UPON the application of JAPAN AND CANADA TRUST SAVINGS COMPANY, the Intended Plaintiff, Mortgagee under a certain Indenture of Mortgage more particularly hereinafter referred to, for leave to commence proceedings to exercise the Power of Sale contained in the said mortgage under the provisions of the "Mortgagors' and Purchasers' Relief Act 1934" coming on for hearing before me this day in the presence of MR. R. D. JORDAN GUY of Counsel for the above-named Intended Plaintiff, and no one appearing for or on behalf of the above named Intended Defendants or either of them, AND UPON READING the Appointment for the Preliminary Enquiry herein dated the 13th day of October 1943, and the affidavit of Frederick Field sworn herein the 8th day of October 1943 and filed, and the exhibits therein referred to, and the affidavit of service of Denise R. Darling sworn herein the 19th day of October 1943, and filed, AND UPON HEARING COUNSEL as aforesaid, I HAVE THE HONOUR TO



REPORT AS FOLLOWS:

1. That by a certain Indenture of Mortgage bearing date the 24th day of October 1914 in writing and under seal, made in pursuance of the Act regarding Short Forms of Mortgages, between the Intended Defendant Onosuke Akiyama as mortgagor, and the Intended Plaintiff as mortgagee, the said Mortgagor did grant and mortgage unto the said mortgagee ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of Vancouver in the Province of British Columbia, and being more particularly known and described as Block 87 (now known as Blocks "B" and "C") of Lot (now District Lot) 2027, Group 1, New Westminster District, according to the map or plan thereof deposited in the Land Registry Office at the said City of Vancouver and numbered 980 (now referred to as Map 5702) for securing the sum of \$55,000.00, together with interest thereon at the rate of 7% per annum (reduced to 6% in the year 1931, then to 4% in the year 1932, and finally to 2% in the year 1933);

2. That the intended Defendant Onosuki Akiyama sold and conveyed the equity of redemption to the Intended Defendant Toru Tamura on the 12th day of August 1931.

3. That the condition of the title to the property is as follows:

- (a) Registered in the Land Registry Office at Vancouver, B. C. in the name of Toru Tamura, title having since vested in the Custodian.
- (b) Subject only to the Intended Plaintiff's mortgage in fee hereinbefore in part recited.

4. That the Custodian has consented in writing to the Intended Plaintiff commencing proceedings to exercise the power of sale contained in the said Mortgage.

#3

5. That the Intended Defendant Onosuke Akiyama is an alien enemy, now resident in Japan.

6. That the Intended Defendant Toru Tamura is also resident in Japan, Messrs. P. S. Ross & Sons having been appointed Controllers of his affairs. The said Controllers have an office in British Columbia at 675 West Hastings St., Vancouver, B. C.

7. That the land which is the subject matter of these proceedings, consists of two blocks of unsubdivided residential property situate in a good district, located at the junction of King Edward Avenue, Quesnelle Drive and Carnarvon Street, Vancouver, British Columbia, having a fair market value at the date hereof of \$30,000.00, and an assessed value of \$28,450.00. There are no buildings on the property.

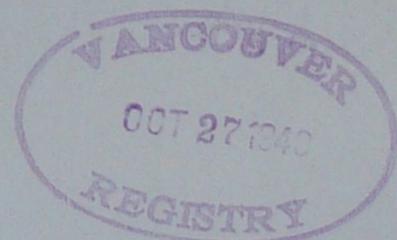
8. That the Intended Plaintiff's claim against the property as at the 15th day of September 1943, is as follows:

Principal	\$50,000.00
Interest to Sept. 15th 1943	<u>2,710.00</u>
	<u>\$52,710.00</u>

9. That there are arrears of taxes owing to or assessed by the City of Vancouver in respect to the mortgaged property for the years 1942 and 1943 in the sum of \$3,573.66.

10. That the Intended Plaintiff has been in possession of the property since the 25th day of January 1943.

11. That according to the evidence of Frederick Field, Controller, with the powers of a liquidator of the Intended Plaintiff Company, neither of the Intended Defendants have any equity whatsoever in the said lands, but to the contrary the Intended Plaintiff will sustain a substantial loss on its investment.



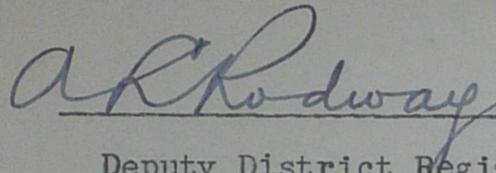
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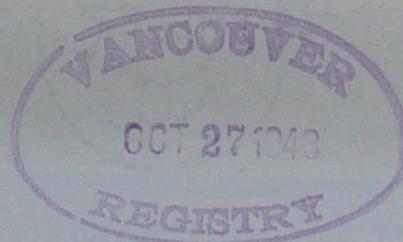
12. That in view of the facts and circumstances herein set forth and alleged, the Intended Plaintiff is desirous of taking proceedings under the "Mortgagors' and Purchasers' Relief Act" for the purpose of obtaining an Order granting it leave to exercise the Power of Sale contained in the said mortgage, extra-judicially at any time or times as in its absolute discretion it may deem necessary.

I WOULD THEREFORE RESPECTFULLY RECOMMEND that the Intended Plaintiff be granted leave forthwith to exercise the Power of Sale contained in the mortgage herein in part recited, and that personal service of the proceedings on the Intended Defendants be dispensed with and that service on such Intended Defendants be permitted to be effected by serving the Custodian and his duly appointed Controller, P. S. Ross & Sons, both of 675 Hastings Street West, Vancouver, British Columbia.

ALL OF WHICH I HUMBLY CERTIFY AND SUBMIT TO THIS HONOURABLE COURT.

Dated at the City of Vancouver, in the Province of British Columbia this 27<sup>th</sup> day of October, 1943.

  
Deputy District Registrar.



W.P.R.

35/43

S. C.

vs.

PRÆCIPE

—FOR—

Solicitor for



VANCOUVER

No. \_\_\_\_\_

IN THE SUPREME COURT

*Mulholland & Purchas's Relief Act*

*Japan & Canada Trust Savings*

*Mulholland*  
Plaintiff,

AND

*Akiyama et al*

*Mulholland*  
Defendant.

*Appointment for Preliminary Inquiry*

REQUIRED  
OCT 13 1943  
VANCOUVER  
REGISTRY

Dated this

*13<sup>th</sup>*

day of

*October*

, 19 *43*

*M. Walsh*

Solicitor for

*Mulholland Plaintiff*

*M.P.R. 35/13*  
S. C. OF B. C.

IN RE  
JAPAN AND CANADA TRUST  
SAVINGS COMPANY

AND

ONOSUKE AKIYAMA AND TORU  
TAMURA.

AFFDT. OF FREDERICK FIELD

WALSH BULL HOUSSEY TUPPER  
RAY & CARROLL.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE "MORTGAGORS' AND PURCHASERS' RELIEF ACT 1934, being Chapter 49 of the Statutes of British Columbia 1934.

AND IN THE MATTER OF AN INTENDED ACTION:

BETWEEN:

JAPAN AND CANADA TRUST SAVINGS COMPANY

INTENDED PLAINTIFF

AND

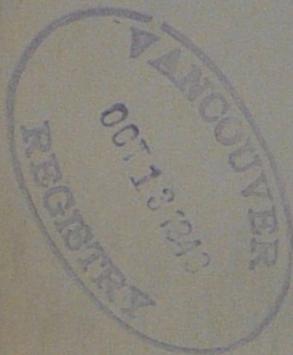
ONOSUKE AKIYAMA and TORU TAMURA

INTENDED DEFENDANTS.

I, FREDERICK FIELD, of 675 Hastings Street West, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. That I am Controller, with the powers of a liquidator of the above-named intended Plaintiff under and by virtue of an Order of the Secretary of State dated the 25th day of January 1943 (a certified copy of which is now produced and shown to me and marked Exhibit "A" to this my affidavit), and I have personal knowledge of the matters hereinafter deposed to, save and except where the same are stated to be upon information and belief.

2. That by a certain Indenture of Mortgage bearing date the 24th day of October 1914, in writing and under seal, made in pursuance of the Act regarding Short Forms of Mortgages, between the Intended Defendant Onosuke Akiyama as mortgagor, and the Intended Plaintiff as mortgagee, the said mortgagor, did grant and mortgage unto the said mortgagee, ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of Vancouver, in the Province of British Columbia, and being more particularly



#2

known and described as Block 87 (now known as Blocks "B" and "C") of Lot (now District Lot) 2027, Group 1, New Westminster District, according to the map or plan thereof deposited in the Land Registry Office at the said City of Vancouver and numbered 980 (now referred to as Map 5702) for securing the sum of \$55,000.00, together with interest thereon at the rate of 7% per annum (reduced to 6% in the year 1931, then to 4% in the year 1932, and finally to 2% in the year 1933), the duplicate of which mortgage is now produced and shown to me and marked Exhibit "B" to this my affidavit.

3. That the Intended Defendant Onosuki Akiyama sold and conveyed the equity of redemption to the Intended Defendant Toru Tamura on the 12th day of August 1931.

4. That I am informed by the Intended Plaintiff's solicitors, Messrs. Walsh, Bull, Housser, Tupper, Ray & Carroll, and verily believe that the condition of the title to the property is as follows:

(a) Registered in the Land Registry Office at Vancouver, B. C., in the name of Toru Tamura, title having since vested in the Custodian.

(b) Subject only to the Intended Plaintiff's mortgage in fee hereinbefore in part recited.

5. That the Custodian has consented in writing to the Intended Plaintiff commencing proceedings to exercise the power of sale contained in the said mortgage as appears from a letter addressed to the Intended Plaintiff's solicitors aforesaid, dated September 23rd, 1943, which is now produced and shown to me and marked Exhibit "C" to this my affidavit.

6. That the Intended Defendant Onosuke Akiyama is an alien enemy, now resident in Japan.

7. That the Intended Defendant Toru Tamura is also resident in Japan, Messrs. P. S. Ross & Sons having been appointed Controllers of his affairs as appears from a certified copy of the Order of the Authorized Deputy of the Secretary of State confirming such appointment, made the 19th day of December 1941, *And marked in letter D. to the my affidavit* The said Controllers have an office in British Columbia at 675 West Hastings St., Vancouver, B. C.

8. That the land which is the subject matter of these proceedings, consists of two blocks of unsubdivided residential property situate in a good district, located at the junction of King Edward Avenue, Quesnelle Drive and Carnarvon Street, Vancouver, British Columbia, having a fair market value at the date hereof of \$30,000.00, and an assessed value of \$28,450.00. There are no buildings on the property.

9. That the Intended Plaintiff's claim against the property as at the 15th day of September 1943, is as follows:

Principal	\$50,000.00
Interest to Sept. 15th 1943	<u>2,710.00</u>
	<u>\$52,710.00</u>

10. That there are arrears of taxes owing to or assessed by the City of Vancouver in respect of the mortgaged property for the years 1942 and 1943 in the sum of \$3,573.66

11. That the Intended Plaintiff has been in possession of the property since the 25th day of January 1943.

12. That the Intended Defendants have no equity whatsoever in the said lands, but on the contrary, the Intended Plaintiff will sustain a serious loss on its investment.

13. That the Intended Plaintiff is therefore desirous of obtaining an Order of this Honourable Court under the provisions of the "Mortgagors' and Purchasers' Relief Act 1934" granting it leave to exercise the power of sale contained in the said mortgage, and that personal service of the proceedings

#4

on the Intended Defendants who both reside in Japan,  
be dispensed with and that the Custodian and his duly  
appointed Controller, P. S. Ross & Sons, both of 675  
West Hastings Street, Vancouver, B. C., be served with  
such proceedings on behalf of both of the Intended  
Defendants.

SWORN before me at the City of  
of Vancouver, Province of  
British Columbia, this  
day of October, 1943.

*Richard Field*

*[Signature]*

A COMMISSIONER for taking  
affidavits within British  
Columbia.