

July 11, 1950.

IN THE MATTER OF THE CLAIM OF THE DEEP BAY LOGGING COMPANY
(E. KAGETSU)

AN INQUIRY BEFORE THE JAPANESE PROPERTY CLAIMS COMMISSION
BEFORE MR. JUSTICE H. T. BIRD, COMMISSIONER, NOV. 8, 1949,

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IN THE MATTER OF THE "INQUIRIES ACT"
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JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E
(THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER).

10

Vancouver, B.C.,

November 8th, 1948, 10:00 A.M.

IN THE MATTER OF THE CLAIM OF
THE DEEP BAY LOGGING COMPANY
(Eikichi Kagetsu)

PROCEEDINGS AT HEARING

20

APPEARANCES:

G. W. McPHERSON, Esq., appearing for the
 Dominion Government.

MESSRS. T. G. NORRIS, K.C., appearing for the
F. A. BREWIN, A. BALDWIN, Claimant.

A. WATSON, Esq., Secretary.
MRS. E. SMITH, Official Interpreter.
30 MRS. E. BLYGH, Official Reporter.

H. I. Bird, H.C.
CASE NO. 1388

JAPANESE PROPERTY CLAIMS COMMISSION

BEFORE

THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER).

Vancouver, B.C.

November 8th, 1948.

IN THE MATTER OF THE CLAIM OF
THE DEEP BAY LOGGING COMPANY
(Eikichi Kagetsu)

PROCEEDINGS AT HEARING

Copy.

THE COMMISSIONER: The appearances, gentlemen.

MR. NORRIS: I appear, Mr. Commissioner, with Mr.

Baldwin and Mr. Brewin for the Claimants, the

Deep Bay Logging Company and Eikichi Kagetsu.

MR. McPHERSON: I appear for the Government, my lord.

THE SECRETARY: This is case 1388 -- Deep Bay Logging Company and Eikichi Kagetsu.

THE COMMISSIONER: Yes, Mr. Norris?

MR. NORRIS: This claim, Mr. Commissioner, has reference
10 in the main first of all, to a timber limit known as Block 195, Cowichan Lake District, which had not been cut, and was not being developed at the time it was taken over by the Custodian. It is timber land.

The value, as set out in the claim for that timber limit, is the sum of \$275,000.00, and it was sold by the Custodian for \$93,000.00, and the loss claimed is \$182,000.00.

I have a white print showing this block --
20 Block 195, Cowichan Lake District, and I would like to put it in, on the understanding that the markings on it, save the boundaries, are not to be considered. I ^{am} merely putting it in for the purpose of showing the boundaries of Block 195.

THE COMMISSIONER: What was the date of the sale?

MR. NORRIS: The date of sale of this was the 28th June, 1943 -- no, -- oh, yes, the 28th June, 1943, and the other property I will deal with in a moment.

(WHITE PRINT MARKED EXHIBIT NO. 1388-1)

The next claim, Mr. Commissioner, has to do with certain property at Fanny Bay, on Vancouver Island, consisting of Blocks 504, 566, 617, 274, 263, 234, 267 and 276, and Lot 88 in the Newcastle District, Vancouver Island, with buildings and contents, on the Deep Bay Logging Company's operation: Certain foreshore rights, booming grounds, dumping ground, landing, bridges, coal dock, road beds, coal beds, comprised in the sale to the

10 H. R. MacMillan Export Company.

Now, that should be considered, Mr. Commissioner, with Items 3 and 4, because this was a going concern. It has been divided up in accordance with the form of claim into these several parts -- the value set, and that, as I say -- that value should be considered with the other values-- the value set is \$142,781.00. Now, that sale took place in April, 1944, but I have not the exact date. Mr. McPherson, will you give me

20 the exact date of the sale of the Deep Bay property?

MR. MCPHERSON: It was in September of '43, but I don't think the documents were completed until 1944.

MR. NORRIS: Do you know the date in September?

MR. MCPHERSON: No, I don't.

THE COMMISSIONER: I do not know whether there is any importance to be attached to that.

MR. NORRIS: It was sold by the Custodian for \$40,000.00, and the loss claimed is \$102,781.00.

30

Now, the next item is Item 3, consisting

of certain equipment on the Fanny Bay property: 60 ton Shay locomotive; 18 logging railway cars; a flat railway car; two push cars; two speeders; eight miles of railroad and 60 tons of coal, and the value new is stated to be \$37,029.00 and was sold by the Custodian for \$14,500.00. The loss claimed is \$22,529.00.

That equipment, I understand, was sold from time to time-- at various times, some time in 1942.

10

(Item 4: A Clyde gas donkey; Empire gas donkey; a Skagit gas donkey; a Cletroc tractor; compressor and accessories of a value of \$22,925.00, and which was sold by the Custodian for \$13,000.00, with a loss of \$9,925.00.

And the next item 5, Mr. Commissioner, should be considered with the other three items: That is to say, that Fanny Bay operation: Wire rope, blocks, straps, clevises, etc.; falling, and bucking
/and miscellaneous tools, \$15,591.80, and which were sold by the Custodian for \$7,104.53, the loss claimed being \$8,487.27.

20

Now, the next item is house property in Vancouver, on MacKenzie Street -- the description being given in the claim, as residence property; value of \$5500.00 and sold by the Custodian for \$4300.00, the loss claimed being \$1200.00. That was sold on the 18th August, 1943.

30

And a Pontiac sedan, 1942 model, value

\$1396.00 and sold by the Custodian for \$1025.00, the loss claimed being \$371.00. That was sold on the 31st August, 1942.

And Item No. 8, certain boom chains and wire rope; the loss being valued at \$726.75. 1200 feet of wire rope at 8 cents a foot-- a loss of \$96.00 -- there being a total loss under this item of \$822.75.

10 THE COMMISSIONER: May I have the date of the car sale again? Was it August, 1942?

MR. MORRIS: August 31, 1942.

THE COMMISSIONER: Were the boom chains also sold in 1942, or was that later?

MR. MORRIS: Well, the boom chains were lost. The boom chains and the wire rope were lost. I may say the boom chains -- the claim for valuation in respect of the boom chains was the price that the Custodian got for those that he did sell.

THE COMMISSIONER: I see.

20 MR. MORRIS: And I will put in at this time a map of the Fanny Bay operation and Newcastle District property, and again it is submitted merely to show the outline of the lots and the other markings thereon should not be considered.

THE SECRETARY: Exhibit No. 2.

(MAP MARKED EXHIBIT NO. 1388-2)

MR. MORRIS: Now the lots are all set out under Item 3, Mr. Commissioner, as 504, 566, 617, 274, 263, 234, 267, 276 and Lot 88.

30 THE COMMISSIONER: This was all E. & N. land, was it?

MR. NORRIS: It was all E. & N. land.

Now, I will put in a letter of January 9, 1948, from the firm of Norris & MacLennan to you, Mr. Commissioner, reading as follows: (Reading same).

THE COMMISSIONER: Was not the Amending Order-in-Council permitting the presentation of corporate claims founded upon that letter?

MR. NORRIS: Yes, as I understand it.

10 THE COMMISSIONER: In other words, the Government, relying upon that letter, granted an amendment, which permitted corporations to claim.

MR. NORRIS: Yes. I put this in mainly because my friend has raised the question as to possible action, and it may not be quite clear, so I will put it in. The letter says, "Barring our clients from the Courts".

THE SECRETARY: Exhibit no. 3.

(LETTER REFERRED TO MARKED EXHIBIT NO. 1388-3)

20 MR. NORRIS: And I will put in a map of the southern portion of Vancouver Island, showing the location of both these properties: The Fanny Bay property being shown on top of the map -- the north end of the map, opposite Denman Island, and the other property, Block 195, being shown south east of Cowichan Lake, both properties being in the railway belt on Vancouver Island.

I have outlined them in red. They are a little difficult, perhaps, to see, but if you
30 have any difficulty, Mr. Commissioner, I will be

glad to point them out.

(MAP MARKED EXHIBIT NO. 1388-4)

THE COMMISSIONER: Is Fanny Bay property also timber land?

10 MR. NORRIS: The Fanny Bay property is timber land and was a timber proposition in actual operation, and for that reason I am stressing the matter that this is a claim with respect to the Fanny Bay operation as a going concern, not withstanding the fact that the items of claim have been shown se-

arately.

Now, I would ask my friend to produce certain documents, and perhaps he might let me have them at this time. Has your lordship discovered it, (referring to plan)?

THE COMMISSIONER: Yes, I see it.

MR. NORRIS: With regard to the Cowidan Lake property, your lordship will see that it is of a very irregular shape. It is a V-shaped piece of land in the centre going into it. It is in two parts -- that is, Block 195 -- it goes right across.

20

THE COMMISSIONER: And 7-A is the property of someone else, is it?

MR. NORRIS: Yes, 7-A is the property of someone else.

25 The word "block" -- "Bk.", and the word 195 show the two parts of this block.

Now, my friend apparently is having a little difficulty in producing these letters and I suggest that I might go on while he is looking them up. I have given him notice to have these letters

30

and he is finding some difficulty --

MR. McPHERSON: No, I am not encountering any difficulty at all, but I have a letter of November 4th from MR. Norris asking me to produce certain letters, and I am now referring to a letter in October, and I assume it was more or less settled and I presume this letter of November 4th would be a picture of what was required by him for this morning, and I can produce those documents based on
10 that letter, and I shall endeavour to obtain any letters that are missing.

MR. NORRIS: There are a great many letters missing, I may say. I was supplied with copies of letters, and they are only one sided, and my friend can dig those up.

MR. McPHERSON: I can dig them up, but I object to the suggestion that only the one side was given to Mr. Norris. The files were all given to Mr. Baldwin and Mr. Kegetsu, and they have been --

20 MR. NORRIS: I am not going to enter into an argument on that.

THE COMMISSIONER: I am paying no attention to it.

MR. NORRIS: I do not suggest there was any effort to hide these letters.

Now, Mr. Commissioner, you will see that the claim covers these two logging operations -- the Irving Real Estate and the claim for logs.

The general submission of the claimant is that the Custodian did not receive the fair
30 market value for the assets which he sold, be-

cause the sale was a forced one and not by a willing vendor to a willing purchaser.

10 That had Kagetsu been left in possession at the Deep Bay Logging Company -- that is, had the Deep Bay Logging Company been left in possession, they would have been willing vendors at prices greatly enhanced beyond those realized by the Custodian, and the Custodian not being able to make the best use of the property was not a willing vendor and his hands were tied.

Further, with regard to the timber limits, there was no reason for selling those limits at the time, save that the Custodian was under constant pressure from the Timber Controller; and I understand evidence of that fact appears in the general evidence, and I will adduce other evidence to the same effect. That is not a matter, of course, which in fixing compensation should be held against Kagetsu.

20 Now the Custodian's policy in liquidating these properties conformed with the practice of Ross & Sons accountants, and liquidators, and in the liquidation and winding up, unless the sale is carried on for some time the sale must be regarded as a forced one by the liquidator.

We say the purchasers of these properties were not willing and anxious purchasers. First, that the Custodian's advertising was inadequate, and was insufficient to stimulate normal competition.

30

10 That the Custodian's advertising contained a very serious limitation -- a condition as to logging, which was not conducive to obtaining the best price. That there was at that time a general idea that the assets of the Japanese who had moved from the coast should be sold at a relatively small price, and that this was a sort of a bargain market, and it would appear, and I think the evidence taken all in all will show that while there may not have been a regular ring formed by purchasers -- that is, in the sense a definite ring, it was in the case of purchasers holding back -- those purchasers holding back, because they thought they could get another property at a smaller price, and there was a general disinclination to bid up, so that the prices would affect other possible purchasers, and all possible purchasers were holding back and not making definite offers because they had an interest in buying similar property.

20

The market, in any event, was not normal inasmuch as there were many more, or other assets under sale than would usually be the case in view of the Japanese evacuation.

Then further, (and this is an extremely strong point) the property could not under the circumstances be sold in a normal way, especially the Fanny Bay property-- I am speaking of it as a going concern -- because of the conditions that existed at that time, that tended to depress the

30

Discussion.

E. Kagetsu,
In Chief.

price.

10 With regard to the logging equipment, the argument is the same. It was part of this general going concern, and it was sold in the same way; and again, the vendor was not a willing or anxious vendor and the purchaser was not a willing and anxious purchaser; and with regard to the urban real estate, the same argument holds to the same extent. And with regard to the automobile, no proper appraisal was made and not enough details were obtained before sale.

THE COMMISSIONER: Was the car sold prior to the establishment of the ceiling price?

MR. NORRIS: That is my understanding. I will check on that. I will have that checked.

THE COMMISSIONER: Very well.

20 MR. NORRIS: Now, the Custodian, of course, owed a duty not only to the people of Canada, but he owed a special duty to the owners of this property: In fact, his main duty, I submit, to these owners, particularly as this was a very substantial property. It was a going concern, and as a going concern was of great value.

I propose now, Mr. Commissioner, to call Mr. Kagetsu.

EIKICHI KAGETSU, being first
duly sworn, testified through
the interpreter as follows:

DIRECT EXAMINATION BY MR. NORRIS:

30 MR. NORRIS: While Mr. Kagetsu speaks English slightly,

Mr. Kagetsu,
In Chief.

I think it would be hopeless to carry on without an interpreter. I have had to use an interpreter myself.

THE COMMISSIONER: Will you swear the interpreter, please Mr. Watson.

(Mrs. Irene Smith, sworn as interpreter).

MR. NORRIS: Q: Mr. Kagetsu, you are by occupation a logging operator?

A Yes.

10 THE COMMISSIONER: Now, Mr. Kagetsu, insofar as you can will you answer in English? If you are in doubt as to any question, let your counsel know at once and it will be interpreted to you.

A Yes.

MR. NORRIS: Q: And you are now living in the city of Toronto?

A: Yes, sir,

No. 8 --

Q Well never mind the address, you are living in Toronto?

A: Yes.

20 Q And you came to this country in 1906?

A Yes.

Q And in 1909 you were naturalized?

A Yes.

THE COMMISSIONER: He would be naturalized in two years?

MR. NORRIS: Well, things happen, Mr. Commissioner.

THE WITNESS: You will see there 1909.

MR. NORRIS: The prior natrualization certificate was issued on the 12th November, 1909 -- which was probably a tribute to Mr. Kagetsu's res-

E. Kagetsu,
In Chief.

possibilities.

Q And you have lived in this province until you were evacuated --since that date --since the date you came here? A: Yes.

Q And you have taken an active interest in public affairs in Vancouver and in British Columbia?

A Yes.

Q Now, Mr. Kagetsu -- Mr. Commissioner, I want to refer now to a matter of which Mr. Kagetsu is very proud -- and it is not necessary to go on the record. Mr. Kagetsu, in 1936 you were invited by the Government to attend the unveiling of the Vimy Memorial? A: Yes.

Q And you went there and you were received by the King and Queen? A: Yes.

Q Now, in 1908 you commenced your logging business?

A Yes, in 1908.

Q When did you start to export timber?

A 1916.

20 Q At that time, where were you operating-- in 1908, first of all, where did you commence operations?

A Sechelt.

Q At S^echelt? A: Yes, and in 1916 operated up in Seymour Creek.

Q Where? A: Seymour Creek.

Q You operated in Seymour Creek in 1916?

A Yes.

Q And when did you first go to Fanny Bay?

30 A In 1923, I started in to logging business -- the Deep Bay Logging Company, I started.

E. Kagetsu,
In Chief.

Q And in 1923 you commenced to log at Deep Bay for the Deep Bay Logging Company, Limited, and you were a director of the Deep Bay Logging Company?

A Yes.

Q And a principal shareholder?

A Yes.

10 THE COMMISSIONER: I might tell you, Mr. McPherson, there is no question but that this claim is one that falls within the Terms of Reference, having regard to shareholding.

MR. McPHERSON: None at all, my lord.

THE COMMISSIONER: And perhaps I might refer to it now-- it was understood that Mr. Kagetsu's personal claim was to be taken at the same time. Is that satisfactory to you, Mr. McPherson?

MR. McPHERSON: Yes.

THE COMMISSIONER: We will proceed with the corporate claim and conclude it before you go on with the personal claim, please.

20 MR. NORRIS: Yes, but I am afraid it will be a little difficult, Mr. Commissioner, to split those things because we have evidence that is applicable to both.

THE COMMISSIONER: Well, perhaps counsel might discuss the situation between themselves.

MR. NORRIS: Perhaps we might do it at noon.

30 THE COMMISSIONER: It is immaterial to me, but I can quite appreciate, though, that Mr. Hunter has probably prepared himself with the personal claim and it is quite conceivable Mr. McPherson knows

E. Kagetsu,
In Chief.

nothing about it. I gather that from my past experience with these things.

MR. NORRIS: Well, the thing was so involved -- and it was so interlocked -- you see, it was a logging operation.

THE COMMISSIONER: Well, counsel can discuss it together at the luncheon adjournment.

MR. NORRIS: Now, first of all, dealing with the Fanny Bay operation -- you left Fanny Bay in April, 1942?

10

A: Yes.

Q And you went to Minto, British Columbia, in May, 1942, -- you were evacuated?

A Yes.

Q From the time in 1923, when you began logging operations, until the time you were evacuated, you had been purchasing timber at Fanny Bay from the E. & N. Railway company?

A Yes, they bought all the timber except the house--

Q I beg your pardon? A: Except the house,

20

I bought all the timber from the E. & N.

Q The standing timber--the timber limits he bought from the E. & N.

A Yes.

Q Did you buy them all at one time, or did you buy them progressively?

A I was friendly with --

Q Will you just speak up, Mrs. Smith.

A He bought them from the E. & N? but not all at once.

30

Q I did not get the answer.

E. Kagetsu,

In Chief.

A I was friendly with the E. & N. people, and they did not let me have them altogether at once.

Q Now, at Fanny Bay you had a railway-- a logging railway-- and was that all built at once?

THE COMMISSIONER: Do you think you need to go into all these details? I am aware that logging railways take some time to build.

10 MR. NORRIS: What I am trying to develop here is that this was a progressive development, and he had other timber that he was to get -- as affecting the values.

A The railway was built in many years.

Q Yes, as he could. Now, you also operated a logging camp at Cowichan Lake in 1930?

A Yes, in 1936, wasn't it?

Q 1936? A: Yes.

Q Were you cutting on Block 195 at that time?

A No.

Q No interlocking property?

20 A I cut practically the whole of 566 and --

Q The other property? A: Yes.

MR. McPHERSON: My lord, I was just going to suggest that if my learned friend likes to lead Kagetsu, I will not object -- I will only object if there is anything to object to, but he can lead and speed up the case.

MR. NORRIS: Well, I have been doing that pretty well.

30 Q Now, with regard to Block 195 -- I want to get it clear-- 195 is his personal claim. Does my learned friend want me to leave that for the

E. Kgetsu,
In Chief.

moment?

MR. McPHERSON: No, my lord, I am handling Block 195.

MR. NORRIS: Where does Mr. Hunter come in?

MR. McPHERSON: Mr. Hunter only comes in on his house claim.

MR. NORRIS: Well, that is very simple, then. We can leave that out.

Q Block 195 you purchased in 1937 for \$17,000.00 from Mr. Tisdall? A: Yes.

10 Q And you bought that through Mr. Whitham?

A Yes.

THE COMMISSIONER: May I have that date again?

MR. NORRIS: In May, 1937.

THE COMMISSIONER: That was \$75,000.00, was it?

MR. NORRIS: Yes.

Q Now in 1942, when you left, had you logged that Block 195 at all?

A No, I hadn't. I didn't.

20 Q Had there been any cutting on that block -- any logging ~~on~~ that block before you bought it?

A No, I went to see it myself and there was no logging.

Q "I went to see it myself"?

A Yes.

Q Now, by the year 1942, what had that block cost you, having in mind taxes and interest, by 1942, when you left?

A: It was worth about \$120,000.00, including the taxes and interest.

30 Q Was that the money he had in it? Was that the

Q purchased - no purchase log

E. Kagetsu,
InChief.

money he had in it?

A Yes.

Q That is, you had \$121,515.00 in it?

A Yes.

Q I am not referring to the sale value. Tell him that.

A: That is all what

I had spent on it -- not the sale price.

10 THE COMMISSIONER: I presume it does not include interest on his investment, I take it. You had better pursue that further. That apparently does not include interest on his investment. From what he says, that was the money he actually laid out.

MR. NORRIS: I think he mentioned interest.

Q Does that figure of \$120,000.00 include interest on your investment?

A Yes, it includes the tax and the interest -- all the money.

20 THE COMMISSIONER: You had better ask him what rate of interest he is calculating on.

MR. NORRIS: What rate of interest would you figure that at-- \$75,000.00?

A 6%.

Q 6%. Was that the rate of interest you were paying?

A: Yes, 6%.

Q Now, you were buying that from the E. & N. on time. He was buying it from Mr. Whitam.

A He was buying it from Whitam, and he says the E. & N. advised him to buy it.

30 Q It had been E. & N. land and you purchased it

E. Kagetsu,
In Chief.

from Whitam?

A: And he made anyway

a deal with him all at once for \$75,000.00.

Q But was he buying it on time -- on terms -- so much
a year?

A: Yes.

Q And it carried interest at 6%?

A Yes.

Q Now, Block 504 -- we are coming to Deep Bay --
Block 504 -- at Deep Bay -- which was purchased in
July, 1939, from the E. & N. Railway.

10 A He said he has got all his particulars in his
little notebook. Will he be allowed to refer to it?

THE COMMISSIONER: You have no objection to that, Mr.
McPherson?

MR. NORRIS: That is all right.

MR. MCPHERSON: I have no objection, my lord, if Mr.

Norris would just state the date and the amount--
I have no objection to his using it.

MR. NORRIS: I must get it from the witness.

20 THE COMMISSIONER: Since counsel proposes that should
be done, I will accept it on that basis.

MR. NORRIS: All right, Mr. Kagetsu. Then I will make
this statement in accordance with Mr. McPherson's
consent: 504 was purchased in 1939 from the E. & N.
Railway by Kagetsu for \$19,000.00, Block 566 was
purchased by Kagetsu for the Deep Bay Logging
Company, Limited, from the E. & N. Railway in
September, 1940, for \$8,000.00.

A Yes.

Q Block 276 was purchased --

30 THE COMMISSIONER: All right, I see it -- 276.

*Deep Bay
Purchase*

E. Kagetsu,

In Chief.

MR. NORRIS: It was purchased by the Deep Bay Logging Company from the E. & N. In February, 1932, for \$65,662.00?

A Yes.

Q And Lot 617 was purchased by the Deep Bay Logging Company on the 17th November, 1941, from the E. & N. Railway Company for \$8,000.00?

A Yes.

10 Q In addition, Blocks 274, 263, 234, 267 and 88 were purchased from the E. & N. Railway from time to time?

A Yes.

THE COMMISSIONER: From time to time between what years?

MR. NORRIS: Between what years did he purchase them?

The reason I am dealing with those generally, Mr. Commissioner, there was no timber value there. They have a value as agricultural land, but they had been logged off and it is not very material, unless my learned friend wishes that evidence.

20 THE COMMISSIONER: I thought it was a claim for timber.

MR. NORRIS: There was very little timber, and the main value is for agriculture.

THE COMMISSIONER: They were substantially logged off at that time?

MR. NORRIS: Yes, but there was a little timber there.

Q Was he going to say something?

A Block 88 was bought from Fruitlands.

Q Block 88 was bought from Fruitlands. It is a company there?

30 A Vancouver Island Fruitlands.

E. Kagetsu,
In Chief.

Q Otherwise, the others were bought from the E. & N.?

A Yes.

Q Now, in these purchases from the E. & N. Railway Company, did he pay interest, or were they time purchases over a period of years?-- the purchases made payable over a term of years?

A Yes, I was paying interest.

Q I suppose it would not matter very much, because it would be interest on his investment.

10 A Either 5½ or 6% -- he is not quite certain.

Q Now coming back to Block 195, -- Block 195 -- when you purchased that in '37, you obtained a cruise report, did you, on Block 195?

A What?

Q A cruise report, a timber cruise?

A Yes, I received two -- two from Mr. Whitam.

THE COMMISSIONER: I am sorry, you will have to speak up. I cannot hear you.

Q Yes, I received two. One was the original and the
20 other was a copy.

MR. NORRIS: Q: And who did you get those from?

A I think-- I am not quite sure,-- I think it was from Mr. Lytton.

Q Mr. Lytton was the sales agent of the E. & N. Railway Company?

A: Yes.

Q Now, I will produce to you a cruise report purporting to be made by T. F. Sheehan, 37 Imperial Building, covering Block 195.

THE COMMISSIONER: What was the date when the cruise was made?

E. Kagetsu,
In Chief.

MR. NORRIS: The cruise was made in 1923 -- he believes in 1923. I think it was some time about that time.

Q Was that on your files?

A I was told about it, -- the report was made in 1923.

Q Yes. He was told it was made in 1923. You got that? Is that one of the copies you got from Mr. Lytton?

A: Yes.

Q Did you have another copy?

10 A Yes, I did, but --

Q Where is it now?

A I mislaid it in Toronto and I don't know where it is.

Q This was a copy which was given you at the same time?

A: It is exactly

the same.

MR. NORRIS: We will mark that.

(COPY OF CRUISE REPORT MADE EXHIBIT NO. 1388-5)

20 MR. McPHERSON: My lord, I wonder if my friend is intending to call Mr. Sheehan so that I can examine him on his cruise?

MR. NORRIS: No, I cannot call Mr. Sheehan, he is out of the jurisdiction.

THE COMMISSIONER: Was this timber cruised subsequently?

MR. NORRIS: Yes, it was cruised by Mr. Hestace Smith, but originally it was cruised by Mr. Sheehan.

30 THE COMMISSIONER: Well, Mr. Norris, you will appreciate it cannot be given the same value it otherwise would if you had the witness here who

*Sheehan's
Cruise*

E. Kagetsu,
In Chief.

made the cruise.

MR. NORRIS: I cannot get the man, he is out of the jurisdiction. He is in Seattle, and there is no way that I can get him here.

THE COMMISSIONER: Have you tried to get him?

MR. NORRIS: I believe some effort was made to get him, and we will try and see if we can get him.

10 THE COMMISSIONER: If there is any marked difference between Mr. Sheehan's cruise and the cruise made by Mr. Eustace Smith, you will appreciate I cannot give any weight to this document.

MR. NORRIS: Simply this --Mr. Eustace Smith did not make a cruise at all.

MR. McPHERSON: I object to that statement. My learned friend does not know what Mr. Eustace Smith is going to say.

MR. NORRIS: I have this from my friend.

THE COMMISSIONER: Do not worry about that, Mr. Eustace Smith will speak for himself.

20 MR. NORRIS: And this document should be taken for what it is worth, and if I can I will get Mr. Sheehan here.

MR. McPHERSON: I object to this document. This document shows 49 million feet. Mr. Norris has been given a copy of Mr. Eustace Smith's cruise, which gave 30 million, and I think if he is going to produce this document he should produce the man who made the cruise then.

30 THE COMMISSIONER: Well, I will accept it for what it is worth, but I warn you it cannot be given very

*Sheehan's
cruise*

E. Kagetsu,

In Chief.

weight in the circumstances.

MR. NORRIS: If I can get him, I will do so, but my friend has interviewed Mr. Sheehan and Mr. Eustace Smith has interviewed Mr. Sheehan, and they all know about this.

MR. McPHERSON: Does my friend suggest that I have interviewed him. I have not interviewed him.

10 MR. NORRIS: Well, in view of my friend's suggestion, I suggest my learned friend should be called. He knows more about these matters than anybody. He has been acting for the Custodian in all these matters and he can very easily clear these matters up by going into the box.

THE COMMISSIONER: Mr. Norris, if you can get Sheehan here, I would like you to do so.

MR. NORRIS: Yes, it is to my interest to get him.

THE COMMISSIONER: I cannot give any weight to this document, unless there is someone here to back it up.

20 MR. NORRIS: Yes, or unless there is something to tie it in with other evidence.

THE COMMISSIONER: Yes, and that is the only reason I am allowing it in now, because it may be helpful in the cross-examination of Mr. Eustace Smith.

MR. NORRIS: I will just put that in.

Q Now, you made a summary of that cruise. Where is that other copy?

30 THE COMMISSIONER: Incidentally, has this timber been logged since?

E. Kagetsu,
In Chief.

MR. NORRIS: No, it has never been logged.

THE COMMISSIONER: Up to the present time?

MR. NORRIS: No.

MR. McPHERSON: I think it has been completely logged
up to the present time.

MR. NORRIS: You mean since the date --

THE COMMISSIONER: I mean at this date.

MR. NORRIS: Yes, it has been logged.

10 THE COMMISSIONER: Then there would be no difficulty
in ascertaining what has been cut from the limit.

MR. NORRIS: There would be a slight difficulty, which
your lordship knows.

THE COMMISSIONER: That deals with the same thing.

MR. NORRIS: We may be able to get it later.

THE COMMISSIONER: Can you not get it from the Forest
Branch?

MR. NORRIS: I am sorry, -- not satisfactorily. You see,
the timber mark covers more than this block.

THE COMMISSIONER: I see.

20 MR. NORRIS: Now, just for the sake of convenience,
Mr. Kagetsu, you made a summary of that Sheehan
cruise, didn't you?

A Yes.

Q And is that the summary?

A Yes.

Q Well, as a matter of convenience, apart entirely
from the admissibility of the original cruise,
I will ask my friend if he will admit this is a
summary of the cruise. He has had it.

30 THE COMMISSIONER: Who made it, Kagetsu? He says it

M. Kagetsu,
In Chief.

it is a summary.

MR. McPHERSON: I don't object, my lord. I thought that was a part of Mr. Sheehan's cruise, but I see it isn't.

MR. NORRIS: Well, I will put that in. I will put that in as part of the summary and you can just mark that page, then.

(SUMMARY MARKED EXHIBIT NO. 1388-6)

10 Q Now, Mr. Kagetsu, you have been logging-- running a logging business since 1909-- 1908,

A Yes.

Q Have you since that time been estimating standing timber -- any timber -- does he know about estimating standing timber?

A I have estimated it, because I have been in the business for 35 years. I know. I don't buy timber unless I see it myself.

Q And you are a practical cruiser -- a practical cruiser?

20 A: I don't depend on the other people's cruising. I depend on mine.

Q Now, did you go over this block 195 before you purchased it?

A: I went to see it and I went over it minutely to check up before I bought it.

Q Now, how did your observations compare with Sheehan's cruise?-- the result of your observations, how did they compare with Sheehan's cruise?

A I cruised more than Sheehan reported. I thought there was 55 million.

30 Q I want you to compare it with Sheehan's report.

E. Kagetsu,
In Chief.

Q You found more than 55 million --

THE COMMISSIONER: Now, dealing with Exhibit 6, it appears to be a sub-cruise of Sheehan's -- not, it is not -- attached to it is a substantial part of Sheehan's report.

MR. NORRIS: It is the same thing, except I have added that summary. I have put in that copy.

THE COMMISSIONER: I think it does not include the first page-- yes, it does.

10 MR. NORRIS: It was just a matter of convenience to put in the copy. The other was an original document he had with him.

Q Now, what sort of fir did you find on Block 195?

→ A It was the very best that I have seen.

Q At the price at which you bought it, I suppose this would be a good buy, would it?

A At that time the timber was about 1,000 feet-- \$9.50 to \$10.00. I thought the value was very high.

20 Q Those were the log prices in Vancouver?

A Even then I thought the \$75,000 was very cheap.

Q Now, Blocks 504, 566, 276 and 617 on the Deep Bay operations, had they been cruised by the E. & N. before you bought them?

A When I offered to buy those timber blocks, then they sent a man to report -- a timber cruiser.

Q Now, did you cruise those blocks yourself?

A After I bought the timber, I went over it carefully.

30 Q And what did you find?

Deep Bay

E. Kagetsu,
In Chief.

100% answer → A My cruise will be about double the E. & N. -- but if you wish me to explain, I am willing to do so.

Q Yes, I want your explanation. You found your cruise made double what the E. & N. cruise showed. Now, will you explain that.

THE COMMISSIONER: Now, just one moment. Let us have part of this interpreted.

MR. NORRIS: Yes, I don't know much about the Japanese language, but it seems to me a great many words are being used.

A The E. & N. timber in this includes the green timber, about 12 inches tall.

THE COMMISSIONER: Yes, up to a 12 inch top.

MR. NORRIS: Over 12 inch-- from 12 inches up.

A And the E. & N. does not include the dead timber or the timber that had fallen, but I made a cruise on it -- I am experienced -- to distinguish what is good and what is not, and so I can tell you -- even if it is dead or fallen, I can tell.

Q Does he mean that they are recoverable-- that there is a recoverable value to ~~the~~ be got from that timber?

A About the hemlock, I don't consider it very good, but the cedar and firs are very good.

Q Ask him if he means there was a high percentage of recovery?

A: And very often there is very good pine.

THE COMMISSIONER: Mr. Norris, we have adopted a practice of recessing for a short time in the morning

session. Will now be a convenient time?

MR. NORRIS: Yes.

(PROCEEDINGS ADJOURNED AFTER SHORT ADJOURNMENT)

THE COMMISSIONER: Yes, you may proceed, Mr. Norris.

MR. McPHERSON: My lord, could I just raise the question

if my learned friend does not object at this moment. Mr. Keith Shaw has been subpoenaed, as I understand, by your lordship, and I do not know what my friend's ideas are as to when the Commissioner's witness should be heard. As for myself, of course, my idea is that your lordship should have a complete picture of both sides and then your lordship, having called a witness, would be in a position to ask the questions, knowing the two sides at the same time. Mr. Shaw is now here, but he does not wish to sit here for ten days -- if this case is going to take ten days-- before being called.

THE COMMISSIONER: What arrangement can we make to accommodate Mr. Shawe, Mr. Norris?

MR. NORRIS: I am very glad to accommodate Mr. Shaw. I was willing to accommodate him from the beginning, but I do not agree that his cross-examination should end this hearing, because my friend has had access to Mr. Shaw, which I haven't had, you see, and therefore I think he should be called at some time -- perhaps just a little later, and I will be glad to give Mr. Shaw reasonable notice of when I would like him to come.

10

20

30

*Be Shaw
examined
for morning*

E. Kagetsu,

In Chief.

10 MR. McPHERSON: My lord, I am a very peaceable man, but I do not like these insinuations of my friend -- that I have talked to Mr. Sheehan and now I have talked with Mr. Shaw. And I would like to state, for the record, I have never discussed this case with Mr. Shaw. He telephoned me to say he had been subpoenaed and I did state seeing that he was the Commissioner's witness, neither counsel should have any communication with him, and it is for your lordship to decide when he should be called and your lordship would be in a position to ask questions once you know the claimant's case and the Government's case.

THE COMMISSIONER: I take it the evidence Mr. Shaw can give relates to the quantity of timber on some of this timber land, which is the subject of the claim here. I would like to have the evidence of both sides before I call Mr. Shaw.

20 MR. NORRIS: Might I, Mr. Commissioner, first of all deal with this question of insinuations. There has been no insinuation on my part. I made a statement, which apparently has turned out to be correct, that he had access to Mr. Shaw, which he has had. I know that is not important in this hearing and we want to get on with it. Now, as far as the time when Mr. Shaw will be heard shortly, may I, with the greatest respect, submit that at some early stage that is convenient he might be called to give the evidence that he will give. You see, as I have shown

30

Kagetsu,
In Chief.

you, we have to depend to a great extent on the Custodian and on his records, and on this other evidence, and in preparation, in the normal course, -- in the ordinary preparation of my case, I would have interviewed Mr. Shaw.

THE COMMISSIONER: Well, you have not been able to.

We will leave it at that. If anything should transpire it is more convenient to ~~xxx~~ call Mr. Shaw at a different time than at the Government stage, that will be done.

10

MR. NORRIS: Well, may I ask if I am free to make an application later?

THE COMMISSIONER: Yes, you are always free to make an application. Mr. Shaw, you may be excused now and we will let you know when we want you.

MR. NORRIS: Well, before he goes, my friend Mr. Baldwin has certain information which he would like to have Mr. Shaw bring-- such as plans and any information as he has got.

20 THE COMMISSIONER: It would be quite helpful to me, Mr. Shaw, if you would get the information that either counsel would give me, so long as you are prepared to furnish it?

MR. McPHERSON: In view of that ruling, my lord, have I the right to get in touch with Mr. Shaw to bring this information here?

THE COMMISSIONER: I would suggest that both counsel might intimate to Mr. Shaw by letter the information you desire. Thank you, Mr. Shaw.

30

E. Kagetsu,
In Chief.

EIKICHI KAGETSU, resumes stand:

DIRECT EXAMINATION CONTINUED BY MR. NORRIS:

Q Now, Mr. Kagetsu, we had got to the stage that the cruises did not take into account this fallen timber, of which you considered a large percentage was recoverable.

10 A The cruise was only green wood, and not the ones that are fallen. I accompanied Mr. Regan, of the E. & N., several times and had a good talk with him, and that is how I know they don't include the fallen trees.

Q Now, what would he say about the percentage of cut the cut runs over, and above the estimated volume or quantity of standing timber?

A I consider about one and a half of overrun timber of the E. & N. cruising.

THE COMMISSIONER: What is that?

A One and a half.

MR. NORRIS: What does he mean by one and a half.

20 A About 15% overrun.

Q About 15% overrun? A: Yes.

THE COMMISSIONER: I suppose a great deal depends on the cruiser, doesn't it?

MR. NORRIS: Yes, a great deal depends on the cruiser.

Q Did you go out with the E. & N. Cruiser when you bought these properties?

A I went with Mr. Regan two or three times.

Q Mr. Regan. A: Regan.

30 Q Now, before they cruise these limits, do the E. & N. make a survey?

A When they give me the report of cruiser, I send the surveyor.

Q He sends a surveyor? A: Yes.

Q You mean he or the E. & N.?

A He does.

Q And in connection with these cruises by Regan, was he with Regan on all these cruises or some of them?

A: Mr. Regan was the E. & N. cruiser. He was employed by the E. & N.

Q Yes, and did Kagetsu go with him on the cruise?

A Yes, I did, once or twice.

Q Now, is there any royalty payable on any of this timber- that is, either 195 or the other blocks?

A No, I didn't pay any royalty- it is a reserve of C.P.R. There is a block reserve.

THE COMMISSIONER: You need not waste any time on that as far as I am concerned, unless you want it on the record.

20 MR. NORRIS: Well, it is a question of values, and it is royalty free.

THE COMMISSIONER: I am quite familiar with the nature of the E. & N. holdings.

MR. NORRIS: All right, my lord.

Q Now, is that timber an exportable timber?

A Yes.

Q And the Crescent mark indicates what?

A The crescent mark takes away all the tax, or the royalty -- the export tax.

30 Q Now, on 195, what percentage of No. 1 fir would

E. Kagetsu,

In Chief.

you think there was on there, when you had it?

A There was about ^{14%}~~15%~~ No. 1 fir.

Q And No. 2? A: I cannot tell you exactly, but there was about 30%.

Q Now, on the Fanny Bay operation, what percentage of No. 1 fir would be there?

A About 12% of No. 1.

Q And No. 2 -- can he estimate it on the Fanny Bay operation?

10 A: About 40%. I cannot say exactly.

Q No, it is an estimate.

A Roughly.

Q Now, at Fanny Bay you had this equipment. What condition was the equipment, in, generally speaking?

A It was in the best condition. I engaged very high wage men and they wanted very good equipment, and I always saw that they were the very best.

Q Was it inspected? A: Yes, the boiler was examined every year.

20 Q Now, the railroad, what was the condition of it?

A The railway was examined and examined by Mr. Swanson of the railway company here every year. And sometimes between the time he would come up.

Q Did he extend that railway into Block 617?

A Yes.

Q Why did he extend the railway into 617? Was it an expensive operation?

A I was in the logging business and I never considered the expense, and in 1942 I had expected to cut this timber down, so they were all there --

*Fanny Bay
Quality*

Q That is 617?

A Yes.

Q If your lordship will give me a minute.

THE COMMISSIONER: Yes.

MR. NORRIS: Q; Now with regard to this railway

extension into 617 you put that in the year before --
did you, the year before you logged it?

A Yes, I put it in in 1941.

Q Expecting to log it in what year?

10 A I expected to log it in 1942.

Q What was the timber like on 617?

A It was very good timber.

Q Now, Mr. Commissioner, I find in setting out the
claim, two blocks were omitted. It does not affect
the total. That is, under item 2, there should be
added blocks 198 and block 256.

THE COMMISSIONER: 198 and 256.

MR. NORRIS: Yes, Mr. Commissioner.

THE COMMISSIONER: Were those blocks logged or do they
20 still carry timber.

MR. NORRIS: 198 and 256 -- there is still timber on 198
and 256?

A. There was a little,
but it was not reported to the Custodian and I was
going to ask him what had happened to it.

Q He means it was not reported to him. But was there
timber on it when the Custodian took over?

A Yes, there was quite a lot.

THE COMMISSIONER: Would you put the further question
to him: had those two blocks been logged.

30 MR. NORRIS: Yes, Mr. Commissioner.

Timber Bay

E. Kagetau,
In Chief.

Q Had 198 and 256 been logged at all?

A Yes, they were almost logged. All of them were logged but there were a few left on those blocks.

MR. McPHERSON: I am not consenting at this time to an amendment to the claim. I propose to make some remarks about this amended claim after Mr. Kagetau's claim is in .

10 MR. NORRIS: Why shouldn't he consent. This was sold and it was simply a stenographer's error or a clerks error.

THE COMMISSIONER: Are you at any disadvantage Mr. McPherson in having it included?

MR. McPHERSON: I am at no disadvantage, except that I am going to attack this amended claim after I hear Mr Kagetau's evidence.

MR. NORRIS: If my friend is going to object to the claim he should have done it at the opening of this hearing.

20 THE COMMISSIONER: We are not proceeding in any strict way, Mr. Norris. I am assuming now that the claim has been amended to include those two items. It may be subject to attack later and it is open to Mr. McPherson to make an attack on it if he so desires, but I want to get at the root of this difficulty and I do not propose to allow any technical matters to interfere with the investigation.

MR. NORRIS: Q: Now, Mr. Kagetau, I am going to ask you about your camp now. There were 23 residences for married people? A. Yes.

30 THE COMMISSIONER: This is at Fanny Bay, is it?

E. Kagetau,
In Chief.

MR. NORRIS: Yes, this is at Fanny Bay. That is the only case, Mr. Commissioner where there was a camp.

Q And ten bunkhouses? A. Yes.

Q And two kitchen buildings?

A Yes.

Q One community hall?

A Yes, one community hall, yes.

Q A powerhouse?

A. Yes, a powerhouse.

Q An office?

A. Yes.

10

Q A blacksmith's shop?

A. Yes.

Q A workshop?

A. Yes.

Q A double storage garage?

A Yes, it was on the highway.

Q And some smaller structures?

A Yes.

Q Now what was the nature of these buildings? What was the condition of them?

A I had insured the structures for \$10,000 and they were in perfect condition for them to live in.

20

Q Were they built on cedar sills?

A It was lumber. He calls it lumber -- sawmill lumber.

Q Cedar?

A. No, only the foundation was cedar.

Q Only the foundation. They all have cedar foundations. And your community hall, how big was that -- how many people?

A He says my employees was 70 to 75, and their wives and children included were about 170, and on Saturdays and Sundays I used to hold cinemas there.

30

Q Cinemas for those people?

A Yes.

Q 175?

A. Yes.

Q And there was a kindergarten there?

A During the weekdays I had a kindergarten teacher for the little children.

Q And you had a baseball field constructed?

A Oh, yes.

Q Now was the land around the camp cleared?

10 A I cannot tell you exactly how much, but a great deal of it was cleared.

Q Had he some of it planted in fruit?

A I was just trying the fruit trees and some vegetable garden too.

Q How many fruit trees would he have there?

A There were only about five or six.

Q Oh, just to start with?

A I bought two dozen but I gave some away.

Q How many acres did he have under cultivation?

20 A I cannot tell you exactly.

Q Did you have some oyster beds there?

A I leased the oyster on the Coast from E. & N.

Q From the E. & N? A. Yes.

Q For your community? - for the men there?

A Yes, it was a very good place for oysters, they yielded very well.

Q At Fanny Bay you had a booming ground?

A I leased the foreshore rights and I built a warehouse on the wharf.

Q And you had a foreshore lease?

30 A Yes.

E. Kagetsu,
In Chief.

Q And a booming ground? A. Yes.

Q And a dumping pier? A. Yes.

Q Now all these were included in the sale by the Custodian, were they?

A Yes.

Q Now, Mr. Commissioner, I would like to go back just a moment to the percentage by which the E. & N. cruises were low, and I am not quite sure that the answer was interpreted as Kagetsu gave it.

10 THE COMMISSIONER: All right, proceed.

MR. NORRIS: Q: I asked Kagetsu a little while ago by what percentage the E. & N. cruises were below the exact cut, or the cut?

A If the E. & N. cruise was five million mine was general ten or eleven million.

Q I am speaking of Fanny Bay.

THE COMMISSIONER: He is not answering the question.

MR. NORRIS: No. By what percentage -- below what?

A 100% -- they were about 100%.

20 Q I am speaking now of Fanny Bay. Now perhaps your lordship would like to cross-examine him on that point. I do not want to cross-examine the witness.

THE COMMISSIONER: I do not believe the witness understood the question.

Q Mr. Kagetsu, do I understand you say the E. & N. cruises were exceeded on being but by 100%?

A Uncut, do you say?

Q Were exceeded -- wait a minute. Perhaps I can put it a little more clearly. I understood him to say when the E. & N. cruise showed 5 million feet

E. Kagetsu,
In Chief.

in his experience he cut 10 million feet from the same area?

A. Yes, I do. I mean

that.

Q The E. & N. cruise must be very bad.

MR. NORRIS: Well, of course, they are done for a different purpose entirely.

Q Now, Mr. Kagetsu, you have some pictures here (Producing same). Is that your booming ground?

A That is the booming ground. Yes, it is.

10 (EXHIBIT No.1388/7 PHOTOGRAPH)

Q And is that your wharf?

A Yes, that is a logging wharf.

Q Yes, and what is this?

A This is loaded on the carriage.

Q This is the railway?

A Yes.

Q And this is your logging engine?

A Yes.

20 THE COMMISSIONER: You can put all those photographs in as one exhibit, Mr. Norris.

MR. NORRIS: Yes, Mr. Commissioner.

Q And is this a picture of your camp?

A Yes, this was taken for the purpose of advertising. It is a very old one -- I have a film -- a cinema made of all those places.

Q Yes -- west -- on this plan, Exhibit 2, I think it was, wasn't it --

THE COMMISSIONER: The blueprint?

MR. NORRIS: The blueprint.

30 THE COMMISSIONER: Yes.

E. Kagetsu,
In Chief.

MR. NORRIS: Q: On the west boundary of that -- yea, the west boundary of that, there is a river shown -- Tsable River? A. Yes.

Q Now west of that river was there a large block of timber? A. Yes, there was quite a lot. It was roughly examined in 1935 but there was about 200 million.

Q 200 million? A. The E.N cruise of the timber -- that is the E. & N. timber, and I made cruises.

Q Now was that available to you at that time or had you made any negotiations about purchasing it?

A It was in 1935 when I sold it. There was such a lot of it and I ^{-ed} approach Mr. Lytton to sell me quite a lot of timber and I thought my camp could be in operation for about ten or twelve years.

Q Had any one blocked or prevented you, or bought timber in there, that would have prevented you from getting access to that timber?

20 A No. I was very friendly with Mr. Lytton so there was no fear of anybody --

Q -- blocking it? A. No.

Q Which way, or in which direction were your operations progressing? Which way were they gradually working?

A Up to 1942 and 1943 this was the direction and then I would have gone straight on right up to here.

Q That was due west? A. Yes.

Q And what was over due west was that 200,000 , or rather 2 million feet of timber?

30 A Yes.

TIMBER
BEYOND
TSABLE
RIVER
FOR
DEEP BAY

E. Kageatsu
In Chief.

THE COMMISSIONER: While you are examining on that subject, Mr. Norris, will you ascertain whether there were any other log operators in that vicinity?

MR. NORRIS: Were there any other logging operators in that vicinity?

A There was the Victoria Lumber.

Q Where were they operating?

A I was in the Newcastle part and they were on the Nelson side.

10 THE COMMISSIONER: That does not help at all.

Q Where was the Victoria Lumber operation in relation to this 200,000 feet tract that you speak of?

A This belongs to Victoria Lumber.

Q This piece here. That is the piece shown here.

MR. NORRIS: Yes, that belonged to the Victoria Lumber.

Q Were they operating it?

A Yes, they were operating.

Q Which way were they working - north?

20 A Yes.

Q They were operating North?

THE COMMISSIONER: And the Tsable River valley runs north and south?

MR. NORRIS: Yes.

NB
THE COMMISSIONER: You see we have had evidence in the other cases to this effect, the E. & N. policy was to hold tracts of timber for contiguous operators and when the witness states that this 200 million tract was available to him he is not asserting that it was available to him and no one else.

30 MR. NORRIS: No, he is simply asserting in his consultations

E. Kageetsu,

In Chief.

with Mr. Lytton he would have some of it. Some one else did buy a part of it and substantially blocked the extension of that operation. The correspondence shows that someone bought 25 million acres, I believe, and effectually blocked it.

THE COMMISSIONER: When did that purchase take place?

MR. NORRIS: That purchase took place after Kageetsu had been evacuated -- after he left.

THE COMMISSIONER: Before the sale?

10 MR. McPHERSON: I can state the fact on that if my learned friend Mr. Norris does not object. The government realized the value of this timber limit was affected adversely by the option given to certain other people but that option was given before the Custodian sold this property and the government will produce evidence as to that.

THE COMMISSIONER: The option was given before the Custodian sold the Deep Bay logging?

MR. McPHERSON: Yes, and evidence will be given to show the Custodian did everything possible to have it cancelled.

MR. NORRIS: I do not know whether your lordship understands the point I am making. The availability of that timber enhanced the value of the operation to Kageetsu and it was open at the time he took the property over.

Q Now what is this -- I only asked him what it was?

A This is the letter written in 1935 explaining about Victoria Lumber Company and how much lumber was in there and near ours.

30 Q Who did he write this letter to?

Concession by Mr. P.

N.B.

E. Kagetsu,
In Chief.

A To a man named Friga Sar (?) a friend of mine.

Q And what are these notes on the back?

A This is the diagram to show how high it was above
sea level -- 1500 feet above sea level.

Q And was this more accessible to the Victoria Lumber
Company or to your operation?

A It is just about the same.

Q Yes, now who bought this 25 million parcel --
who got the option on it? Probably my friend can
tell me.

10

MR. McPHERSON: It was the Alaska Pine or Mr. Horner,
I think, my lord.

MR. NORRIS: It was the Alaska Pine. Has the Alaska Pine
anything to do with the Victoria Lumber Company?

A I don't know.

Q I don't think they have.

MR. McPHERSON: I will admit that.

THE COMMISSIONER: As far as I am aware they are two
separate and distinct companies.

20

MR. NORRIS: Perhaps I could find out about this from
another witness. Perhaps you could translate for
me at noon.

A Yes.

THE COMMISSIONER: Are you starting now on a new phase
of your examination, Mr. Norris.

MR. NORRIS: Yes.

THE COMMISSIONER: Well, we adjourn at 12.30 in any case
and we will adjourn now. All right, Mr. Secretary
we will adjourn to resume at two o'clock.

30

(PROCEEDINGS ADJOURNED UNTIL 2.00 P.M.)

I hereby certify the foregoing to
be a true and accurate report of
the said proceedings.

E. Blyskal
Deputy Official Stenographer

E. Kagetsu,
In Chief.

(2:00 P.M. PROCEEDING RESUMED PURSUANT TO
ADJOURNMENT)

EIKICHI KAGETSU, resumed the stand:

DIRECT EXAMINATION BY MR. NORRIS, RESUMED:

Q Mr. Kagetsu, I produce to you a letter dated
March 31st, 1942, written by you to Major
Taylor, Chairman of the B.C. Security Commission.
I am not going to read it all. Do you remember
writing that letter?

10 A Yes, I do.

Q And that was a letter in which you said that you
wished to stay on the property to log it off,
"Unfortunately in this district . . . problems
will be solved". Do you remember writing that
letter?

A: Yes.

Q And you got a reply from the Security Commission?
Did you get that?

A Yes.

THE COMMISSIONER: How do the contents of that letter
touch on the issues before me?

20

MR. NORRIS: He is pointing out in this letter at
that time to the Security Commission that it
was a going concern and there was a good market
for the logs ^{if} and he was allowed to remain
there the logs would be marketed, and so on.

THE COMMISSIONER: I appreciate that, but how does
that touch on the issues before me?

MR. NORRIS: The issue before you, as I understand
the Commission, is as to the value of this
operation, the fair market value of this

30

going concern
good

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operation. It is a market value of an operation which as a going concern --

THE COMMISSIONER: It is greater as a going concern than some of its parts, I appreciate that.

MR. NORRIS: What I mean is this does show -- perhaps strengthens the evidence with regard to this being a going concern and is intended to stay there.

THE COMMISSIONER: I do not think it has any bearing here.

MR. NORRIS: If your Lordship rules that way, I am not going to press it.

THE COMMISSIONER: My position here is this, that we start with the premise that the evacuation policy was right.

MR. NORRIS: I don't propose to suggest that this evacuation was wrong, but it had these effects whether it was right or wrong.

THE COMMISSIONER: I do not think this letter advances your position at all. I assumed you were putting it in as a criticism of the evacuation policy.

MR. NORRIS: Oh no. I may have my own views on that, but I don't intend to inject them into this, and I certainly don't intend to inject into this hearing any criticism of any bald matters of policy. I mean, there it is.

THE COMMISSIONER: I have nothing to do with them.

MR. NORRIS: I quite appreciate that. However, I suppose your Lordship can take notice of the fact that these people didn't want to go, and

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would have carried on.

THE COMMISSIONER: That is perfectly obvious.

MR. NORRIS: Q: This 200 million feet of timber we spoke about, do you remember that?

A Yes.

Q Was it accessible where it lay to you or to the Victoria Lumber Company?

→ A It was really mine. It was more accessible.

Q To your property? A: Mine went south-west and the Victoria Lumber Company went north, so mine was more accessible.

10

Q Were there any physical barriers or any hills or valleys, and so on, which would make the situation different as between the Victoria Lumber Company and your property with regard to accessibility?

A Yes, there were many.

Q Many what? A: Many things to make it more difficult.

20 Q More difficult for whom -- for you or the Victoria Lumber Company?

A It was more difficult to the Victoria Lumber Company than mine my company. There was a creek.

Q And what about hills?

A Yes.

THE COMMISSIONER: There were hills, I take it.

MR. NORRIS: Yes. I don't just fully understand the procedure here, my lord. I take it this claim is in as an exhibit.

30

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In Chief.

THE COMMISSIONER: Yes, I treat it as a pleading.

MR. NORRIS: Q: Will you take that claim, Mr.

Kagetsu? You see Block 195, item 1?

A Yes.

Q That shows a value of \$275,000.00.

A Yes.

Q Is that a fair value for that timber or is that a fair value to put on that timber as at the time of sale?

10 Q That was the fair market value.

THE COMMISSIONER: Can I have the date of sale again?

MR. NORRIS: Block 195 on the 28th June, 1943; and the Deep Bay property, my friend, Mr. McPherson, tells me the negotiations were concluded, as I understood him, in December, 1943, but the documents weren't completed until April, 1944. I would like an opportunity to check that later with Mr. McPherson.

Q That is the value as at the 28th June, 1943?

20 A Yes, it is.

Q I show you item No. 2, Blocks 504, 566, et c.,-- this is the Fanny Bay property -- and over the page it shows a value of \$142,781.00.

THE COMMISSIONER: There is no need for you again to verify the values. He has already sworn to them. If you simply want him to say that the value he has put on them is the fair market value, there is no need for it.

MR. NORRIS: That is all I wanted him to say.

30 Q Before you left the Fanny Bay operation,

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the Deep Bay Logging Company property, before
you left that, the Custodian had some men
go up there? A: Yes.

Q And they took an inventory ?

A It was from my inventory.

Q They took it from your inventory ?

A Yes.

Q If you look at item 8 on page 3 of that claim,
you will see that there were 640 boom chains?

10 A Yes.

Q The Custodian has only credited you with 317?

A Yes.

Q Were there 640 chains there?

A I read it myself so I am sure it was there.

Q Did these men count the chains?

A No.

MR. NORRIS: I take it the claim with regard to the
wire rope is admitted, Mr. McPherson.

MR. MCPHERSON: My lord, we are not yet are that
20 is the same wire rope we consider the
Government lost. If it is the same, it is
admitted, but we haven't been able to identify
whether that is the 1200 feet of spool that
was taken away, but I will admit there was a
spool stolen and the Government admits it
was lost. Whether it was this 1200 feet,
I haven't been able to find out.

THE COMMISSIONER: If there is any question about it,
you had better prove it.

30 MR. NORRIS: Q: If you look at item 8, page 3,

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In Chief.

1200 feet of wire rope at 8 cents a foot, was that there at the time the Custodian took over?

A: Yes, there were 1200 feet, but that was the large coil. Out of that large coil 1200 feet was stolen, missing.

THE COMMISSIONER: Q: I did not hear what the word was after "large". Was it "coil"?

A Yes.

10 Q On a spool?

MR. NORRIS: Q: Was it on a spool, a drum?

A A drum.

Q Is eight cents a foot the proper charge for that?

A: Yes, that is the ordinary market value.

MR. NORRIS: WITH regard to the chains, the charge is \$2.25 each. I think that is the amount which the Custodian has allowed with respect to those he has given credit for.

20 Q At page 2, item 3, there is 60 tons of coal. Was that there at the time?

A When I was evacuated it was there.

Q Was it included in that coal for which these are invoices?

A Yes, and I had to pay everything in cash in advance in those days.

Q And this was not touched?

A But it was half used.

Q There are two invoices, one of which shows

30 34 tons that wasn't touched, and the other

*Begin Chain's
Bogus Rope*

E. Kagetsu,
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41 tons, part of it had been taken?

A Yes.

THE COMMISSIONER: Where is the claim for loss of
coal?

MR. NORRIS: Page 2, item 3(a), included in that.

THE COMMISSIONER: I see.

MR. NORRIS: If my friend wants these in, I will put
them in.

Q Felled and bucked timber. Have you got a record
of your felled and bucked timber in your book?

10 A Yes.

Q The quantity?

THE COMMISSIONER: Before you leave the lost
articles, would you bring out where the articles
were left at the time of the evacuation?

MR. NORRIS: Q: Mr. Kagetsu, when you left the
boom chains, where were they?

A 610 in the blacksmith's shop.

Q Were there any in the booming ground?

20 A Thirty.

Q And how many in the blacksmith's shop -- 610?

A Yes.

Q Where was the wire rope?

A In the powder house.

Q And it was in the powder house on the Fanny
Bay operation? A: Yes.

Q Have you got some notes about the felled and
bucked timber in your book?

A Yes.

Q Before going on with that, about this coal,
30 it was just before you left -- February 28th,

E. Kagetsu,
In Chief.

1942, and March 24, 1942?

A Yes.

Q And you paid for it at the time of delivery?

A Yes. A week or two before I paid cash.

Q Where was that coal?

A In my coal bunker.

Q Where was that?

A: Fanny Bay.

Q The value of that coal, I take it, you paid these invoices?

A: I paid

10 freight, too.

MR. NORRIS: \$283.78 for 34 gross tons and \$342.02 for 41 gross tons -- \$7.00 a ton for the coal plus a surcharge of the Wartime Prices & Trade Board of 30 cents a short ton, and freight to Fanny Bay approximately \$35.00 to \$41.00. We were dealing with the felled and bucked timber. How much felled and bucked timber was there at Fanny Bay?

A 2,568,064 feet.

20 Q All these items on page 2 and the items 3, 4, and 5, were at Fanny Bay on the property?

A Yes, these were all there.

THE COMMISSIONER: Is this felled and bucked timber claim included in the claim for timber?

MR. NORRIS: It is included in the gross.

THE COMMISSIONER: \$275,000.00.

MR. NORRIS: No, there was nothing felled and bucked in 195. That is \$142,000.00.

THE COMMISSIONER: It is included in the \$142,000.00?

30 MR. NORRIS: Yes.

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In Chief.

THE COMMISSIONER: You might ascertain what value
he puts on felled and bucked timber laying in
the woods. I presume that is where this timber
was.

MR. NORRIS: Q: There was first of all the cold-
decked timber? A: Yes.

Q How many thousand feet of that?

A 2,371,718 feet,-- half of that.

Q Half of it? A: Yes.

10 Q It was a little over 700,000 feet?

A Yes.

Q And what price do you put on that a thousand?

A \$12.00.

Q \$12.75 you have got here, is that correct?

A Yes.

Q The felled and bucked timber, apart from the
cold-decked timber, will you look at your book
again? That works out to \$8,925.00 for
the cold-decked, my lord.

20 THE COMMISSIONER: Yes.

MR. NORRIS: Q: The felled and bucked timber,
how much; what quantity?

A About \$1,868.00.

Q 1,868 thousand, is that correct?

A Yes.

THE COMMISSIONER: That would be the balance.

We have 700,000 feet of cold-decked.

MR. NORRIS: And the other was 1,868 thousand,
the balance.

30 THE COMMISSIONER: Yes.

*Felled &
Bucked*

E. Kagetsu,
In Chief.

MR. NORRIS: At \$10.75. He says \$11.00. I think
the calculation is based on \$10.75.

Q Your buildings were insured for how much?

A \$10,000.00.

Q What value do you put on those in this claim?

A \$4,000.00.

Q Now, the farmland, do you know what you valued
that at as farmland?

A: Thirteen

hundred.

10 MR. NORRIS: As a matter of fact, -- I don't know
whether my learned friend objects --

\$1,175.00 was the value of the farmland.

THE COMMISSIONER: This was a developed farm.

MR. NORRIS: No, this is the value of the land
logged off for agricultural purposes.

THE COMMISSIONER: And the value he put on it.

MR. NORRIS: \$1775.00. And the balance including

standing timber and everything else, that is
stated there, the dock, and the foreshore

20 lease, and so on, it come to \$108,000.00.

THE COMMISSIONER: What does that \$108,000.00
include?

MR. NORRIS: That includes the standing timber.

THE COMMISSIONER: Where; on what?

MR. NORRIS: On the Fanny Bay property.

THE COMMISSIONER: On 504, 506, etc.

MR. NORRIS: Yes, that includes the standing
timber and everything else set out in item
2.

30 THE COMMISSIONER: I follow you.

*Camp
buildings*

E. Kagetsu,
In Chief.

MR. NORRIS: Q: Are there any other trees not included in this value you have given? Did you include your Christmas trees, small trees?

A I want to tell you something about it.

Q What do you want to say about it?

A About the second growth trees.

Q Yes. Did you plant them? A: I cut about 1923 and 1924. That is the second growth. That makes about four inches or five inches diameter, second-growth. I was protecting the B.C. Forest property.

Q You were adopting proper methods of conservation?

A Yes.

Q How many feet of standing timber do you figure there was there?

A There was so many I couldn't tell you.

Q I don't mean Christmas trees. I mean the standing timber. How many thousand feet of standing timber on the Fanny Bay property?

20 A 27 million feet.

Q 27 million feet of standing timber?

A Yes.

THE COMMISSIONER: That would be the timber standing and uncut on 504, 566, 617, 274, 263, 234, 267, 276.

MR. NORRIS: That is right, my lord. As I explained to your Lordship, that figure is a figure of this operation as a going concern, that total.

30 THE COMMISSIONER: The total money claim, you mean?

10

20

not
17 million
per acre

Reforestation
conscious

E. Kagetsu,
In Chief.

MR. NORRIS: Yes.

THE COMMISSIONER: How does he arrive at his 27 million feet? Is that simply his estimate or has he cruised for it or what?

MR. NORRIS: Q: How do you figure 27 million feet standing timber?

A It was I who estimated it and I haven't made a mistake.

THE COMMISSIONER: It is his estimate?

10 MR. NORRIS: Yes.

Q At Fanny Bay you had built a new office building, hadn't you?

A: Yes, I did.

Q For your son?

A: I had a

contract with Mr. Lytton, and as my son was graduated from the University I built a new office for him and furnished it.

Q Your son is a graduate in forestry?

A Yes.

20 Q You had paid taxes from time to time on your land after you logged it?

A I paid taxes all the time on everything so that I would have access to all the logs and protect the forest.

Q I am referring to the property after it was cut?

A: Yes.

MR. NORRIS: It may be necessary, my lord, to ask your Lordship's permission to recall Mr. Kagetsu later after I have had some further information.

30 THE COMMISSIONER: Very well.

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Discussion.

MR. McPHERSON: With respect to the amended claim generally, the Government takes the position that there are certain items in this claim which were not included in the original claim, certainly items that Government counsel was not aware of at all until the examination of Mr. Kagetsu commenced this morning, and the Government, therefore, requests that certain of these items be struck out of the claim on the ground that they were neither received within the time set by your Lordship's Order for the filing of claims, nor were they received in January, 1948, when the company was allowed to file a claim, nor were they received after July 17, 1948, when Government counsel forwarded the file to opposing counsel. In addition to that Government counsel has been in touch with Mr. Norris and Mr. Baldwin concerning this claim on several occasions endeavoring to get a breakdown of the claim, and I would point out to your Lordship that the original claim of the company is dated the 6th January, 1948.

THE COMMISSIONER: I have the claim the 25th November, 1947.

MR. McPHERSON: That is another Kagetsu claim, my lord. The two claims have now been consolidated.

THE COMMISSIONER: Yes.

MR. McPHERSON: On November 25th, 1947, Mr. Kagetsu

completed a claim, but the day that claims were called for was the 30th November, 1947, as your Lordship is aware.

The COMMISSIONER: Yes.

MR. McPHERSON: Subsequently to the filing of that claim, the company filed a claim, or Mr. Kagetsu filed a claim for the company's assets, that being dated the 6th January, 1948.

THE COMMISSIONER: I have that before me.

10 MR. McPHERSON: I would point out to your Lordship that the original claims do not make any reference whatever to agricultural land, to this property as a going concern, to re-forestation, if that is what these Christmas trees are. Those items were not included in the original claim.

THE COMMISSIONER: Where are they found in the claim as amended?

20 MR. McPHERSON: Under item 2 of the claim, November 3rd, 1948, received by Government counsel on the 4th November.

The COMMISSIONER: Wait a moment. You are talking now about the claim you are now proceeding with.

MR. McPHERSON: Item 2, I take it, is where this claim for agricultural land is hidden away somewhere.

THE COMMISSIONER: But you say there is no express claim for anything in relation to agricultural land, is that the situation?

30 MR. McPHERSON: That is correct, my lord.

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Discussion.

THE COMMISSIONER: Yes.

MR. McPHERSON: For the purposes of the record, my lord, I wrote a letter July 17th, 1948, to Mr. Norris, enclosing the claim file, and requesting him to let me have any amendment, and asking him for details of the claim -- the customary letter which your Lordship has heard about in other cases. Having written that letter and having received no amendments, I wrote again on September 17th and asked for a reply to my letter of July 17th and didn't receive a reply. On November 2nd, I wrote again and asked for these amendments, and subsequent to that I had a discussion with my learned friend, Mr. Baldwin, and we discussed particulars of the claim and I requested information about the breakdown of item 2 in the amended claim. Your Lordship will note that in the original claim there is no reference to agricultural land and there was no reference to another item which Mr. Baldwin advised me was part of their claim, which I haven't yet heard. I think it would have to be dealt with now; but the item 3 of their amended claim, Mr. Baldwin has advised me, that includes a claim of fifty cents a thousand for 28 million feet; that in that \$37,000.00 there is some kind of a claim of 50 cents a thousand for timber as increasing the value of the railway.

MR. NORRIS: No, that is not right.

THE COMMISSIONER: It does not appear in item 3 and it has not been suggested to me it is included.

MR. NORRIS: I would ask your Lordship's permission to deal with that. It was just an oversight it wasn't dealt with.

THE COMMISSIONER: I will hear Mr. McPherson first.

MR. McPHERSON: That is the details I got for item 3.

10 THE COMMISSIONER: Just a moment. Let us deal with one thing at a time. You opened in regard to the question of agricultural land. Have you finished with that now?

MR. McPHERSON: No. But he has told me that item 3 indicates he was giving particulars about something that didn't appear there. Now, I am going back to say that at the time of that discussion I was not advised or had not been advised until today that there was any claim for agricultural land or reforestation. The Government is in no position to consider such a claim because we had assumed that our learned friend would give me the details of his claim.

THE COMMISSIONER: What did the Custodian do with the logged off land?

MR. McPHERSON: He sold it, my lord, the same as in the Royston case, to the purchasers of the larger timber.

30 THE COMMISSIONER: Was the property sold as a going

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concern?

MR. McPHERSON: No. The timber was sold separately and the equipment was later liquidated piece-meal, but the timber itself in the lands was transferred to the purchaser of the timber which in 1943 was then sold, as I endeavoured to show in the Rogston case, but the problem there was to bring this in line with the advertisement under which the assets were sold; that is, set it up as parcels.

10 THE COMMISSIONER: Does it come down to this, that you cannot adduce evidence to meet this claim for agricultural land? Is that the gravamen of your complaint?

MR. McPHERSON: No, my lord, I am prepared to admit I could get witnesses to look over this property, but I am suggesting that these people are not entitled to amend their claim. I am getting tired of having opposing counsel give me
20 amended claims two or three days before I come in.

THE COMMISSIONER: Mr. Norris, I suppose, has enough of a problem in the case we are now concerned with, and I have no doubt he is prepared to shoulder that burden but not those of the other Japanese claimants.

MR. McPHERSON: You will also appreciate, my lord, that in this claim -- your Lordship has read the amended claim -- I am unable to find these
30 oyster beds included in it. I didn't know

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- there were any claims for Christmas trees.

THE COMMISSIONER: These claims are well concealed if they are there.

MR. McPHERSON: I didn't know they were claiming it as a going concern. I presume that is a claim for goodwill, although the goodwill may be hidden in the value of the assets. If that is the case, the Government should have been advised not three days before the trial but last July, and as Government counsel I would ask that the claims for these amounts should be struck out.

THE COMMISSIONER: There is one item for agricultural land, and the second item is ~~some~~ claim for fifty cents a thousand as an increased value of the railway.

MR. NORRIS: I haven't dealt with that, my lord.

MR. McPHERSON: The claim for the oyster beds, whatever it may amount to, and the hidden claim as a going concern, whatever the increased value for that is, and one other item at the end of the claim, which is in item 3, the claim for the coal.

THE COMMISSIONER: There is a claim for coal, is there not?

MR. McPHERSON: Yes, sixty tons in the amended claim, and there was a claim for oil, gasoline and coal in the original claim of the company. The inventory which my learned friend hasn't filed, Mr. Kagetsu's inventory which he referred to, which I will be filing if my learned friend

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doesn't file it, makes reference to only five bags of coal for a blacksmith's forge. When I considered this claim in July when I was preparing the Government's defence, I went through it very carefully and I found five bags of coal and I knew nothing about sixty tons and Mr. Kagetsu didn't include it in his inventory, and we never knew there was coal there. That is really a matter of
10 evidence, but the other items, I suggest, are definitely outside this case at this time.

THE COMMISSIONER: Are not the other items matters of evidence as well? For instance, the claim as presented, speaks of a total value under item 2 of various blocks of timber and plant and equipment. If the claimant comes in here now and asserts that total value is made up of something in addition to that which he has given in his particulars, are you
20 seriously embarrassed?

MR. McPHERSON: I am, my lord, on this question of agricultural land and reforestation, and I am very much embarrassed because I had been suspicious of this being in here -- at least, I shouldn't say suspicious --

MR. NORRIS: Why didn't you ask us then?

MR. McPHERSON: I did ask on several occasions for particulars, and I was worried and looking for a claim for reforestation. As your Lordship
30 heard, the Royston case was the first case in

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which there was a claim for agricultural land and reforestation. So I was looking for it in this claim, and I asked Mr. Baldwin on the 'phone several times and only the other day I tried to get him to break it down but I never heard of it until this morning. If I have to defend the Government on the question of agricultural land, I will have to hire a man like Mr. Cobb, for instance, and send him out, I will have to go over this land and see whether or not it is suitable for agriculture, I will have to find out whether it was cleared or timbered, so that I will know how old the stumps are; and the whole claim only involves \$1,175.00.

THE COMMISSIONER: In the circumstances I think you have cause for complaint. I will hear from Mr. Norris on that. Now, as to the other items in the claim for the oyster beds, that, I agree, is introducing something new to the picture presented by the claim. Christmas trees appear to be the same thing. There is the item of fifty cents for the land, oyster beds, Christmas trees, and what other?

MR. McPHERSON: The Christmas trees, if they included reforestation, then it is just the Christmas trees. I am not sure whether the witness was talking about reforestation or not.

THE COMMISSIONER: Those are the four items.

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MR. McPHERSON: Yes. I am leaving the coal aside as a matter of evidence.

MR. NORRIS: It is not necessary for me to submit to your Lordship that we are not in the Police Court and that --

THE COMMISSIONER: There has been no suggestion of it up to date, Mr. Norris.

MR. NORRIS: My learned friend has suggested that in some way he has been deceived. There is no suggestion of deceit at all.

10 THE COMMISSIONER: You seem to be unduly sensitive, Mr. Norris. I never heard anything about deceit. I have heard a complaint by counsel that he is being faced with claims now that were not disclosed in the claim.

MR. NORRIS: With respect, my lord, he says he gave Mr. Baldwin the opportunity to tell him and Mr. Baldwin didn't disclose it.

20 THE COMMISSIONER: I am not paying very much attention to that.

MR. NORRIS: Very well. With great respect, your Lordship has known me for a long time, and I think your Lordship knows I am not a very sensitive person.

THE COMMISSIONER: Let us get on with the meat of it.

MR. NORRIS: These matters are pure elements of value. Take the agricultural land. What more could be said? If you look at item 2, Blocks 504, 566, 276, 617, 274, 263, 234, 267 and Lot 88, whether that was going to be used for
30 agricultural land or nonmatter what for, there

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it was. It was all known to my friend. He has known about this for a long time.

THE COMMISSIONER: The picture is rather different from that. Counsel has to prepare in advance for a matter of this description, and I think you will fully appreciate that Government counsel can't get information as to whether this land is fit for agricultural purposes or otherwise.

10 MR. NORRIS: But surely, my lord, the claim was always in respect of those blocks.

MR. McPHERSON: No, the claim was for timber land.

MR. NORRIS: Well, timberland, no matter what it was, it was sold as one block. The Custodian sold it, my lord.

THE COMMISSIONER: And in other cases we have had evidence that such timber land as a rule is retained by an operating company for the purpose of protecting its right-of-way or something.

20

MR. NORRIS: I don't know anything about the other cases, but I do know that had I been faced with this claim, I submit with respect, I would have found what the elements of value are.

THE COMMISSIONER: There is where another feature of Mr. McPherson's complaint comes in.

MR. NORRIS: He says he asked for particulars and didn't get them. He didn't ask for these particulars. He sold this as a block. The

30

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particulars we got here refer to the sale as a block. He sold this as a going concern.

THE COMMISSIONER: Let us stay with the one point, Mr. Norris. We are talking about whether you disclosed to him your claim for some value as agricultural land.

10 MR. NORRIS: I submit it was disclosed. It is only an element of value. I submit that isn't a matter for particulars but it is a matter of evidence and really he is not entitled to it, I submit.

THE COMMISSIONER: I do not think it is. I think it is a matter of some moment if the claim is being made in respect to logged-off land as having a peculiar value because of its worth from an agricultural point of view.

MR. NORRIS: May I suggest to your Lordship that all agricultural land in this particular province is logged off land?

20 THE COMMISSIONER: But you and I, Mr. Norris, have lived long enough in this province to know that logged-off land as a general rule has very little value.

MR. NORRIS: Still this was a lot of logged-off land. Apart from that I had to get a man here from the east. We were faced with much greater difficulties than my friend was. I have had in a very short space of time to take the burden of other work, which is not
30 your Lordship's concern, I suppose, to deal

with this man, to get him here and find out what this picture was.

THE COMMISSIONER: The total claim you are making with respect to it is \$1,175.00 as part of a ~~the~~ claim running into \$500,000.00.

MR. NORRIS: Yes.

THE COMMISSIONER: As such are we not spending a lot of time on it?

10 MR. NORRIS: Then I submit that is a matter for the Government. The Government could afford to be generous with regard to it.

THE COMMISSIONER: I am not disposed to hear evidence as to its value as agricultural land.

MR. NORRIS: May I submit with the greatest deference -- I know your Lordship will bear with me -- here is a case of the gravest hardship, if we are not entitled to put in all the elements of values. Surely, my lord, -- I would ask if necessary to reserve that, and consider it; but it does seem to me it doesn't matter what the element is --

20 THE COMMISSIONER: If it were possible, Mr. Norris, to read out of the particulars given in "A" any suggestion that this logged off land had a peculiar value for agricultural purposes, then I would agree with you.

MR. NORRIS: But my point is I am not required to do that. My submission is I am not required to do that because that is an element of value. Whether it is of value for agricultural

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purposes, no matter what for -- I don't know
what use these people might put it to --

THE COMMISSIONER: You have had my view on it,
Mr. Norris.

MR. NORRIS: Does your Lordship make the definite
ruling? I would ask your Lordship to consider
that because it is the gravest hardship.

THE COMMISSIONER: I have ruled on it. You may go on
to the next point.

10 MR. NORRIS: Does your Lordship rule I may not submit
any evidence with regard to its value for
agriculture?

THE COMMISSIONER: With regard to its having a
peculiar value as agricultural land.

MR. NORRIS: Then it has no value at all?

THE COMMISSIONER: No, it probably has a value,
or some part of it has, for the railway
right-of-way.

MR. NORRIS: No, because it is away from the railway.

20 What your Lordship has ruled in effect is --
I don't want to strain your Lordship's patience--
that certain of that land may not be taken
into consideration.

THE COMMISSIONER: You are quite wrong. I have said
that I don't propose to hear evidence as to
its having a peculiar value as agricultural
land in view of the fact you have failed to
give particulars over a considerable period
of time when you were asked.

30 MR. NORRIS: No, my lord, with the greatest respect I

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was not asked specifically for it.

THE COMMISSIONER: I noticed from what has been read to me from these letters that you were asked to particularize what this claim means.

MR. NORRIS: No. This claim went in November 4th.

THE COMMISSIONER: Let us have the letter again.

MR. NORRIS: My learned friend had the opportunity since November 4th --

THE COMMISSIONER: Just read the letter, Mr. Norris.

10 MR. McPHERSON: There are several letters dealing with this question. The first was July 17th.

THE COMMISSIONER: Let Mr. Norris read it himself and he may change his mind.

MR. McPHERSON: I trust your Lordship will appreciate that I couldn't ask whether they were asking for particulars of agriculture. (Reading letter referred to).

20 MR. NORRIS: As your Lordship knows all through the month of July when we are able to deal with these things, I endeavoured to get in touch with my learned friend. He ^{promised} ~~used~~ to meet me on several occasions and I was never able to get him.

THE COMMISSIONER: This claim was filed in November, 1947, and we are now in November, 1948.

30 MR. NORRIS: I appreciate that fact, but, surely, my lord, if there is to be inconvenience as between two parties, surely the person whose property is taken should be given the benefit of any consideration your Lordship can give.

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THE COMMISSIONER: So little consideration is shown by the claimant. Here is the situation, Mr. Norris. I have a great many of these claims. I am going to have to sit for another six months to a year. I have specifically asked each counsel concerned to endeavor to be ready when a case goes on and I have asked both counsel co-operate to permit the hearings to be proceeded with expeditiously.

10

I do not think in this case the claimant's solicitor, has given the information that would warrant government counsel in thinking there was going to be any claim made for agricultural land, and I will go further in that and say I do not think Mr. Norris thought about it until it was brought up for the first time in the presentation of the Royston case.

20

MR. NORRIS: I may say I know nothing about the Royston case. Your lordship will appreciate we could go on with these things from month to month. I have done my best to present my case.

THE COMMISSIONER: But in this case I think you have quite unwittingly taken government counsel at a great disadvantage in that he cannot now get the information in regard to the wealth of this land as agricultural land unless this case is put over for a matter of several weeks.

30

MR. NORRIS: He had this claim on November 4th. This is November 8th. He could have got that information within two days. I got it within two days.

He could have got that. He waited until Mr. Kagetsu gave his evidence and then he made his objection.

THE COMMISSIONER: Wherein could government counsel ascertain from the statement made in this amended claim that a claim was being made in respect of a truly agricultural value to this land.

MR. NORRIS: It is the value of the land, my lord,. The elements of value is a matter of evidence.

10 TH ECOMMISSIONER: I do not think so. I am not going to hear evidence on this claim unless counsel agree we adjourn for a matter of a week. That is going to cause me a great deal of inconvenience personally, but that is something I have to put up with, I fancy.

MR. NORRIS: I am in your lordship's hands, but it does seem to me -- I have the greatest respect for your lordship -- in being handicapped in the presentation of this case --

20 THE COMMISSIONER: It is a matter that I think you should be allowed to present so long as an adjournment is granted.

MR. NORRIS: I can give my friend -- he has the appraisal and it is made by a well known Vancouver agricultural appraiser.

THE COMMISSIONER: He has to employ his own men, and have them properly examined. These I take it are sections of what?

MR. NORRIS: Blocks.

30 THE COMMISSIONER: What is a block?

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MR. NORRIS: It is an irregularly shaped piece of land.

THE COMMISSIONER: It would run into a substantial number of acres and for a man to make a proper check of this land for its worth as agricultural land purposes or otherwise I think would take some time. Maybe I am wrong.

MR. NORRIS: I don't think it would take more than a day.

THE COMMISSIONER: I think you would have to walk pretty fast.

10 MR. McPHERSON: On the question of an adjournment I am in a very difficult position. I think your lordship will agree that government counsel has leaned over backwards to supply opposing counsel in all cases with information. I went to the trouble before these cases opened --

THE COMMISSIONER: Do not let us go over the ground.

MR. McPHERSON: This is my ground. I went to the trouble to throw the case open at the request of your lordship to meet all counsel who might be attending
20 in your Chambers. Mr. Baldwin attended, representing Mr. Norris. You made certain definite rules which were transmitted to the counsel in writing by the secretary. One was the government counsel was entitled to such particulars as he might require to meet the claim. Then subsequent to that I had some meetings when I attempted to get particulars, not knowing there was a claim for
30 agricultural land. There was no reason for me to ask whether they were claiming for agricultural land, oyster beds, or Christmas trees. It was not until

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last week -- Mr. Norris gave me the impression the other day that we might be --

THE COMMISSIONER: I do not think we need go into that. Let us confine ourselves to the issue before us.

MR. McPHERSON: As your lordship knows, it is impossible for me to agree to an adjournment at this date. Your lordship said that when these cases started we were to go ahead. I have made arrangements to be out of this court by the 1st of December. I had to put it ahead, and since the cases were late in starting, I would have to oppose it.

MR. NORRIS: I haven't asked for an adjournment.

MR. McPHERSON: If I figured that Mr. Norris had any grounds for complaint about government counsel's actions in the matter, I would be prepared not to oppose an adjournment, but I feel here is something they knew they were claiming that wasn't apparent from the claim, and I was dealing with them not at arms length but supplying them with all my defence and everything else. And when I telephoned for information it isn't until November 4th I get a new claim for \$60,000 more than the original claim.

THE COMMISSIONER: Under what head?

MR. McPHERSON: Under the whole thing. They bumped the claim to a total of \$60,000. And since Mr. Kagetsu arrived in the west-Mr. Brewin has been acting in this matter in the East and Mr. Kagetsu had counsel available and therefore I cannot agree to an adjournment.

MR. NORRIS: May I ask your lordship -- we will be some time on this claim -- could my friend get these particulars before this claim is over.

THE COMMISSIONER: That was running through my mind. What length of time are we likely to be occupied on this case?

MR. NORRIS: Certainly all of this week.

10 THE COMMISSIONER: So far as the agricultural land is concerned, Mr. McPherson, could you be ready to meet that phase of the game by say, Monday next?

MR. MCPHERSON: The particular man I would have got was Mr. Cobb, and he is in Montreal, I noticed in the paper by accident. I would have to find out who I could get to look at the property.

THE COMMISSIONER: I suppose you would want to get rid of this claim along with the rest. You do not know when Mr. Cobb is returning?

MR. MCPHERSON: No, my lord. I noticed he went to Montreal. I don't know whether I could get anybody else or not.

20 THE COMMISSIONER: I am going to hold this phase over until the morning. You find out whether you can get the witness you require, say by Monday next. Now, Mr. Norris, as government counsel has said, there was an oyster bed on the foreshore of this land.

MR. NORRIS: There is no value put on that. It is just a matter of general evidence. There is no claim purely in dollars and cents in respect of the oyster beds.

30 THE COMMISSIONER: Just a little trimming.

MR. NORRIS: It is an element of value.

THE COMMISSIONER: And so far as the Christmas trees are concerned?

MR. NORRIS: It is just another thing to show the nature -- it isn't put in at any specific value.

THE COMMISSIONER: And you are putting no specific value on that?

MR. NORRIS: No.

10

THE COMMISSIONER: What about this 50 cents a thousand increasing the value of it by virtue of the railway or something of that description.

MR. NORRIS: It is an element of value with respect to the railway. Again we come back to this matter of having a going concern and having been sold at a time it was a going concern. The element of value is simply the value of that railway. In fixing the value of that railway to that land, one would have to figure on the basis of 28 million feet at 50 cents, a matter of \$14,000. The railway was there and would have been used. It is purely and simply an element of value.

20

THE COMMISSIONER: Let me see if I understand you.

Assuming there was no development back of this land other than say 5 million feet, you would then say the railway had less value than if there were 50 million feet available to be cut -- ~~xx~~ I am just taking a supposititious case -- you say the logging railway has a greater value because of their being a large quantity of timber available than if only a small quantity of timber available.

30

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MR. NORRIS: That is it.

THE COMMISSIONER: I do not think you are going to be in any difficulty in that regard, Mr. McPherson. I will deal with the question of agricultural land first thing in the morning. Do you think you will be able to get the necessary information by that time, Mr. McPherson?

MR. NORRIS: I will be glad to supply my learned friend with a copy of my valuation.

10 THE COMMISSIONER: I think you should do so. Then I won't name any specific time, but I would like you to speak to it in the morning and intimate when you think you could be ready.

MR. NORRIS: Q: You have included in your claim, Mr. Kagetsu, a claim for the value of the railway for that land for logging purposes?

A I estimate the railway at \$3.00 per thousand feet.

THE COMMISSIONER: I do not understand that.

MR. NORRIS: It is really a matter for somebody else to
20 give evidence on. I am just proving it generally through this witness.

THE WITNESS: I have still 20 million feet of timber over to log and I have to get the expense out of this railway.

Q What did the --

THE COMMISSIONER: Just a minute. If you are going to call another witness, are we going to get very far with this witness?

30 MR. NORRIS: No, I don't think so.

THE COMMISSIONER: I think it might be much better if you leave it until you call your other witness on this subject.

We will take a short recess.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. NORRIS: I think I had better put in the two invoices referred to.

THE COMMISSIONER: Very well.

(TWO INVOICES MARKED EXHIBIT No. 1388/8)

10 MR. NORRIS: Mrs. Smith tells me that he didn't understand the questions I asked with reference to the 50 cents and the 28,000, so perhaps that will be borne in mind by your lordship in considering his answers.

THE COMMISSIONER: I was taking it as if those questions had not been asked at all.

CROSS EXAMINATION BY MR. McPHERSON:

20 Q Mr. Kagetsu, I show you a J.P. form. Is that your signature? A. Yes.

(J.P. FORM MARKED EXHIBIT No. 1388/9)

MR. McPHERSON: That is dated the 22nd May 1942, my lord.

Q Now, Mr. Kagetsu, in this J.P. form you stated that you had executed a general power of attorney to Carl McLennan Stewart, a solicitor in the City of Vancouver, is that correct?

30 THE COMMISSIONER: Mrs. Smith, would you ask Mr. Kagetsu to please confine himself to answering the question. He is asked simply if he gave a general power of attorney to Carl McLennan Stewart, prior to his

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evacuation?

A. I signed something, but I didn't know what it was for, as we were all very confused, and he told me if I signed it the Custodians would deal with everything.

MR. McPHERSON:Q: Mr. Kagetsu, didn't Mr. Carl Stewart act for you through the year 1942 and in 1943? Didn't he act for you in Vancouver. Didn't he attend to the business for you?

10 MR. NORRIS: To the extent that is a question of law, my lord, that he acted for him.

THE COMMISSIONER: A statement is apparently made over the signature of the claimant that he executed a power of attorney.

MR. NORRIS: If he addresses himself to that of course, I can't object, but the question as to whether or not he represented him in Vancouver, the question arises whether he represented him or represented the Custodian.

20 THE COMMISSIONER: I wish the witness would answer the questions put to him instead of having long conversations with the interpreter.

A Yes, when I was operating he was doing my work sometime.

MR. NORRIS: That wasn't the question. Perhaps Mr. McPherson, you could give him the years.

THE COMMISSIONER: Apparently it is something volunteered by Mr. Kagetsu.

MR. McPHERSON:Q: Mr. Kagetsu, I show you a letter dated April 13th, 1942. Is that your signature?

30 A Yes.

Q Is this the letter that you gave to the Custodian at the time you delivered the inventory sheet?

A Yes, that is the list of the things.

Q Is this the inventory sheet. Do you ever remember meeting a Mr. Murray?

A Yes, I remember him. He come to my camp.

Q Did he check this inventory sheet?

A Yes.

Q You were there when he checked it?

10 A Yes.

MR. McPHERSON: I would file a copy of Mr. Kagetsu's letter dated April 14, 1942, addressed to the Custodian, in which he says he is enclosing an inventory, and I would file the letter and the inventory together as one exhibit, if it please your lordship?

THE COMMISSIONER: All right.

(LETTER DATED APRIL 14, 1942 AND INVENTORY MARKED EXHIBIT No. 1388/10)

20 MR. McPHERSON: Q: Mr. Kagetsu, do you recall whether or not at the time you delivered that inventory you were in the Custodian's office?

A Yes.

Q Am I correct that Mr. Carl Stewart was there with you?

A. No.

Q Mr. Carl Stewart was not with you?

A No.

Q Would I be correct if I said at that meeting you agreed that the company's assets should be sold?

30 A No.

Q You didn't agree then?

A No.

Q Would I be correct if I said that the company had considerable debts and didn't have any money to pay for a watchman?

MR. NORRIS: What date was this?

MR. McPHERSON: 1942.

MR. NORRIS: What date, may I ask?

MR. McPHERSON: I am talking about the meeting of
10 April 13th, 1942.

A I never had any debt. I had a little to E. & N. but nothing to speak of.

Q You didn't have many debts?

A No.

Q Am I correct that you were indebted to the Yokohama Species Bank on the 13th April 1942 in the sum of \$23,000?

A. I had security for that, so it didn't matter at all; it didn't count.

Q Am I correct that with respect to Block 195 you
20 still owed \$16,000 approximately?

A Yes.

Q So you had some debts? A. Yes; some Vancouver wholesaler or something.

Q Can you tell me whether or not the company had enough money to pay Mr. Murray the watchman's fees?

A Yes.

Q Am I correct that Mr. Stewart was selling certain equipment for you and he was to use that money to pay the watchman's fees?

30 A No. It was to pay my life insurance.

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Q Do you know whether or not the Custodian advanced money to pay the watchman's fees?

A I never knew that money was paid to the watchman until I saw the Custodian's paper.

Q You were evacuated May 28th, 1942, weren't you?

A Yes.

Q When did you close down the operations at Fanny Bay?

A March 8th.

10 Q If you closed down March 8th, 1942, why did you buy 34 tons of coal according to this Exhibit 8, dated March 24, 1942?

A It is customary for the coal mines to have the money in advance about a month or six weeks; and in my place there had to be certain cart (?) opened up in the front or something. So it was very difficult to get that.

THE COMMISSIONER: Q: But the question asked is this.

20 Why, if you closed your operations March 8th, should you have been buying coal three weeks later. Show the document to the witness so that he can understand it?

A. The order was given about a month or six weeks before this.

MR. McPHERSON: Mr. Kagetsu, didn't you go back to the property after the meeting in the Custodian's office, April 13th?

A Yes, I went back very often.

30 Q My learned friend produced a letter to you this morning addressed to Austin Taylor, dated March 31st, 1942, in which you requested permission to remain to take out the felled and bucked timber. Now at

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at that time was your operation continuing?

A Half of the people had to leave on the 8th March, so half the operation stopped. I was so confused I stopped operations for the time being on March 8th.

Q And you were not logging at all after March 8th; you never logged after March 8th?

A Yes, I did. I had hoped to continue after I asked permission from Mr. Austin Taylor. So I did some.

10 Q Am I correct, Mr. Kagetsu, that you didn't stop operations on March 8th?

A Half of my employees were taken March 8th so I had to stop operations, and on the 13th all of them had evacuated. I am not certain but about the 13th -- I have it with me at the hotel -- but I think it was the 14th March.

Q I show you a letter that my learned friend didn't put in this morning, but the government would like to put it in for a different purpose. It is addressed to Austin Taylor. Is that your signature?

20

A Yes.

MR. McPHERSON: This is the same letter of March 31st, 1942, addressed by Mr. Kagetsu, to Austin Taylor, and I would like to file a copy of that as an exhibit. (LETTER MARCH 31st, 1942, MARKED EXHIBIT No. 1388/11)

Q Mr. Kagetsu, after your evacuation am I correct that you came back to Vancouver in June 1943?

A Yes, I remember that.

Q And am I correct that you came back to Vancouver for the purpose of discussing the question of

30

the company's assets with your solicitor, Mr. Stewart?

A No, I didn't come to talk over disposal of any property.

Q When you came back to Vancouver in 1943, did you see Mr. Stewart?

A Yes.

Q Did you also see Mr. Robert Wray in Mr. Frederick Field's office?

A I don't quite remember.

10 Q Do you remember seeing Mr. Wray and discussing the question of your debts to the Yokahama Species Bank and the question of the debt on Block 195?

A I don't quite remember.

THE COMMISSIONER: I would like you to carry on a little further. I assume you are going to lead evidence to the effect that he did.

MR. McPHERSON: Yes.

THE COMMISSIONER: Will you put the question for the witness and give him an opportunity now to meet it.

20 MR. McPHERSON: Q: Do you say you did not discuss your debts with Mr. Wray in June 1943?

MR. NORRIS: Does he know Mr. Wray. Is Mr. Wray here?

MR. McPHERSON: Q: You know Mr. Wray, don't you,

Mr. Kagetsu?

A. I don't remember discussing the debts with him at all.

Q How much timber did you tell Mr. Wray or Mr. Carl Stewart was on the Deep Bay property in 1942.

THE COMMISSIONER: Just a moment. What kind of timber?

MR. McPHERSON: Standing timber, my lord, How much
30 standing timber?

MR. NORRIS: Does he mean tell Wray or Stewart. Which is he asking?

THE COMMISSIONER: Would you reframe the question, please.

MR. MCPHERSON: Q: Mr. Kagetsu, how much timber did you say to Mr. Wray in April, 1942, was on the Deep Bay property as standing timber, which includes your own blocks in that area?

A I never said anything to Mr. Wray, as I expected to return there. I never discussed it.

10 Q Would you say I was wrong if I say you stated you had seventeen to eighteen million feet of standing timber on the Deep Bay property?

A I don't remember saying anything to him about it.

THE COMMISSIONER: Do you say you didn't do so or don't remember. I would like you to put the question does he say he does not remember.

Q Do you mean that you don't remember or that you didn't talk to Mr. Wray on that subject?

A I don't remember ever discussing it.

20 MR. MCPHERSON: Q: Mr. Kagetsu, when you cruised your own timber, what size timber did you include in your cruise, down to what size?

A Ten-inches.

Q Would that be ten-inches diameter breast high?

A Ten inches diameter.

Q When you log it and when it is fallen you take the measurement from the top?

Q Ten inches at the top?

THE INTERPRETER. I don't know what he means. He says he cuts up to ten inches diameter, it doesn't

matter if large or small.

MR. McPHERSON:Q: When you were logging, what was the smallest diameter tree you were cutting, that is what was its diameter at the stump?

A Stump or top.

Q Stump? A. Maybe 12 inches.

Q Mr. Kagetsu, were you cutting 12-inch trees in 1941?

A. I can't tell you, as I cut so many.

10 Q You should know as an expert woodsman, as you have been qualified this morning, 35 years in the woods -- you should have some idea how big the trees were you were cutting in 1941?

A Yes.

Q What was the diameter of the trees you were cutting?

A You want the average?

Q I want the diameter of the trees?

A The largest is 30 inches and the smallest would be about ten inches.

20 Q Am I correct that you are saying that your company in 1941 was cutting trees 30 inches down to 10 inches at the stump diameter?

A Stump.

THE COMMISSIONER: I would like you to wait until the interpreter translates the question into Japanese before you answer. I am afraid Mr. Norris that this man is not understanding a great many of the questions. It is inconceivable to me that he is asserting he was cutting down to ten-inches stumps as logs.

30 MR. NORRIS: My lord, my position sitting here there are

a lot of things I would like to do about it, but I am afraid I can't.

THE COMMISSIONER: Some of your assistance may be able to tell you whether he is understanding the question.

MR. KAGETSU, JUNIOR: I think I can make him understand a little better.

THE COMMISSIONER: Is the question being put in Japanese to the witness correctly?

10 MR. KAGETSU, JUNIOR: Generally I think, yes.

THE COMMISSIONER: Then, it is up to him. He will have to look after himself.

MR. KAGETSU, JUNIOR: But some of these technical matters such as diameter and top and stump diameter I think I could do a little better.

THE COMMISSIONER: If you wish to have the question put through your own interpreter.

MR. NORRIS: I would, my lord, and then Mrs. Smith can check him.

20 THE COMMISSIONER: That is satisfactory. Put your question again on this subject of diameter. Swear the interpreter. What is your name?

MR. KAGETSU, JUNIOR. Kagetsu.

THE COMMISSIONER: You are Mr. Kagetsu's son?

MR. KAGETSU, JUNIOR: Yes.

(HAJ KAGETSU, SWORN AS INTERPRETER)

MR. NORRIS: Will your lordship explain to the interpreter that he is to put the question exactly as it is put to this witness.

30 THE COMMISSIONER: Your function is to translate from

English into Japanese the question exactly as it is put by counsel and then get the answer from the witness and translate it into English and let us know exactly what he says in English. Is that clear to you?

THE INTERPRETER: Yes.

THE COMMISSIONER: And do not let him wander too far, stop him, because it is just not possible for you to remember more than a few sentences he utters.

10 MR. McPHERSON: Q: What size timber were you cutting at Deep Bay in 1941, giving me the diameter breast high? A. 12 inches.

THE COMMISSIONER: Will you ascertain, Mr. McPherson, whether the witness is now referring to poles or piles or is he speaking of logs?

MR. McPHERSON: Q: When you refer to 12 inch diameter, are you talking about logs for lumber, or are you talking about poles or piles?

20 A Logs. I cut poles and pile in two, but in some cases they are smaller than that.

Q What diameter would the poles and the piling be?

A I use the greater part of those on my own operation. It cuts down to six inches.

Q Is that the poles or the piles?

A Everything, poles and piling.

MR. NORIS: Is my learned friend referring to the minimum diameter in each case here?

THE COMMISSIONER: That is what I understood.

30 MR. McPHERSON: Q: Are these the minimum diameters?

A Yes.

Q In these logs that the 12 inches in diameter, how many logs would you get out of one tree on the average, can you tell me?

A Just one.

Q Was there a good market for 12 inch logs in 1941?

A We sold it with mixture of other timbers so I don't know.

Q That is 12 inch logs at the butt?

10 A No, D.V.H. breast high.

Q But now he has cut the logs he has got a 12 inch log at one end, hasn't he, breast high?

MR. NORRIS: He didn't say he cut it breast high.

He asked the diameter of the logs breast high.

MR. McPHERSON: Q; To what height did you cut logs in 1941?

A. About two and a half feet for the smaller timber up to about four feet for the larger.

Q And to what height did you cut 12 inch timber in 1941?

20 A. About two and a half feet or three feet, depending on the tree.

THE COMMISSIONER: Just a moment, before leaving that.

What is two and a half feet. I am free to confess I do not understand. If he says he is cutting logs to

2 a 12 inch diameter, and now talks about ^{two} ~~A~~ and a half feet,

MR. NORRIS: Two and a half feet from the ground but 12 inches in diameter breast high, that is the difference. They would be a greater diameter as they went down.

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THE COMMISSIONER: I did not appreciate he was cutting them two and a half feet above the ground.

MR. McPHERSON: Q: When you cruise timber do you take into consideration in your cruise trees that are 12 inches at breast high?

A If I can get a log out of such a tree, I include it. Sometimes such a tree will not give one log and I don't include it then.

10 Q Do you agree with me that in 1941 it was not customary to cut timber less than 18 inches breast high?

A. The rangers came around and examined the cut-over area and complained there were trees left, that is greater than 12 inches D.V.H.

Q With respect to the fallen timber you mentioned that you included in this cruise of yours, what makes the tree fall? why does the tree fall?

MR. NORRIS: Which tree?

20 MR. McPHERSON: I am asking the questions, my lord.

THE COMMISSIONER: I would like to have the question repeated.

MR. McPHERSON: Q: Today my learned friend attempted to qualify him as an expert cruiser and he mentioned his cruises were 100% over the E. & B. cruise and he cut these small trees from fallen timber. This is before it is logged he goes into a virgin stand --

THE COMMISSIONER: Your question is now, what makes the tree fall.

MR. McPHERSON: I can put the question in another way.

30 Q Mr. Kagetsu, am I correct that fir trees, which are

down on the ground, as a general rule are down because they are rotten at the butt?

A A lot of them are uprooted and fall that way.

Q But isn't it correct that a lot of timber that is down is down because it is punk; it is bad wood; it is rotten?

A. No, the wind blows

them down.

Q When you say your cruises are 100% above the E. & N. cruise, are you saying that the E. & N. cruise of
10 Block 195 would be half of 55 million, which is what I understand you are claiming?

A The E. & N. didn't cruise that, and therefore I wouldn't want to make that statement.

Q With respect to this timber that is down and you include in your cruise with respect to the downed timber, isn't it a fact that the wind blows it down because it is bad timber?

A No, often times it falls because they have a lot of limbs on them and they are perfectly sound.

20 Q What sized limbs do you include in your cruise in order to get 100% over the E. & N. cruise?

A It is difficult to say., Sometimes they make No. 3 logs. Are you asking do I utilize the limbs?

Q I am asking whether the 100% includes any limbs?

A No.

Q With respect to the timber back of Deep Bay, at the time you left Vancouver in April --

THE COMMISSIONER: Wait a minute. What timber back of Deep Bay. You are now talking about the 200 million?

MR. MCPHERSON: Yes.

THE COMMISSIONER: Make that clear to him.

MR. MCPHERSON: Q: With respect to the timber behind Deep Bay, that is the two hundred million feet you mentioned today, when you left here in April 1942, did you have an option on that timber?

A No, I didn't have any formal option; just a verbal one.

Q Did you obtain that verbal option from Mr. Lytton?

10 A On 60 million of it we got it from Mr. Lytton.

Q That was a definite verbal option from Mr. Lytton, was it?

A. Yes, it was a definite verbal option although I didn't have any papers.

Q How much were you to pay for it?

A It hadn't been cruised, so it hadn't developed that far.

Q So you got an option for 60 million feet of timber that hadn't been cruised yet, is that right?

A I had cruised it but the E. & N. hadn't.

Q What position did Mr. Lytton hold in the E. & N. railway?

20 A. He was the only man in charge of the forest for the E. & N.

Q At Victoria?

A. Yes.

Q And when you bought timber from the E. & N. Railway, did you buy here in Victoria or in Vancouver?

A Victoria.

Q When did you get the option for 60 million feet, about what date?

A November 1941.

30 Q And how much did you think you would have to pay

a thousand. Did you have any figure in mind?

A It would have depended on their cruise.

Q Why does it depend on a cruise as to the quantity then what I am asking is, what price per thousand were you going to pay?

A On the average \$1.75 to \$2.00, but I want to limit that by saying not everybody had access to that timber.

10 Q So that in 1941 you were considering buying timber from the E. & N. at \$1.75 to \$2.00 a thousand?

A Yes.

Q With respect to your original claim, item No. 2, block 617.

THE COMMISSIONER: Is this November 28th?

MR. McPHERSON: This is the claim dated January 6th, 1948, my lord.

THE COMMISSIONER: Where is the item?

MR. McPHERSON: Item No. 2, Block 617.

20 MR. NORRIS: That claim is abandoned. We have given an amended claim.

MR. McPHERSON: I look in the amended claim and under Item 2 I see, parcels A. B. C. etc., (Reading) Will we take that out of there, my lord?

THE COMMISSIONER: What do you say?

MR. McPHERSON: Block 617 you are claiming something for.

MR. NORRIS: But my learned friend is referring to the earlier claim.

30 MR. McPHERSON: I think I am entitled to refer to the earlier claim in order to get a break-down of this

claim.

MR. NORRIS: No, my lord.

THE COMMISSIONER: Why not.

MR. NORRIS: Because we have abandoned it entirely. We are not relying on it at all. We say it is recast entirely, it is a different claim. If we are going into that --

10 THE COMMISSIONER: In January 1948, a claim is made in respect of Block 617, wherein the estimated fair market value is shown as \$32,000. That claim is sworn to as his amended claim, now filed. What is the basis of your objection.

MR. NORRIS: Simply this, that we find it was incorrect, and we have said in effect, "This is incorrect, it was incorrectly sworn, we are putting a new claim in".

20 THE COMMISSIONER: This is cross examination. I will allow the question. I would prefer to let the witness explain for himself rather than have counsel explain in the course of the examination.

MR. NORRIS: Surely, my lord, you are doing me an injustice because there is no suggestion -- I am not trying to explain anything to this witness.

THE COMMISSIONER: Let the question be put.

MR. McPHERSON:Q: On January 1948 in the City of Toronto, you apparently signed a claim form. Is that your signature?

A Yes.

30 Q At the time you signed that form, Mr. Kagetsu, you referred to Block 617, and you claimed that the

E. Kagetsu,
Crows-Exam.

estimated fair market value of that lot of timber at that date was \$32,000. Is that correct?

A Yes. I did write that, but at the time --

Q I don't want any explanation.

THE COMMISSIONER: He says he did write it in. If he has an explanation, we will hear it.

A I didn't have any access to any data so couldn't do any ground work. All I did was discuss it with Mr. Brewin and submit a rough claim.

10 Q Mr. Kagetsu, in view of your wide knowledge of timber and the fact that you knew the Deep Bay timber, are you suggesting you didn't know how much timber the Deep Bay Logging Company had in 1942?

A I knew.

Q How much timber did the Deep Bay Logging Company have in 1942, the day you were evacuated, standing timber?

A. About 27 million.

Q In your claim for Block 617 of \$32,000 how much timber did you estimate was on that block when you made that claim?

20

A At that time I figured about 11 or 12 million, but I had no exact idea.

Q So, if there were 11 million you were claiming \$3.00 a thousand, is that correct?

A I didn't know the existing market value and therefore I did use roughly that figure.

THE COMMISSIONER: Q: That is the \$3.00 a thousand?

A Yes.

MR. McPHERSON: Q: Under your amended claim, Mr. Kagetsu, you are claiming for Block 617. How much timber do

30

E. Kagetsu,
Gross-Exam.

you claim is on that block?

A I only considered the block cumulatively.

Q If you considered the block cumulatively, you arrive at what figure. What is the total claim you are making for standing timber?

A 27 million.

Q How did you arrive at 27 million?

A I sent out estimators to get that figure for me.

10 Q When did you sent the estimators out?

A Four or five days before.

Q Have they given you their estimate yet?

A Just the rough figure.

Q The timber estimators you sent out have made a report, have they?

A Not yet.

Q Mr. Kagetsu, how can you claim 27 million feet of timber if you don't know if there is 27 million feet there or not?

20 A I knew myself there was 27 million feet from the start.

Q How much timber do you know there was on Block 617?

A. About 12 million.

Q How much are you claiming for the timber on block 617 out of the total claim of \$142,781.00?

A \$4.00 a thousand.

Q Am I correct that you bought this block of timber in November 1941 for \$8,000?

A Yes.

THE COMMISSIONER: Just a moment. That 12 million feet at \$4.00 a thousand would show a price of \$48,000, would n't it?

E. Kagetsu,
Cross-Exam.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: I wonder if now would be a convenient time to adjourn. We have gone on longer than usual today. Would that be satisfactory to you?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Or do you prefer to finish this phase of your cross-examination?

MR. McPHERSON: No, I will be a day yet. I might say
10 if my learned friend has the cruise of these blocks
of timber, I could greatly shorten the cross-examination
I have supplied him with my cruise of the timber.
If he could let me have his, it would simplify the
cross-examination.

THE COMMISSIONER: If you have them, Mr. Norris, you might discuss that situation with counsel.

MR. NORRIS: Whatever material has been obtained has been obtained for the purpose of this hearing and I will discuss it with Mr. Kagetsu.

MR. McPHERSON: Before your lordship adjourns, I have had
20 this same reply placed before me on other occasions
by Mr. Norris, that I wasn't entitled to something
of this kind because it was a part of his case.
I understood from your lordship's ruling some time
ago that both sides are entitled to reports, and
cruises, and so on, and I would point out as an
example, my lord, that this whole question you have
spent so much time discussing today that Mr. Norris
had a report November 1st before I even talked to
him on this agricultural proposition, so if I had
30 been given this, then I would have been in a better

E. Kagetsu,
Cross-Exam.

position, and if he could give me his cruise --

THE COMMISSIONER: It would facilitate matters very much if you would furnish information of that character to government counsel. I have directed him to open his entire files to claimant's counsel for examination, and permit them to extract any documents and copies. It seems to me reasonable that claimants counsel should provide the same facilities to government counsel that is furnished by government counsel to the claimant.

19

MR. NORRIS: May I say this, my lord, with respect to these cruises, they aren't complete yet. That is the sort of rush we have been in to try to get these particulars completed.

THE COMMISSIONER: You have had only a year, Mr. Norris. You may not have had the time, but certainly the claimant has.

20

MR. NORRIS: Well, my lord, we have done our best to give my learned friend -- of course, there is no use my discussing that with your lordship again, but I have given him everything he has asked directly.

THE COMMISSIONER: I am simply throwing out the suggestion to you that it will facilitate these hearings if this information can be given to him in advance; otherwise we are going to take much longer.

MR. NORRIS: Before your lordship concludes, I would like an opportunity of meeting your lordship with my learned friend in your Chambers.

THE COMMISSIONER: I will be glad to see you now.

30

(PROCEEDINGS ADJOURNED TO 10.00 A.M. NOVEMBER 9, 1948)

*I hereby certify the foregoing to
be a true and accurate report of
the said proceedings.*
D. H. H. H.
Deputy Official Stenographer

Vancouver, B.C.,

November 9th, 1948, 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: My lord, with my learned friend's permission we are calling another witness now, who will be examined and cross-examined.

THE COMMISSIONER: Very well.

10

JOHN NUGENT BURKE, a witness called on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Burke?

A Vancouver.

Q At what address?

A: 6187 Sperling

Street.

Q What is your occupation, at present?

A I am manager of the B. C. Loggers' Association.

Q And how long have you served in that capacity?

A Since February, 1942.

20

Q Now, what business were you in prior to that?

A I have been in the logging business in British Columbia since 1925.

Q In what particular phase of the logging business?

A Well, I was manager of a logging company here when I came in 1923 to the coast, and was with them until they finished operations in 1939.

After that I was working for myself and in business in connection with others in logging until I took the position I have.

30

Q Would you tell the Commissioner, briefly, what

. H. Burke,
In Chief.

knowledge you have of log prices in your present capacity?

A: One of my

duties --

THE COMMISSIONER: Mr. Burke is well known to me.

I think I know pretty well what his duties are.

MR. BALDWIN: Very well, my lord. For the record I wanted it, that was all.

THE COMMISSIONER: Unless you particularly want it on the record, I know it.

10 MR. BALDWIN: No, my lord.

Q You are familiar, then, with log prices from 1942 on?

A: I am.

Q Would you tell the Commissioner what the trend was from 1942, further up through the years -- what it has been?

THE COMMISSIONER: Should we not limit it to the date of the sale by the Custodian of these timber limits?

MR. BALDWIN: Yes, my lord. None of the sales were made
20 in 1942.

THE COMMISSIONER: 1943.

MR. BALDWIN: I was getting the trend.

THE COMMISSIONER: Bring it up from the year 1942 until the date of the sale. Do you think there is any purpose in calling evidence beyond that date?

MR. BALDWIN: A little bit longer. I think the dates after the sale have equal probative value as the ones immediately before.

THE COMMISSIONER: Very well. What was the date of
30 this sale? June, 1943, was it?

J. N. Burke,
In Chief.

MR. BALDWIN: One was in June, 1943. The other agreement for sale was signed in March, 1944.

THE COMMISSIONER: Concluded in September of 1943, was that not it?

MR. NORRIS: There is a question about that. That will have to be developed, as far as the documents are concerned.

THE COMMISSIONER: Very well. Carry it on until the documents were signed, then.

10 MR. BALDWIN: Q: Would you outline to the Commissioner the prices of, for example fir, from 1940 up through 1944, then 1945 and 1946.

A May I refer to a memorandum I have with me?

Q Yes.

A: In the summer of 1940, the prices of fir logs were pegged by voluntary agreement between the operators and the Timber Controller at \$13.00, \$18.00 and \$25.00 for three, two and one logs respectively.

THE COMMISSIONER: Q \$13.00, \$18.00 and \$25.00.

20 A Right. Fir peelers were pegged at \$24.00 and \$30.00. These prices were held at that level by the Timber Controller until July, 1942, when an increase of 50 cents on all grades was authorized.

On February 1st, 1943, the Timber Controller granted an additional increase of one dollar, making the prices for standard fir logs \$14.50, \$19.50 and \$26.50.

Q That was February, 1943, Mr. Burke?

30 A Yes, Mr. Commissioner. Just prior to that, in

J. N. Burke,
In Chief.

January, 1943, they established, by order of the Timber Controller, a price on pulp logs of \$29.00 and \$36.00.

On June 15, 1943, another advance of \$1.00 was authorized by order of the Timber Controller, bringing the prices to \$15.50, \$20.50 and \$27.50 for saw logs, but the prices of peelers was left at \$29.00 and \$36.00.

On April 1st, 1944, the Timber Controller advanced the ceiling price on standard logs \$1.50, making a price of \$17.00, \$22.00 and \$29.00, and at the same time set the peeler prices at \$31.50 and \$37.50. These prices remained in effect until after the period you are referring to, actually until November 17, 1945.

MR. BALDWIN: Q: Mr. Burke, in the case of these advances it was a flat rate for all species, wasn't it -- a lump sum added?

A I don't think that is quite an accurate statement. You will notice the peelers were advanced exactly the same as standard logs, but the usual practice was to grant an advance of 50 cents, \$1.00, or in one case to \$1.50.

Q Would you be good enough to outline briefly to the Commissioner the similar advances made in the prices of cedar, hemlock and balsam?

A In cedar, the price was pegged voluntarily in August, 1941, at \$13.50, \$20.50 and \$26.50, with the price at \$22.50 and \$28.50 for lumber ceiling.

On February 1st, 1943, there was a dollar

Burke date 28 June 43

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Deep Bay
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J. N. Burke,
In Chief.

advance on all grades.

Q Excuse me, Mr. Burke; should we perhaps deal with hemlock and balsam at the same date, to save you going back again?

A I think it is more simple the way I am doing it, and I won't become confused.

On June 15, 1943, another \$1.00 advance on all grades of cedar.

April 1st, 1944, a \$1.50 advance on all grades of cedar, and those prices remained in effect until the control was removed on November 17, 1945.

The hemlock price in 1940 was \$12.00, with a select ceiling of one to two dollars over that price. It dropped in the Fall of 1940 and the Spring of 1941 to \$11.00, advanced slowly to \$13.00 to October 1st, 1941, when the Timber Controller set a ceiling of \$13.00 for hemlock, as of December, 1941.

20

There was an advance granted on April 15, 1942, to make the price \$15.00.

On February 1st, 1943, there was an advance of \$1.00 for pulp hemlock and a lumber grade was established, pegging logs 20 inch and up suitable for the manufacture of lumber, and a price of \$18.50 was set on that grade.

On June 15, 1943, there was a one dollar advance in both grades.

April 15, 1944, an advance of \$1.50 on both grades, and that remained in effect until the

30

J. N. Burke,
In Chief.
Cross-Exam.

ceiling was removed in November, 1945.

The price of balsam was the same as hemlock up until June 28, 1946, when the price of pulp balsam was set at \$25.00 and lumber at \$30.00.

July 10, 1947 -- oh, these are past the date, I am sorry, I am going beyond the date.

MR. BALDWIN: I don't think my friend or the Commissioner is interested in anything beyond that date.

10 Q What would you say, Mr. Burke, as to the relation between the ceiling price fixed by the Timber Controller and the sale price?

N.B. → A By early 1942, or perhaps late 1941 I think I can say that -- well, I can say that practically any log of reasonable quality sold at the ceiling price.

MR. BALDWIN: That is all from me, Mr. Burke.

CROSS-EXAMINATION BY MR. McPHERSON:

20 Q Mr. Burke, the increase in the price of logs from 1940 until the present time, would you say that that was represented principally by the increase in the cost of producing logs?

A Are we talking about --?

Q 1943 and 1944. The increase you have referred to, starting in 1940, when you gave the basic figures for fir of \$13.00, \$18.00 and \$25.00 --

A Yes, I gave them all through to 1945.

30 Q Yes, in 1943, the increases and so on; but I am suggesting to you the reason why the increases were necessary was because the cost of the rise

of labour and the cost of producing logs and moving them out of the woods, is that right?

A If you will say the increase was due to the increased cost of producing logs, I will agree.

THE COMMISSIONER: Q: Let me understand that. Is that an increased cost of production, as opposed to increased value of standing timber?

A Mr. Commissioner, the ceilings, in my opinion, were never raised excepting when a producer was able to demonstrate to the Timber Controller that a raise was necessary because of increased production costs.

MR. McPHERSON: Q: Now, I show you a statement, Mr. Burke. Isn't this really what you have been saying, this statement which is headed "British Columbia Loggers' Association, Average Selling price of logs - 1924 to 1947". Do you recognize that as a document produced in your office?

A It would appear to be a copy of a document produced in our office.

Q Now, I point out to you, Mr. Burke, in this document, for example, you have the 1940 prices. You see, you gave the figures for 1940 of \$25.00 \$18.00 and \$13.00, which is going from the high grade to the low grade.

THE COMMISSIONER: Are you now on fir?

MR. McPHERSON: I am now on fir.

Q You gave the figures \$25.00, \$18.00 and \$13.00. I am reversing them, because that is the way they are on the page. I point out in the statement

J. N. Burke,
Cross-Exam.

for 1940 it shows No. 2 logs were sold below the average of \$18.00, and No. 3 below the average of \$13.00, No. 2 being sold for \$17.67 on the average, and No. 3 for \$12.44. It also shows further that No. 1 was sold above your average, that is, it was sold at \$26.19.

A I see that.

Q And over on the far side, (indicating), these would be the average prices for all species, wouldn't they?

10

A: It is very easy to understand, sir. The reason for No. 1 being above the average is because peelers are included in No. 1 on this statement, which brings it above the average. The reason for the cost being below the average, and you will note this is 1940 and not late 1940, 1941 and 1942 that I was referring to, is some logs were sold at less than the price of some others, because some companies sold on a list that would show at the camp rather than at the mill, and there we see the difference.

20

Q I am not suggesting the figures you have given are wrong, but I point out if you take these averages and run them across you will have the average cost for all species.

A Yes, you will have the average price. May I say, if this is a true copy of the statement prepared in our office, then this represents the sales which were reported to the British Columbia Loggers Association, and nothing else.

30

J. N. Burke,
Cross-Exam.

Q Yes. That, of course, is what your figures given this morning are based on.

A No. The figures I gave you this morning were the ceiling prices of logs for that period.

Q In other words, the figures this morning have nothing to do with the actual selling price, except it was around the ceiling price.

A Except as I stated. At least, any good logs would sell for ceiling during the period I referred to.

10 MR. McPHERSON: I don't know whether my learned friend would permit me to put this in. I was going to put it in through Mr. Eustace Smith.

MR. NORRIS: My friend has the right to put it in.

MR. McPHERSON: He has identified it.

THE COMMISSIONER: I think the question is asked, to put it in, without it being identified positively as the B. C. Loggers' Association's document.

20 MR. NORRIS: I don't think there is any doubt about it, that that is from the B. C. Loggers' Association. If Mr. Burke will just look at it and see if it is.

THE WITNESS: This is a carbon copy, or I should say a typewritten copy of a great many figures, and I am not prepared to say whether it is correct or isn't correct.

MR. NORRIS: Then put it in for identification.

THE WITNESS: It is probably what it purports to be.

THE COMMISSIONER: Put it in for identification.

30 (DOCUMENT MARKED EXHIBIT NO. 1388-12)

J. N. Burke,
Cross-Exam.

MR. McPHERSON: Q: Mr. Burke, would you say that the increased cost of producing logs exceeded the increased sale price allowed by the Timber Controller between 1941 and 1944?

A That is a very difficult question. I would have to say that in my opinion, it did.

Q Yes?

A: In my opinion, it did.

10 Q Now, do you know, does the B. C. Loggers' Association keep any record, or have you any information at all as to the ceiling price on standard ^{ing} timber?

A No. Just a moment. I shouldn't say we had no information, but it is only casual information which might happen to be given us in the course of certain other information.

Q But you didn't keep any records?

A We didn't keep any records of anything of that kind.

20 MR. McPHERSON: Thank you.

THE COMMISSIONER: Q: Mr. Burke, just before you leave the stand, there was evidence led yesterday to the effect that logs, 12 inches at the butt, breast high, were marketable and were actually marketed as logs in the period 1940 to 1944.

A I will certainly say that is correct, Mr. Commissioner.

Q That is correct?

A: Yes.

Q Is not a 12 inch log at the butt an unusually small log?

30

A: It used to be

J. N. Burke,
Cross-Exam.

so considered, but during the war there was such a scarcity of wood that all species of logs were cut in mills, which they would never have looked at before.

THE COMMISSIONER: I see. Do either counsel wish to pursue the question I have raised?

10 MR. NORRIS: Q: Simply to perhaps make this clear, Mr. Commissioner, that you referred to logs 12 inches at the butt and then the reference was 12 inches breast high. The evidence of Kagetsu was they would cut below breast high, so it would have a bigger diameter than 12 inches at the cut.

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20 A I think my statement would be correct, that there were many logs that would only be 12 inches breast high at the stump. I might clarify it further by saying in my opinion the industry, having developed better cutting and utilization methods, particularly in hemlock, is prepared to use much smaller stuff than it was ten years ago.

MR. McPHERSON: Q: Well, Mr. Burke, you have told his lordship that logs of 12 inches breast height, which, of course, is ~~xxx~~ what a cruise is based on, breast height, and they cut somewhere below that, but logs of 12 inches, you have stated, were marketable from 1940 to 1944? In that period there was a market for 12 inch logs?

30 A Might I say I didn't realize I was saying in 1940. There would be some doubt in my mind

J. N. Burke,
Cross-Exam.

about 1940, but getting on into 1942, 1943 and 1944 and further on, the further on you went the more marketable they would be.

10 Q Mr. Burke, on this sheet that I have put in for identification, I notice that the average price for all species was \$15.12 in 1940, \$16.04 in 1941, \$17.30 in 1942, \$19.74 in 1943 and \$21.37 in 1944. Now, after 1944 the prices of logs, according to these figures, jumped considerably. That is, in 1944 it was \$21.37, 1945 it was \$22.05, and then the next year it was \$27.41.

A What was the next year?

Q The next year was 1946, and in 1947 it went all the way up to \$38.33. Now, I suggest to you, Mr. Burke, that actually it wasn't until, certainly not until after 1943, and probably until after 1945, that the price of logs really started to skyrocket and there came a market when you could almost market the branches off the trees.

20 A That statement is right, but I don't agree with your reasoning.

Q You have said in the period 1940 to 1942, there was a market for 12 inch logs.

A I think so.

Q Would they sell at a lower price than the other logs?

A: The last four years, anything that could be called a log and given a grade would sell.

Q It would be from some time in 1944 on?

30 A I can't state the definite date, but that has

J. N. Burke,
Cross-Exam.

been the trend in the last few years.

Q The dates are very important to his lordship in this case, because the Government sold this property the Government contends, in the Fall of 1943, and the papers were completed in the Spring of 1944; so, it is very material to know when the price of logs really started to climb and when 12 inches were marketable.

10 A The prices didn't really start to climb until the Controller took the control off in November, 1945. That is really the simply statement.

THE COMMISSIONER: Q: November, 1945.

A Yes, Mr. Commissioner.

MR. McPHERSON: Q: Now, before the Timber Controller took the controls off in November, 1945, did it, in your opinion, pay loggers to cut 12 inch logs when the sale price was fixed? Wouldn't they be more likely to cut big logs?

20 A That is a difficult question, again, to answer. There was great pressure being brought on all loggers to greater utilize the product of the forest, and since the mills were willing to cut them where they were seldom willing before, there was a tendency on the part of loggers to take timber which they formerly left in the woods, and that included smaller logs.

Q You wouldn't be positive as to what date you think that tendency started?

A No, I wouldn't.

30 Q You don't think it was before 1942, anyhow?

J. N. Burke,

Cross-Exam.
Re-Direct.

A I wouldn't say that. I don't think it was before 1942.

Q Have you any information as to the situation within the last few months? Would I be right if I said that the sale of small logs has fallen off within the last few months?

A You would be right if you said the sale of off quality logs was falling off, and small logs of some species.

Q Are those what you call peewee logs?

A I think there is still a good sale for peewee fir logs. I know there is not a good market for peewee cedar logs, but for small hemlock there should be just as good a market as there ever was.

MR. McPHERSON: Thank you.

RE-DIRECT EXAMINATION BY MR. NORRIS:

20 Q Mr. Burke, would you just look at this document, which has been put in for identification. I think your statement was that the price didn't start to advance, or didn't really jump -- I think those were your words, really jump -- until the Controller took the ceiling off in 1945.

A That is true.

Q But that is, I take it, a comparative statement, isn't it? That is, there was a general progression.

A There was a general progression. The price of logs kept right up with the ceiling price.

30 Q And that is in contra distinction to the earlier years, when the price was up and down?

*Market
better for
small logs
243 244
than in
1947*

J. N. Burke,
Re-Direct.

A Oh, yes.

Q In other words, from 1940 on there was a general progression up. Prior to that, it had been up and down?
A: That is a true statement.

Q Now, I suppose the relation of the cost of production to profit, would, in each case, depend on the economy of operation of the operator?

A Oh, yes.

10 Q That is a natural thing?

A Yes.

Q You spoke of better utilization, and methods. By that you mean, I take it, that the products which previously had been waste, or were not used, were utilized?
A: I mean that in the past six years, to my knowledge, the industry has been more and more interested in trying to utilize, in a better way, the product of the forest.

Q And that is true with all industries, isn't it?

20 A I can't say for any other industry.

THE COMMISSIONER: Q: You say it is peculiarly true of the timber industry?

A It is peculiarly true of the timber industry.

MR. NORRIS: Q: Now, your evidence today has to do, I take it, with British Columbia.

A Only, and the coast of British Columbia.

Q The coast of British Columbia. Logs that had been or might be considered small might, in other places, be utilized and differently utilized?

30 A Oh, yes.

J. N. Burke,
Re-Direct.

THE COMMISSIONER: Q: In regard to the marketing of small logs, to be economically marketed they must be marketed locally, must they not?

A: Anywhere, Mr. Commissioner, on the market that you can get a log into water. It makes little difference if you take it to Vancouver or even to Seattle, if it were exportable.

Q: The timber we are concerned with here is export timber, which is E. & N. timber.

10 A: Yes.

MR. NORRIS: Q: And the lumber would be produced here and exported, is that it?

A: No.

Q: Or the logs would be exported.

A: If your logs were permitted to be exported, it makes little difference whether they go to the Vancouver market or the Seattle market.

MR. McPHERSON: My lord, I think Mr. Burke might be able to give your lordship some information on the question of the E. & N. timber being exportable. You will recall we had the same question up in the Royston case, and Mr. Burke has been told now that this is Crown grant timber. I think he might be able to give your lordship some information on the question of whether or not there was an export market for Crown grant timber.

20

THE COMMISSIONER: If counsel desire to pursue that feature, it would be helpful. It would be open to each of you to examine the witness further on that question.

30

J. N. Burke,

Re-Direct.

MR. NORRIS: Is there some question as to whether or not the E. & N. timber is exportable?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: It was exportable, I gather from the comment of Government counsel. Whether it was exportable in the period under review, namely, from 1940 to 1944, is the question.

MR. NORRIS: My friend might pursue it.

10 MR. McPHERSON: Q: Mr. Burke, am I correct that with respect to Government timber during the war --

THE COMMISSIONER: Now, wait a moment. "Government timber"?

MR. McPHERSON: Q: -- with respect to Crown grant timber, there was an embargo on the exportability of Crown grant timber, unless the company had had the timber for export could establish they had a quota, or they were given a quota, or they had been exporting beforeⁱⁿ the basic period, is that correct?

20 A The fact, as I recall it, is that some time, and I don't recall the date, about 1944 or 1945, they put a quota on exportable fir and exportable hemlock.

THE COMMISSIONER: Q: Who is "they"?

A The Dominion Government, through the Timber Control. Prior to that, Mr. Commissioner, the timber Control barred entirely the export of fir logs for some considerable period, running as far back, if my memory is correct, as 1942, and I don't recall any deviation from that

J. N. Burke,
 Re-Direct.
 E. Kagetsu --(Cross)

until they started the quota system, and the year of that I am not certain about. I don't recall it. But it has been in effect for three, four or five years, I don't know exactly how many.

MR. McPHERSON: Thank you.

THE COMMISSIONER: Mr. Norris, have you any questions?

MR. NORRIS: In view of the fact that this matter has just come up, my lord, I would like to inform myself a little better on the matter. The witness
 10 can come back some other time, if I want him.

THE COMMISSIONER: If it would not cause you too much inconvenience, Mr. Burke, we might have to call you back again. We will facilitate you as much as possible.

MR. NORRIS: Q: Might I have the exhibit, the plan -- the blue one? Do you know that timber mark? (Indicating).
 A: NO. I could tell what that timber mark represents -- Crown grant timber.

20 Q By what?
 A: By the curve underneath.

MR. NORRIS: That is on Exhibit 2. All right, thank you.
 (Witness aside).

EIKICHI KAGETSU, recalled, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, I show you a plan which is entitled "Deep Bay Logging Operation".

30 THE COMMISSIONER: Now, just a moment, if you please.

There is rather too much conversation going on here for me to follow the examination. All right, proceed.

MR. McPHERSON: Q: I show you a plan, which is stated to be a plan of the Deep Bay Logging operation. Do you recognize that as a plan of your operation? That is a plan of the Deep Bay Logging operation?

A: Yes.

10 Q Would this part coloured in green, be where the standing timber was on the different blocks?

A Yes.

Q You can see the different blocks, Mr. Kagetsu.

A Yes.

Q Now, this part marked "Logged", is that where the felled and bucked timber was?

A That is right.

Q And this little piece marked in green over here, (indicating), what is that?

A I don't know.

20 Q Would that be a small jag of timber left on Block 276? In other words, Block 276, the page isn't long enough, so that green patch has been put in to show there was some timber there, is that right?

A: Yes.

MR. McPHERSON: My lord, I will give your lordship a copy of this so you can follow it.

MR. BALWIN: If I might interrupt my friend for a moment. I wonder if he could phrase his questions so there will be no possible misconception in the witness's mind as to whether he is agreeing

E. Kagetsu,
Cross-Exam.

with what the plan purports to represent. If he was asked, for example, if he was back there, I think he would be quite clear in his own mind that the green represents timber.

THE COMMISSIONER: If there is any doubt in your mind, Mr. Baldwin, as to whether the witness understands the question, you are quite free to interject.

10 MR. McPHERSON: Q: Mr. Kagetsu, before we go on with this, you understand most of what I am saying, don't you, in English?

A Just the difficult questions, he doesn't understand. Generally, he does.

Q You used to talk English in the Custodian's office, didn't you?

A Oh, yes.

Q And you understood English pretty well.

A Not very well.

Q We will go on, Mr. Kagetsu. On this chart,
20 would this line (indicating), in your opinion, be your railway?

THE COMMISSIONER: You might indicate where it is.

MR. McPHERSON: It is marked "present logging railroad", my lord. It is a line in blue ink.

A Pretty well, that is the way.

Q You think that is the approximate line of your railway?

A: Yes, coming through here (indicating).

Q Now, your railway ended at this spar tree in
30 block 274, didn't it, when you left?

E. Kagetsu,

Cross-Exam.

A: Oh, yes. Two here, and one here, I guess,
(indicating).

Q Was there any spur line of your railway into 566?

A 566? Oh yes, we go in here, (indicating).

Q You came in here, but you hadn't your railway
in here (indicating)?

A No, we came in this way (indicating).

Q That is the felled and bucked timber here, (indicating)?

A: Yes.

10 Q But there was no railway into 566?

A Well, my branch is here, you know, (indicating).

Q Yes, there were some spur tracks in.

A But the main line was here, (indicating).

Q The main line entered at the spar tree, marked
"spar" in 274, is that correct?

THE COMMISSIONER: That is 21.

MR. McPHERSON: Marked 21, yes.

THE WITNESS: 274, yes, in there (indicating).

MR. McPHERSON: Q: And your railway wasn't in to

20 Block 617, was it?

A Pretty nearly reached.

Q But it wasn't in to 617.

A Just about within reach to 617.

MR. McPHERSON: Here it is, Mr. Norris.

MR. NORRIS: It is marked on the plan, isn't it?

MR. McPHERSON: Yes.

MR. NORRIS: He agrees with that, doesn't he?

THE COMMISSIONER: Yes.

MR. NORRIS: Why not mark it "A" or "x"?

30 THE COMMISSIONER: He has indicated it already, with

E. Kagetsu,
Cross-Exam.

the spruce tree and 21400, above it.

MR. McPHERSON: Now, I would like to file that.

THE COMMISSIONER: Is this a copy of Exhibit 2?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: This is something new.

MR. McPHERSON: This is a plan prepared by Eustace Smith, showing the timber.

MR. NORRIS: We could have it proved later. It is going to be proved, I suppose?

10 THE COMMISSIONER: You propose to prove it by Mr. Smith?

MR. McPHERSON: I will prove it as the standing timber, my lord. Mr. Kagetsu has admitted it is a plan of the operation.

(PLAN MARKED EXHIBIT NO. 1388-13)

Q Mr. Kagetsu, when we adjourned yesterday you had told his lordship, with respect to Block 617, that in your original claim you were claiming \$3.00 a thousand, and that in the new claim it works out to \$4.00 a thousand.

20

Would you explain to his lordship why you increased the value of the timber \$1.00 a thousand and between the time you drafted your original claim and the time you drafted your new claim?

A I just lived in Toronto. I couldn't find the market price. It was just my own rough estimate, that was given to Mr. Brewin.

MR. NORRIS: I would like to know if the reporter got the last answer. Did he say a rough estimate?

30

E. Kagetsu,
Cross-Exam.

THE COMMISSIONER: Mr. Kagetsu, I think it might be safer if you gave your answers in Japanese to the interpreter and then allowed her to translate them. I do not want there to be any misunderstanding as to what you say.

MR. MCPHERSON: Q: Mr. Kagetsu, what was the selling price of standing timber in the E. & N. timber belt in 1941?

MR. NORRIS: You mean from the E. & N.?

10 MR. MCPHERSON: Q: Yes, in the E. & N. timber belt, and E. & N. timber.

MR. NORRIS: You mean purchased from the E. & N.

A It was \$1.75 and \$2.00.

MR. MCPHERSON: Q: In 1941? A: Yes, in 1941.

Q With respect to Block 617, Mr. Kagetsu, am I correct that you bought that block of timber for \$8,000.00 in 1941?

A Yes, I did.

20 THE COMMISSIONER: Mr. McPherson, I missed the price that the witness gave as to the E. & N. timber in 1941.

Q \$1.35? A: \$1.75.

MR. MCPHERSON: \$1.75 to \$2.00, my lord.

MR. NORRIS: And that was purchased, as I understand it, from the E. & N.

THE COMMISSIONER: Yes.

MR. MCPHERSON: Q: Mr. Kagetsu, am I correct that when you bought Block 617 you bought it on the basis of a cruise of 7,298,000 feet?

30 A Yes. It was the E. & N. cruise, and he bought it

E. Kagetsu,
Cross-Exam.

on that basis.

Q I suggest to you, Mr. Kagetsu, that if you paid \$8,000.00 on the basis of the E. & N. cruise, that it works out that the E. & N. were selling timber at \$1.10 a thousand in 1941. Would that be correct?

A: At that time when I buy it, I buy it for so much an acre and it doesn't consider the number at all. The timber is there.

10 Q Are you suggesting, Mr. Kagetsu, that you buy timber on the basis of area that the timber covers -- that is the number of acres?

A When I buy, E. & N., it is always by area. So much an acre in the area, and so much acres.

Q Would I be correct if I said that in Block 617, it had 790 acres?

A Could he refer to the note book?

Q Mr. Kagetsu, to assist you I refer you to your original claim, where you state that Block 617 has 790 acres.

20

MR. NORRIS: If my friend is trying to establish the acreage, if he says that is the acreage I will agree with it.

THE COMMISSIONER: You say so in the claim.

MR. NORRIS: My position about that claim is it was abandoned, and it was wrong; but if my friend has any information that that is the acreage, all right.

A If it is in the claim, I think it must be so.

30 MR. McPHERSON: Q: Now, Mr. Kagetsu, if you take 790

E. Kagetsu,
Cross-Exam.

acres and divide it into \$8,000.00, you get \$10.10, approximately. Now, are you suggesting, Mr. Kagetsu, that you, as an experienced timber man, bought block 617 for \$10.10 an acre?

A He doesn't think.

Q Isn't it correct, Mr. Kagetsu, that when you buy timber you buy the timber on the basis of a cruise, either your own cruise or someone else's cruise? Isn't that correct?

10 A Yes, it is, sir.

Q Would you explain to his lordship, Mr. Kagetsu, where you get the figure of \$3.00 a thousand to put in your claim in January of 1948, while you were in Toronto?

A I didn't know the market value in Vancouver, as I was in Toronto, so I roughly estimated it.

Q Can I take it, Mr. Kagetsu, that your first claim wasn't based on inquiries made by you as to market values of timber, or equipment?

20 A I didn't know what the Commission or the Custodian was going to do, and I was told I had to put in a claim, so I put in a rough calculation.

Q You were in business at Fanny Bay in the Spring of 1942, weren't you, Mr. Kagetsu? That is correct, isn't it?

A Yes.

Q And in the Spring of 1942, didn't you know what the ceiling price of standing timber was in the E. & N. timber belt from the E. & N. Railway Company?

30

A: I bought the

timber in 1941, so I know up to then, but from 1942 I don't know anything about it.

Q I am correct, that the evidence shows that you bought Block 617 in November of 1941?

THE COMMISSIONER: That is what he said.

MR. McPHERSON: Q: And it works out at \$1.10 a thousand?

A: Do you mean

\$1.10 an acre?

Q No, \$1.10 a thousand, for the timber.

10 THE COMMISSIONER: That is simply a matter of calculation, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

Q Mr. Kagetsu, I show you this plan again. Your railway in Block 504 passes the point marked 18:00.

A: Yes.

Q Why didn't you take out the timber on the right hand side, to the north of the railway?

A I intended to have a road go right through here after I had finished with this side, (indicating).

20 Q Isn't it a fact, Mr. Kagetsu, that this timber wasn't accessible to this railway?

A I kept that for that purpose.

Q Kept the timber for what purpose?

A For the railway property.

MR. NORRIS: For the purpose he suggests; he was going to build a line right through the centre of that grant after, to the north, and across the V.L. & M. timber, into the timber that he hoped to get from the E. & N.

30 THE COMMISSIONER: Yes, I see. You might ask the witness

E. Kagetsu,
Cross-Exam.

again whether the timber left in Block 504 could be moved economically by the existing railway, which he had.

MR. McPHERSON: Q: Mr. Kagetsu, could the timber left in Block 504 be logged out economically with the existing railroad?

A I could have done it, but there was no necessity for doing such a thing.

Q And isn't it a fact that from the point marked
10 "water tank" up in the corner of Block 274, that you had taken up the rail into Block 504?
That is correct? A: Yes.

Q Now, with respect to the timber left in Block 504, am I correct that that was a very steep sided slope?
A: There was a very steep slope, but I had surveyed everything and had it all arranged.

THE COMMISSIONER: Q: Speak a little louder, please, Mrs. Smith.

20 A I had it surveyed, so I had all the arrangements made to lay the railway there.

MR. McPHERSON: Q: Mr. Kagetsu, if you had built the new railway you are talking about, wouldn't you have had to bridge three major ravines or canyons?

A Yes, I would have had to do that.

Q And that is very expensive, isn't it?

A They are here and here, (indicating). It would take \$16,000.00.

THE COMMISSIONER: Here to here -- what is that, Mr.
30 McPherson?

MR. McPHERSON: My lord, I don't think it is material. He is talking about the cost of the railway from some point to another point, and of course it depends on the terrain, and what they are building through.

THE INTERPRETER: He did not consider the extension of this railway, because there was enough timber on the other side.

10 MR. McPHERSON: Q: Mr. Kagetsu, if you didn't have the timber, or if you couldn't get the timber in the back here, that is the timber that you mentioned yesterday, (indicating) --

THE COMMISSIONER: Is that the 200 million tract?

MR. McPHERSON: Q: Yes -- if you couldn't get that 200 million tract of timber, wouldn't it be better to log this timber by truck than build a railway in to get that timber, (indicating)?

A I was certain of getting this timber on the other side.

20 Q I am asking the witness if he didn't get the timber on this side, (indicating).

THE COMMISSIONER: None of this is going to mean anything when it comes to reading the notes, unless you identify in your question what you are pointing to.

MR. McPHERSON: Q: Mr. Kagetsu, if you didn't get the 200 million feet of timber that you mentioned, that you had an option on 60 million feet from the E. & N. Railway to the northwest of Block
50 504.

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Cross-Exam.

THE COMMISSIONER: Mr. Kagetsu, would you please answer the question counsel puts to you.

MR. McPHERSON: Q: Mr. Kagetsu, if you didn't get the timber from the E. & N. Railway lying beyond Block 504, would you have built a railway into the remaining timber on Block 504, or would you have logged it by truck?

A Yes, I would have logged it.

Q By --?

A: Yes, I would have

done it by truck, if I couldn't have got that timber on the other side.

Q And you would do it by truck, Mr. Kagetsu, because it wasn't practical to build the railway through that timber, if that was all the timber you had, was it?

A No, it wasn't.

Q Now, with respect to Block 617, am I correct that this is their high land, (indicating)?

A Yes, it is, sir.

20 Q Am I correct that most of it is over 2,000 feet?

A Yes, it is about 2,000 feet. 500 feet higher.

Q Mr. Kagetsu, in coming into Block 617 from the end of steel at the point 21:00 spar, you would have to come into Block 617 and build many bridges as you switch back up the hills, wouldn't you?

A: This is a rather small creek and I wouldn't have great difficulty in bringing trucks in.

Q Trucks?

A: The railway,

30

yes.

NB
big if

E. Kagetsu,
Cross-Exam.

Q Now, Mr. Kagetsu, if you didn't have any other timber and the timber marked green on this map, would you have built a railway into this block 617, or would you have logged it by truck?

A I would prefer having a railway rather than the truck, because it is certain.

Q Because of what? A: He means certain -- certainty of operation.

Q What do you mean, Mr. Kagetsu, when you say the railway is certain of operation?

10 A Trucks are operated by gas, so very often it goes short of gas and it would stop in the middle of it, whereas with the railway there is no difficulty with that.

Q Mr. Kagetsu, do you know of any other logging operations on the British Columbia coast of this size -- the size of Deep Bay -- that are railway operations, or that were railway operations in 1942?

20 A: I don't know what other companies did.

Q Did you tell us, Mr. Kagetsu, why you left that patch of timber in 276, that patch marked green down in the right hand corner?

A Because it was easier to take it out by trucks.

Q Yes, Mr. Kagetsu, you had intended to truck that timber out, hadn't you?

THE COMMISSIONER: Is this the piece you are referring to, Mr. McPherson, (indicating)?

MR. McPHERSON: Yes, my lord.

30 A If I leave it, there are many who are anxious to

have small lots, or small holdings.

Q How much timber do you estimate is in that stand?

A As it was a great distance from there, or from this place, I didn't go in and see it, but my rough estimate is about 2 million.

10 MR. McPHERSON: My lord, in view of the confusion as to just where this timber of the E. & N. adjoining Deep Bay is, I would like to go back to Exhibit 2. It is my recollection that the witness said yesterday that that river you see on the right side is the Tsable River?

A Yes.

MR. McPHERSON: But I think he was wrong, my lord -- unintentionally wrong. If you look at the big map of Vancouver Island, I don't know what the Exhibit number is, my lord --

THE COMMISSIONER: Exhibit 4.

20 MR. McPHERSON: -- exhibit 4, if your lordship looks at that map, I think that it is apparent that it is the Tumblewater Creek.

MR. NORRIS: Mr. Commissioner, perhaps my friend doesn't know that creeks and rivers in this province may have half a dozen different names. That has been my experience, and it may be the case here.

THE COMMISSIONER: It may be.

30 MR. McPHERSON: I am not trying to confuse the witness, I am trying to make it clear where this timber was. You will notice on your map that the Tsable River flows almost east and west. This shows

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Cross-Exam.

as flowing north, (indicating), and that is what confused me yesterday, how that could be the Tsable River, flowing north.

THE COMMISSIONER: I have not found it on Exhibit 4 yet.

MR. NORRIS: It is marked on the plan my friend produced as the Tsable River. It is marked there as the south fork of the Tsable River.

THE COMMISSIONER: Yes, it is so marked on Exhibit 13.

10 MR. McPHERSON: My lord, the confusion has arisen because everybody calls it the Tsable River, but it isn't the Tsable River. That is the point I would like to clarify for your lordship.

THE COMMISSIONER: Oh, I see your Tumblewater Creek, running north and south, and apparently flowing into the Tsable River.

MR. McPHERSON: And the Tsable River comes from away over near Comox Lake. You see that, my lord?

THE COMMISSIONER: Yes, it rises in Tsable Lake.

20 MR. McPHERSON: Both of these charts have assumed it is the Tsable River.

MR. NORRIS: Apparently it is the south fork of the Tsable River.

THE COMMISSIONER: It would be the south fork of the Tsable River. It is certainly not the main stream. You see here, Mr. Norris, (indicating), if you will observe it.

MR. NORRIS: Yes, I see that, Mr. Commissioner, but I would maintain that probably whoever drew this
30 plan is quite correct, it is the south fork of

the Tsable River. Perhaps Mr. Smith knows about it.

THE COMMISSIONER: Your friend is seeking to distinguish between the main stream, which runs roughly east and west, and whatever this fork is, whether it is the Tumblewater Creek, or the south fork, which flows roughly north and south.

10 MR. NORRIS: Apparently the witness knows it as the Tsable River, and the plan shows it as the south fork of the Tsable River.

THE COMMISSIONER: Where does the timber lie, now, Mr. McPherson?

MR. McPHERSON: That is what I am coming at. That is the only point in raising it.

Q Mr. Kagetsu, you stated yesterday that the timber was across the Tsable River.

MR. NORRIS: He means across there, (indicating).

20 MR. McPHERSON: He stated yesterday that the timber was across the Tsable River, and if it had been across the Tsable River, then it would be somewhere in the north, as you can see.

THE COMMISSIONER: That is true.

MR. McPHERSON: It was across the Tumblewater Creek in here, (indicating), and that is the reason I asked to clarify this.

Q Am I correct that the V.L. & M. Railway was already into Block 34, and was within a very short distance of the Tumblewater Creek?

A Yes, it is, sir.

30 Q The Victoria Lumber & Manufacturing Company, Mr.

E. Kagetsu,

Cross-Exam.

Kagetsu, were logging Block 34 in 1941 and 1942, weren't they? A: Yes.

Q And you had taken up the rail in Block 504?

A Yes.

10 Q Now, you have stated this morning that you were going to build the railway into this accessible timber across the Tumblewater Creek, but you were going to build a railway through the remaining timber in 504 into the accessible timber across the Tumblewater Creek, and across Block 274 to the timber on the V. L. & M., and you stated yesterday that this timber was more accessible to you than the V. L. & M. Would you explain to me how that could be true, if you had to build a brand new railway all the way through, and they were already within a few hundred yards of the Tumble water Creek?

A I could have built the railway from here on, (indicating), or this way.

20 MR. NORRIS: Now, again, we have "from here on".

MR. McPHERSON: I will just clarify that, Mr. Norris.

Q You say you could have built a railway from the water tank in Block 274 on over the Tumblewater Creek, or you could have gone in through the remaining timber on Block 504, is that correct? A: Yes.

Q You stated this morning that your intention was to build a railway through the remaining timber on Block 504, is that correct? Is that
30 what he stated this morning?

E. Kagetsu,
Cross-Exam.

A Yes, that was my intention.

Q That is why you took up the railway track, is it not, from the water tank to the end of steel in 504?

A: Yes.

Q You agree with me, Mr. Kagetsu, that the timber across the Tumblewater Creek was more accessible to the V. L. & M. Company?

A I don't agree with you there, he says. It would have been nearer or more accessible from my property than from theirs.

10

MR. NORRIS: My lord, the other interpreter points out to me that apparently there is some error in the translation of the evidence in connection with the V. L. & M. Company.

THE COMMISSIONER: You can cover it in re-examination if you wish. Do you think there is any purpose in arguing with the witness as to whether or not the timber is more accessible to one operation than the other? He has stated his position twice.

20

I do not want to stop you, however, Mr. McPherson.

MR. MCPHERSON: I am rather confused now. I understood the witness to say that the V. L. & M. had bought Block 34 and were within a short distance of the creek.

THE COMMISSIONER: He did so.

MR. MCPHERSON: And he had taken up his rail in 504 and would have to build the railway through the remaining timber.

THE COMMISSIONER: He said he would have to put his line through 504.

30

E. Kagetsu,
Cross-Exam.

THE INTERPRETER: Excuse me, I think I said there was
no railway of the Victoria Manufacturing Company.
They were doing it by trucks, were they not?

MR. NORRIS: There is where the error arises.

THE COMMISSIONER: Just pursue that, so as to clear it
up.

MR. McPHERSON: Q: We are talking about 1941 and 1942,
Mr. Kagetsu. In 1941 and 1942, I understood you
to say, in answer to my question, that there was
a railway in Block 34. Is that correct?

A Yes, there was.

Q And it was after 1942, Mr. Kagetsu, was it not,
that they changed the railway to a logging road?

MR. NORRIS: I don't want to interrupt my friend, but
perhaps, instead of saying the block he might
deal with the point in that block where it was,
because that is how it came up in the first
instance.

THE COMMISSIONER: How far into the block did the
railway get?

MR. NORRIS: Yes, into 504 -- 34, in relation to
Block 504, and how far it got in there.

MR. McPHERSON: My lord, when I was examining the
witness, I understood he said they were logging
in Block 34 when he was logging in 504.

THE COMMISSIONER: That is what I understood him to
say.

Q Mrs. Smith, would you ask the witness how far
the Victoria Lumber Railway had extended into
34 when he ceased his operations in 1942?

E. Kagetsu,
Cross-Exam.

A He said he couldn't very well tell by this, but could he have the other one, the blue one, (indicating).

MR. NORRIS: Might the witness be asked this question; I think we might clear it up this way: Was the railway in any part of Block 34 that is shown on that white map?

THE COMMISSIONER: We better leave him alone for a moment.

10 A This is the Victoria Lumber Company, (indicating) and the railway was coming this way.

Q Would you translate what the witness has said, if you please, Mrs. Smith?

A Well, he has marked this (indicating). This is the sky line, (indicating), as he calls it. That is the Victoria Lumber Company, that is the railway (indicating). The sky line, he means.

MR. NORRIS: He has marked it on there.

THE COMMISSIONER: Q: Now, Mrs. Smith, would you kindly
20 translate what the witness has said?

A He has marked it here. This belongs to the Lumber Company, and the railway came down this way (indicating), and this part had no railway, but it was taken out by skyline (indicating).

THE COMMISSIONER: For the purpose of the record, the witness has indicated by pencil marks showing that the railway extends from the figure 34, shown on Exhibit 4, in a general north westerly direction, and that in that part of Block 34,
30 which lies south of the figure 34 on the map, there

E. Kagetsu,
Cross-Exam.

was no railway, and that area had to be logged by skyline.

Q Now, is that a correct interpretation of what he has said? A: Yes.

THE COMMISSIONER: Does that conclude your cross-examination on this feature, Mr. McPherson?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: I think we might recess for a short time.

10

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

EIKICHI KAGETSU, resumed the stand,
testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, referring for a moment to Block 276, and that is the small piece of timber coloured green in the right hand corner of this chart which has been filed for identification --

THE COMMISSIONER: That is Exhibit 13.

MR. McPHERSON: Yes, Exhibit 13 -- you stated that you estimated, though you were not in that timber, that there was still 2 million feet of timber there?

20

A: It was so far away that I didn't go there to examine it, but I roughly estimated about 2 million feet.

Q Would you say I was wrong if I said there was approximately 300,000 feet of timber there?

A I am sure there was more than that.

Q Mr. Kagetsu, in your original claim, that is the claim of the company dated January 6th, 1948, you claim \$5,200.00 as the fair market value for

30

that timber, and at the time that you drafted that claim did you think there was 2 million feet of timber in that block?

A I calculated it was there.

Q I suggest to you, Mr. Kagetsu, that if you divide, or if you valued at \$5200.00 that 2 million feet in your original claim, you were claiming \$2.00 and approximately 60 cents a thousand. Would that be correct?

10 A 60 cents?

A A thousand.

THE COMMISSIONER: Now, will you clarify the question, Mr. McPherson.

MR. McPHERSON: Q: Mr. Kagetsu, you have stated that when you prepared your original claim, you based the \$5200.00 that you were claiming for the timber in 276 on an estimate of 2 million feet of timber. Am I correct that you arrived at that figure of approximately \$2.60 a thousand?

20 A When I said 2 million feet, it meant that it was roughly estimated and I intended to correct that when I came into Vancouver, when I examined the property.

Q Am I correct that you bought this block of timber, that is 276, in 1932 from the E. & N. Timber?

THE COMMISSIONER: E. & N. Railway Company.

MR. McPHERSON: The E. & N. Railway Company, my lord.

A Yes, I did.

Q And the price was \$61,610.00.

30 A The acreage is 1530, and at the price of \$6,506.62

E. Kagetsu,
Cross-Exam.

-- no, \$65,662.00.

Q And, Mr. Kagetsu, the figure of \$65,662.00 includes \$4,052.00 for poles, does it not?

A I bought timber land at so much an acre, and I didn't distinguish between the poles and others.

Q With respect to this particular block of timber, 276, didn't you buy it on an estimated cruise -- and E. & N. cruise of 30,805,000 feet?

A 30,580,000?

10 Q Is that what he says, or what I am supposed to say?

A No, what you say.

Q 30,805,000. A: I didn't buy it at so much per foot, I bought it by so much per acre.

Q Mr. Kagetsu, isn't it correct that when you buy timber from the E. & N., or when the E. & N. timber company sell timber, they insist that you take the land in order that they are relieved of the taxes, but what they are selling you is timber.

20 A I buy the timber and land included.

Q Can you tell me what the E. & N. cruise was on Block 276 in 1932, when you bought the land?

A It is so long ago, I have forgotten.

Q Would you think that 30,800,000 feet is approximately correct?

A I can't remember.

Q Mr. Kagetsu, in your amended claim, dated November 3, 1948, you are claiming for Block 276 under Item No. 2-A. How much timber are you claiming on that block?

30

A: Could he refer

E. Kagetsu,
Cross-Exam.

to the book?

THE COMMISSIONER: Yes, he may.

A My estimate was 27 million, but I wasn't certain, so I sent a man to estimate and I haven't had a reply yet.

MR. McPHERSON:

Q So that, in 1942, when you were still here, you estimated 2 million feet?

THE COMMISSIONER: That is what he says.

MR. McPHERSON: Q: And today you are estimating

10 27 million -- 2,700,000?

THE COMMISSIONER: No, no. We are talking about two different times. The witness has said in 1932, when he bought it, he estimated 27 million feet on 276.

A: No, I didn't.

MR. McPHERSON: My understanding, my lord, is, and I have asked him how much timber he is claiming on 276, and there is only that green patch, and he has already stated in 1942 he estimated 2 million feet, and I understood him to say he is now estimating, depending on a cruise he is to get, 2,700,000 feet.

20

MR. BREWIN: No. I think what he is saying, if I understand him right, he is estimating all of the items mentioned in Item 2 -- 27 million feet.

THE COMMISSIONER: I cannot reconcile the 27 million figure, because we have been dealing with only Lot 276. Better put the question to him again.

MR. McPHERSON: Q: Mr. Kagetsu, with respect to Block 276, how much timber are you claiming now

30

E. Kagetsu,
Cross-Exam.

as having been on that block in 1942, when you left?

A: It was my rough estimate in 1942, 2 million.

Q And how much timber are you claiming today on Block 276?

A. I have put in the claim on the whole, so I can't tell separately. That, I am getting an estimate on.

Q Mr. Kagetsu, how do you arrive at the figure of 27 million feet for your total claim on the Deep Bay property?

10 A: I was certain of getting that amount, if I logged the timber, so I put in that claim.

Q How did you arrive at the amount of 27 million feet?

A: I have cruised it myself before.

THE COMMISSIONER: Q: What was your cruise when you made it yourself?

A 276 was the one that I didn't cruise. Most of the other places, I had cruised. It was too far away.

20

MR. McPHERSON: Q: Mr. Kagetsu, why did you wait until November of 1948 to have your timber cruised?

THE COMMISSIONER: That is not going to be helpful to me, Mr. McPherson.

MR. McPHERSON: My lord, Government counsel is getting into the hopeless position that your lordship has a claim before you that the claimant does not know how it is arrived at.

THE COMMISSIONER: I appreciate that.

30 MR. McPHERSON: And Government counsel is also in the

E. Kagetsu,
Cross-Exam.

position that he has n't any cruise on which is the claimant is claiming, and it is very difficult to cross-examine this man when he doesn't know his own claim.

THE COMMISSIONER: That is his misfortune. He has lumped a great deal of timber under one item in his claim, and he apparently does not know how he arrives at the total figures. Now, it is for him to back it up.

10 MR. McPHERSON: Q: Mr. Kagetsu, at what rate per thousand feet are you claiming for timber on Block 276?

A: I haven't put

the claim in by feet at all.

Q Mr. Kagetsu, --

A: I have taken

it separately.

Q -- yesterday you told me that with respect to Block 617, you estimated your claim at \$4.00 a thousand in 1948, and that you had estimated it in your original claim at \$3.00 a thousand. I suggest to you that you did exactly the same thing in the case of Block 276.

20

A As I wasn't in Vancouver, I didn't know the market value. I was in Toronto, and I didn't know the market value, so I put in the rough estimate, but since I came to Vancouver I have found out the market value and I put in the price higher.

Q What price did you put in for Block 276?

A I have claimed under the whole, 27 million, and
not
30 I have/taken them separately, but I am getting

E. Kagetsu,
Cross-Exam.

the estimate, and if you wish that I shall report it to you as soon as I get it.

Q How much are you claiming a thousand on the 27 million? A: \$4.00 a thousand.

THE COMMISSIONER: Q: That is your present claim, is it? A: \$4.00 per thousand.

Q And that is his present claim, is it?

10 A Yes, that is the present amended claim.

THE COMMISSIONER: I would like to put the question to him, Mrs. Smith:

Q Is that figure of \$4.00 a thousand the basis of your present claim for timber?

MR. BALDWIN: My lord, on the Deep Bay operation, you mean?

A No, this is the value in 1943, when it was sold. Not the present values.

20 THE COMMISSIONER: Q: So, put it to him again so there will be no question about it, all of the timber that is covered by Item 2 in your claim you calculated to contain 27 million feet, and for that timber you claim \$4.00 per thousand? Now, will you put that to him?

A Yes.

Q Am I correct, Mr. Kagetsu, that when you filed your original claim, you were estimating your claim for timber at \$3.00 per thousand?

A Yes, that is right.

30 Q Now, Mr. Kagetsu, with respect to Block 504,

E. Kagetsu,

Cross-Exam.

that was originally claimed by you personally in your claim dated the 25th November, 1947, and you claimed \$7,000.00 for that property as timber land.

A: It was the 1948 claim?

Q The 1947 claim. The claim in 1947 -- November 25, 1947 -- Mr. Kagetsu claims \$7,000.00.

A Is it the one that I sent in from Toronto?

Q Yes. A: Yes, it is so.

10 Q And that claim was based on \$3.00 a thousand?

A Roughly based on that. I couldn't find anything at Toronto, so it was really a rough estimate.

Q Now, at \$3.00 a thousand for \$7,000.00, that, Mr. Kagetsu, works out to a claim of 2,333,333 feet of timber. So, what you were claiming there was 2,300,000 feet, roughly, of timber remaining on 504 when you made your claim -- 504 -- Item 4, Block 504.

THE COMMISSIONER: 2, 333,333 feet.

20 A I was called by Mr. Brewin and told to come to him, and I had only about an hour to fit in all these things, and I didn't have the notebooks or anything with me, or anything to refer to, and it was only my rough estimation.

MR. McPHERSON:

Q Mr. Kagetsu, you have told us this morning that you left this timber so you would have timber to log when you built your railway through it. Now, did you know in 1942 how much timber you were leaving?

30 A: Yes, I did. I think I know.

E. Kagetsu,
Cross-Exam.

Q All right. How much timber did you think you were leaving in that area to the north of Block 504, coloured green, on Exhibit 13?

A I can't tell you exactly, but about 6 million or 6,500,00. Six and a half or seven million.

Q And when you saw Mr. Brewin in Toronto, you knew that you had an estimate of 6 to 6½ million feet on that timber coloured green on Block 504?

THE COMMISSIONER: The witness says 6½ to 7.

10 MR. McPHERSON: Q: When you saw Mr. Brewin, you knew that, didn't you?

A I didn't have my notebook with me, so I really didn't know exactly what timber there was until I have seen my notebook.

Q Where was this notebook, Mr. Kagetsu? In Vancouver?

A Yes, they were left in Vancouver in my luggage, and the other day I had them forwarded to me.

20 Q Now, Mr. Kagetsu, you have said that you were claiming in your original claim at \$3.00 a thousand, and if we accept your figure of 7 million, the top figure, as the remaining timber on 504, that is \$21,000.00, but you only claim \$7,000.00.

Now, are you claiming today in your amended claim -- you have advised his lordship you are claiming at the rate of \$4.00 a thousand -- are you claiming today for Block 504, \$28,000.00 on your total claim in Item No. 2?

A I haven't separated the claim for 504.

30 THE COMMISSIONER: Mr. McPherson, I am going to ask

E. Kagetsu,
Cross-Exam.

the witness to break down his claim under Item 2, to show the quantity of timber he claims in respect of each of the lots, or each of the blocks, and the price at which he is claiming.

MR. McPHERSON: Thank you, my lord.

10 THE COMMISSIONER: If we go on in this way, we are going to be here for another two days with this line of cross-examination. So, I will adjourn now to give counsel an opportunity to furnish particulars of Item 2, so that we can save some time.

MR. BALDWIN: My lord, if I may speak to that; this whole item 2 was sold in one lot, buildings, blocks of timber and foreshore lease. It was the subject matter of a sale to the MacMillan Export Company. That being the case, it is our submission, apart from the fact that the claimant can only guess at the allocation of this timber on these blocks, that the Custodian has
20 sold it all as one. Is there any reason why the claimant should be required, when he has not been in a position of knowledge that the Custodian has been in, to break his claim down as to blocks?

THE COMMISSIONER: Am I to assume that the figure of \$142,781.00 is a guess as to the value; because, if that be so, I agree with you there is no purpose in it. But I had assumed that the claim was the aggregate of prices put on these various blocks of timber.
30

E. Kagetsu,
Cross-Exam.

MR. BALDWIN: It isn't anything more than as close a guess as the claimant can put on it at this time.

We are having the area cruised now, so the positive amount of timber can be brought to the Commission.

THE COMMISSIONER: Then, we are wasting time on the cross-examination.

MR. BALDWIN: I think that has appeared in evidence.

10 THE COMMISSIONER: The weakness in your position, Mr. Baldwin, is this, that you are presenting a claim here, presumably on the basis of the value of individual items calculated in the aggregate --

MR. BALDWIN: No, my lord.

THE COMMISSIONER: -- and I have assumed there was some basis for the \$142,000.00 claim.

MR. BALDWIN: No, my lord. In that connection, may I say this, that this, as I said, was all sold as one.

20 THE COMMISSIONER: I am not concerned with how it was sold.

MR. BALDWIN: Not the amount, but it was sold as a unit.

THE COMMISSIONER: I am concerned with how the claimant values these items and shows it in his present claim at \$142,00.00 odd.

MR. BALDWIN: Yes, my lord. It is all these limits and the buildings and everything sold as one.

THE COMMISSIONER: How does he arrive at his figure
30 of \$142,000.00? He cannot seem to tell us. I

E. Kagetsu,
Cross-Exam.

though it might be advantageous to you to have an adjournment so you could go over it with him to ascertain how he does arrive at the figure.

MR. BALDWIN: My lord, broadly speaking, we can put in this, that the standing timber is estimated at 27 million feet by the claimant.

10 THE COMMISSIONER: Yes, but what I am directing you to do is to break it down between those various blocks, and to declare what price per thousand you are seeking to recover. Now, I understand that the witness has pinned himself to \$4.00 per thousand.

MR. BALDWIN: That was agreed, yes.

THE COMMISSIONER: But there is nothing to show what he claims is contained on these different limits. In order to arrive at his claim, I assume he must have had some idea as to what timber was standing there, otherwise the \$142,000.00 can only be the wildest guess.

20 MR. BALDWIN: Well, my lord, that was the estimate he made, as best he could, at the time.

THE COMMISSIONER: Well, I am giving you the opportunity

MR. BALDWIN: We will have some information, I hope, by tomorrow, and will have more definite information before this case concludes, which we will file.

30 THE COMMISSIONER: You think nothing can be accomplished by an interview by yourself with your client, in order to ascertain how this figure is arrived at?

E. Kagetsu,
Cross-Exam.

MR. BALDWIN: No, my lord, not until we receive this report, which we are waiting for. I am told we should have it by tomorrow morning.

THE COMMISSIONER: That is not very satisfactory from my point of view.

10 MR. McPHERSON: My lord, might I just speak to this question? Am I to assume, my lord, that when they do get this report, unless the guess was an excellent one and it ties in with the report, that they will be filing an amended claim?

THE COMMISSIONER: That is what I am afraid of.

MR. McPHERSON: And the second point, my lord, is that subject to your lordship stopping me, it is my intention to follow exactly the same type of cross-examination for Items 3, 4 and 5 --

THE COMMISSIONER: That is what I had anticipated.

20 MR. McPHERSON: -- all the way through. These are the particulars that I requested some time ago, and what I would like to do is go ahead with this case with the witness, but I don't think the witness should be allowed to change his claim if the Crown comes in and shows these figures are ridiculous. I am also very reluctant to agree at this very late date that they can come in with a cruise and expect me to prepare a defence to it.

30 THE COMMISSIONER: That is something that should have been done long since. I am going to adhere to the suggestion I threw out before. I will adjourn and give counsel such time as he thinks

E. Kagetsu,
Cross-Exam.

is necessary to break down the claim.

10 We wasted the greater part of yesterday, and certainly all of today, on something the witness is not prepared to answer. Either that, or he cannot answer it. I will give you an opportunity to break it down and furnish particulars of these items, showing the quantity of timber that is estimated to be on these blocks, and the price at which he claims. So far as the other items are concerned, it is probably impractical to break them down.

Then I think a value should be put on the plant and equipment, which is presumably valued in some part of the \$142,000.00. The same thing should be done with these other items.

20 If counsel will consult with his client this afternoon, you can let me know first thing in the morning whether you are ready to go on and furnish the particulars by that time, and go on with the hearing. We are just wasting time now.

MR. BALDWIN: I quite agree, my lord.

MR. McPHERSON: Does your lordship's ruling apply to the fact we should have particulars of the Shay locomotive and what they are claiming for the other major items there, and how they arrive at those totals?

THE COMMISSIONER: I think it should be done.

30 MR. McPHERSON: They did give particulars in the original claim, and the Government is defending each one, because we sold them separately.

E. Kagetsu,
Cross-Exam.

THE COMMISSIONER: Undoubtedly you propose to call some expert to show the 60 ton locomotive was worth so much in 1943.

MR. BALDWIN: I wouldn't want your lordship to think we haven't given particulars. I have already told my friend we have taken Mr. Skelding's figures.

THE COMMISSIONER: Let us know what the figures are.

MR. McPHERSON: My lord, that is quite correct, that
10 Mr. Baldwin told me they were taking Mr. Skelding's figures. I overlooked that, and I apologize to my friend for it, but what I would like is an official list of the way they break down each item.

THE COMMISSIONER: That does not seem unreasonable, Mr. Baldwin.

MR. BALDWIN: My lord, the same thing applies again. These things were sold in parcels.

20 THE COMMISSIONER: I pointed out to you that I am not concerned with the matter of sale, I am concerned with how you arrive at your claim. For instance, you claim \$37,029.00 for this block under the head of Item 3. Now, presumably you must have put a value on the various items in order to reach that aggregate.

MR. BALDWIN: Yes.

THE COMMISSIONER: That is what I am directing you to furnish, and the same will apply to the various heads of Item 4 to make up the total of
30 \$27,095.00. Mind you, I assume there are a

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Cross-Exam.

lot of small items included under the compressor and accessories, and what not. I do not want all the details of that, but you have set out certain heads, such as the Empire gas donkey, and so on. Presumably you must have some idea of the value, in order to make up the total.

MR. BREWIN: We have it right here, and can give it to my friend right now.

THE COMMISSIONER: Let us have them right now.

10 On Item 3, the 60 ton locomotive?

MR. BALDWIN: Mr. Skelding's figure on that locomotive was \$5,000.00.

THE COMMISSIONER: The 18 railway cars?

MR. BALDWIN: \$3675.00.

THE COMMISSIONER: What is that?

MR. BALDWIN: I beg your pardon, my lord, that is for 19 logging cars. That includes the flat railway car. The total is \$3675.00.

THE COMMISSIONER: The push cars?

20 MR. BALDWIN: \$200.00 for both. Two speeders --

THE COMMISSIONER: The push cars are \$200.00?

MR. BALDWIN: \$200.00. \$100.00 each.

THE COMMISSIONER: And the speeders?

MR. BALDWIN: Two speeders, at \$4,650.00.

THE COMMISSIONER: Now, the eight miles of railroad?

MR. BALDWIN: \$9,024.10.

THE COMMISSIONER: Is that the item that includes 50 cents a thousand?

MR. BALDWIN: No.

30 THE COMMISSIONER: Oh, you add that, in addition?

E. Kagetsu,
Cross-Exam.

MR. BALDWIN: Yes.

THE COMMISSIONER: 60 tons of coal?

MR. BALDWIN: 60 tons of coal is to be added. That was valued at \$8.00, where it was delivered, \$480.00. And the other basis for the use of the railroad is 28 million feet at 50 cents a foot -- \$14,000.00.

THE COMMISSIONER: 28 million at 14 cents a foot?

MR. BALDWIN: 50 cents a foot.

10 THE COMMISSIONER: And the total?

MR. BALDWIN: \$37,029.10, under "B" of the claim.

THE COMMISSIONER: Wait a moment. \$37,029.10 is the total value of these things?

MR. BALDWIN: Yes, \$14,000.00 on the use of the rails, 28,000 feet at 50 cents, \$14,000.00. That was counted, my lord, because these other values are not the value in use. They are the value of the sale of equipment. That is the basis of it. Do you wish Item No. 4?

20 THE COMMISSIONER: I make that total \$37,529.10. Is my addition wrong?

MR. BALDWIN: \$37,029.10.

THE COMMISSIONER: I make it 529. Perhaps my addition is wrong. You are right. There are your particulars of Item 3, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Then as to Item 4, have you those figures?

MR. McPHERSON: I have them, my lord. I haven't them here,
30 but I have them in Mr. Skelding's appraisal.

E. Kagetsu,
Cross-Exam.

THE COMMISSIONER: You are satisfied?

MR. McPHERSON: Yes. I pointed out I had forgotten that Mr. Baldwin had given me them, and I apologized.

THE COMMISSIONER: Does the same apply to Item 5?

MR. BALDWIN: Yes, my lord. Those are all Skelding's figures.

THE COMMISSIONER: Allskelding's figures?

MR. BALDWIN: Yes, my lord.

10 THE COMMISSIONER: 6, we are not concerned with presently, nor with 7.

MR. BALDWIN: No.

THE COMMISSIONER: And the boom chains. So that the only item that we are concerned with at the moment for further information on is Item No. 2.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Now, Mr. Baldwin, how long do you think it is likely to take you to furnish that information, or to get it ready?

20 MR. BALDWIN: Well, the information we will have available by this evening or tomorrow morning, it won't be a cruise, it will be a reconnaissance. There has not been time to do that, but it will enable us to give a better idea, certainly, of whether our claim of 27 million feet is correct. It may not be sufficient to break down the blocks, but what information we get will be made available to my learned friend.

THE COMMISSIONER: Suppose we adjourn until tomorrow
30 morning? Do you think that should give you

sufficient time to put this item 2 in shape?
I presume you must have these figures now, in
order to arrive at the \$142,000.00.

MR. BALDWIN: No, my lord, we haven't, to be quite
honest. It is a general impression of the claim-
ant that there was more timber there than was
estimated by the Custodian.

10 THE COMMISSIONER: What are we going to be up against?
Are you likely to be coming in with an increase
in your claim, under Item 2?

MR. BALDWIN: No, I don't think so. We valued it a
little on the generous side, perhaps, in order
that our later reduction downward would embarrass
my friend less.

THE COMMISSIONER: I think we would save time by tak-
ing an adjournment for this afternoon to enable
you to get these figures, because it is hopeless
dealing with Mr. Kagetsu now on each item -- we
are not getting anywhere.

20 We will adjourn until 10 o'clock tomorrow
morning.

MR. McPHERSON: Your lordship appreciates, I presume,
that when we do get those figures, I would like to
have the right to ask for an adjournment until
I have a chance to consider them, because I have
prepared my cross-examination on that line.

THE COMMISSIONER: However, there will be enough for
you to go on tomorrow, in any case, without deal-
ing with that phase of it?

30 MR. McPHERSON: Yes, my lord.

(PROCEEDINGS ADJOURNED UNTIL NOVEMBER 10, 1948,
AT 10:00 A.M.)

I hereby certify the foregoing
is a true and accurate report of
the said proceedings.

J. P. Hanahan
Deputy Official Stenographer

Vancouver, B.C.,

November 10th, 1948; 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: My lord, before my learned friend
proceeds with the cross-examination of Mr.
Kagetsu, I have already supplied my friend with
these cruises made by C.D. Schultz & Company,
and I think it best, for your Lordship's
assistance, to file them at this time. They
will be proved later when we call Mr. Schultz.
There are two there.

10

THE SECRETARY: Exhibit No. 14.

MR. BALDWIN: They had better go in separately.

THE COMMISSIONER: What are they?

MR. BALDWIN: One is the 4 percent stump examination
in
of Lots 195. That is/the Cowiathan Lake area,
and the other just completed is an inspection
of 504, 566, 617, 274, 263, 234, 267, 276,
and Lot 88 in the Newcastle district.

20

THE COMMISSIONER: How about 198 and 256?

MR. BALDWIN: They are not covered in this report,
my lord.

THE COMMISSIONER: I see. The man's name is Schultz?

MR. BALDWIN: C.D. Schultz & Company Limited.

THE COMMISSIONER: S-c-h-u-l-t-z?

MR. BALDWIN: Yes, Schultz, S-c-h-u-l-t-z. The
information that we have obtained from this
is contained in the letter -- I do not know
whether your Lordship has it to hand this
morning. We sent you a copy.

30

THE COMMISSIONER: Yes.

THE SECRETARY: Exhibit 14 and 15.

(CRUISES BY C.D. SCHULTZ & CO. MARKED
EXHIBITS NOS. 14 and 15).

MR. BALDWIN: That sets out the information that we
can give your Lordship and my learned friend
at this time.

THE COMMISSIONER: Have you had an opportunity to
examine these reports, Mr. McPherson?

MR. McPHERSON: Yes, my lord.

10 THE COMMISSIONER: Are they going to be sufficient for
your purpose?

MR. McPHERSON: After a very careful consideration of
the entire picture, my lord, I would like to move
for an indefinite adjournment of this case,
and I must say, my lord, I hope you will appreciate
that I do not make this suggestion
lightly at all. It is after a very careful
consideration of the matter and taking into
consideration the history of filing the
20 amended claim, and after a very preliminary
consideration of this report, which I received
at a quarter to nine, although it was delivered
to the Custodian's office somewhere about 5
o'clock last night (the office closing at 4)
but that is no fault of my learned friend, and
I am not suggesting it is, but I would make
my motion for an indefinite adjournment on
the following grounds, my lord; and I would
like to list the following grounds in order
30 that they may appear in the record:

Discussion.

First of all, that the original claims were filed in November of 1947 and January of 1948, respectively.

Secondly, counsel for the Japanese claimants were advised last spring by your Lordship that the corporation cases would be heard in Vancouver in the fall, and that everybody should be ready to proceed without any adjournments at that time, and your Lordship would not countenance any delay.

10 The third point is that the Government's case, insofar as it was known on the basis of the information the Government had about the claim, was given to my learned friend in July of 1948 and at that time they were asked for any amendments to the claim and certain particulars were to be supplied not later than the 1st of September in order to give Government counsel an opportunity to prepare
20 the defence.

 And No. 4: Mr. Kagetsu is a man of means, and my learned friend would not deny he had sufficient money to proceed to Vancouver last summer to prepare his case and consult with his local counsel on his defence.

 The fifth point: Subsequent to the letter of July 15th, 1948, to my learned friend, there was correspondence and some interviews, both with Mr. Norris and Mr. Baldwin, all to the
30 effect that the Government required additional

particulars of the claim -- that is the original claim, we not having received the amended claim at that time, and they were advised if Government counsel had not those particulars the Government would proceed with the cross-examination.

10

The reply the Government counsel received from my learned friend as to these particulars was that the Government was not entitled to those particulars: First, the Government had sold the property en bloc, and, secondly, it was part of their case.

And the seventh point is the information now supplied does not cover the points made by your Lordship yesterday completely. It is only with respect to the timber limits and does not cover the values placed on item 2 of the claim.

20

It does not give the value of the timber and does not give a breakdown of the \$142,000.00 roughly.

30

And in addition to that the covering letter of November 9th from Mr. Norris -- in one paragraph there clearly indicates the claim is a guess because Mr. Schultz did not estimate the timber on 276 and 504; and the claimant's solicitors now say the estimated value of the timber now examined by Schultz is 50,096 feet. I suggest that in itself indicates a guess, because that exact figure has been taken in order that the total may add up to thirty million.

Discussion.

THE COMMISSIONER: That is a very small item.

MR. McPHERSON: It is a very small item.

And in addition to that, my lord, this report of Mr. Schultz's is an inspection report of various blocks of timber. I have the following comments to make on the report now that it has been filed, and these are preliminary comments only.

10 THE COMMISSIONER: Which report are you referring to now?

MR. McPHERSON: This is the small report.

THE COMMISSIONER: Let us see what exhibit numbers they have. Exhibit 14 you are referring to now?

MR. McPHERSON: Yes, I am referring to Exhibit 14, my lord.

With respect to Exhibit 14, I could arrive at the values by multiplying by \$4.00 a thousand.

20 As Mr. Kagetsu stated yesterday -- on the other hand the report itself indicates in the last paragraph, "In order to satisfactorily appraise the timber values remaining, logging plans and inventories of the Tsable River Logging Company should be made available. Alternatively an air and ground forest survey would be the most efficient manner covering information." Indicating that the gentleman who made this inspection, while he said on the opening he inspected 504 and the following blocks including 504 and 276, the body of the report at

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page 1 says, "Block 504 -- standing timber appears to exist in the northern portion of Block 504", which would indicate that he did not inspect it; and 276, "timber appears to exist along the south boundary of Block 276. An examination was not made of this area so no estimate is submitted."

10 THE COMMISSIONER: Now this report, I take it, is being filed. It will be relied on as proof of some claim. Now if the report is incomplete, does that affect the situation as far as you are concerned, Mr. McPherson? It is simply a weakness in the proof, is it not?

20 MR. McPHERSON: Yes, except for this very important point. In the case of Block 217 -- particular reference to 617 referred to on page 1, you will note that this report says there is still 10,125,000 timber standing on that block, and that is so fantastic, in view of the fact that this property has been logged, and has been under logging operations since 1943, and that figure is so fantastic the Government counsel is considering whether we should have a new cruise made by Mr. Eustace Smith to find out what timber is there and cross-examine the man who made the report.

THE COMMISSIONER: In other words, you are seeking time now to have your own cruise made so that you can proceed with cross-examination?

30 MR. McPHERSON: Yes, that is the second string to

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my argument this morning.

The first point I am making, and I do this with all deference to my learned friend -- they have come here before your Lordship and taken up your Lordship's time and that of other counsel in presenting a claim when they are not ready to proceed, and they are now putting the Government counsel in a position of proceeding on information not supplied.

10 And the second point is Government counsel wishes to consider and discuss with the liquidator and his experts (that is the liquidator's experts) the desirability of making a new cruise and find out what timber is there and what timber has been taken off this property.

And in addition to that you have a claim for the agricultural land, which has not been spoken to yet because I could not make up my
20 mind what to say on that point.

You have the new claim for agricultural land and I would like to consider whether it is suitable for agriculture.

THE COMMISSIONER: That does not amount to very much. The total claim is only \$1700.00 odd dollars, and is part of a claim which in the aggregate runs to \$500,000.00.

MR. McPHERSON: That is a matter which my learned friend should have taken into account and been prepared to withdraw the claim, and as
30 they are not prepared to do that I feel the

Government should have the right to reply.

True, it is only \$1700.00, but I feel Government counsel has been ~~ready~~ to go ahead with this case right from the start and I am obviously of the opinion that this case will continue. This report is not satisfactory and if it does continue as in the past, we will be another week or a week and a half on this case.

10 THE COMMISSIONER: Getting down to practical things, Mr. McPherson, supposing you do decide you must have a further cruise of these blocks enumerated in item 2, how long would it take to have the cruise made?

MR. McPHERSON: In the first place, I understand it depends considerably on the weather, and I understand it was snowing there the first day Mr. Schultz was making the cruise, but I am given to understand once a man gets on there it would take anywhere up to ten days. This cruise was made in two days.

20 THE COMMISSIONER: Can you get information from Mr. Smith as to how long it would take?

MR. McPHERSON: He tells me it would take ten days.

30 Taking all these things into consideration, and I am very anxious to handle these corporate cases, but I have to proceed with the argument on all the other cases immediately after this case, and it is essential that I should be finished with these cases by the 1st of December at the very least, and if this case was being continued I could have worked out

my plans accordingly, we would have been through.

But if your Lordship can see fit to adjourn this case until the New Year, then I could consult with Mr. Hunter, and he would be able to handle the case in the New Year and there would be no necessity for any further adjournment then.

10 An adjournment of ten days at this time will leave me in a most embarrassing situation, and I do not consider my embarrassing situation is due to my own negligence, and I would suggest there should be an indefinite adjournment.

THE COMMISSIONER: And you pin your application for adjournment, as I gather, on two grounds: One, the necessity of the claim as reported in Exhibit 14 -- that you must have a cruise made of these blocks; secondly, that you must have an examination made of the agricultural land in terms of the claim that is made in respect
20 of it.

MR. McPHERSON: Yes, my lord, and the third point, I consider most important, and that is I am placed in this position due to the fact I could not get the information as your Lordship
30 directed some little time ago.

THE COMMISSIONER: What have you to say about that, Mr. Baldwin?

MR. BALDWIN: First of all, Mr. Commissioner, I would like to ask for a short adjournment here now, in order that my learned friend and I may
30 discuss the matter and also with Mr. Norris,

who is the claimant's senior counsel on this matter.

w If I might interject now before going on with that, I believe my learned friend is aware, in any event, that we are having a fuller examination made of the Deep Bay Logging limits.

10 THE COMMISSIONER: It is unfortunate from my point of view that this was not done long, long ago. However, we are faced with the fact now. Yes, I will be glad to give you an adjournment, Mr. Baldwin, to give you an opportunity to consult with your associates. Supposing we adjourn until 11 o'clock. Would that give you sufficient time?

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Very good.

20 MR. McPHERSON: May I speak to another matter at this time, Mr. Commissioner. Mr. Hogg is here now and if this case is adjourned for a few moments I think Mr. Hogg would like to discuss the three cases that he is interested in. You will recall Mr. Wismer spoke to you about it.

THE COMMISSIONER: Just a moment, Mr. Hogg. I will excuse you gentlemen.

MR. HOGG: I am not in a position, Mr. Commissioner, to either indicate that I am withdrawing these claims or going ahead with them.

THE COMMISSIONER: When do you expect to be?

30 MR. HOGG: Within the course of a week.

Discussion.

Those are the Canadian Saltery Limited, Howe Sound Fisheries Limited, and Burrard Fish Company cases.

THE COMMISSIONER: Well, supposing I put it down for Monday morning. There is a holiday intervening and you can speak to them then.

MR. HOGG: Yes, I shall be ready then.

THE COMMISSIONER: Will you speak to it then on Monday morning?

10 MR. HOGG: Yes.

THE COMMISSIONER: Now, Mr. McPherson, there is another matter I wish to see you about relative to Mr. Russell. I wonder if I could see you in my chambers now.

MR. McPHERSON: Yes, I may say I have arranged with Mr. Russell to see you today.

THE COMMISSIONER: We will adjourn then until 11 o'clock.

(PROCEEDINGS ADJOURNED UNTIL 11:00 A.M.)

20 (PROCEEDINGS RESUMED AT 11:00 A.M. PURSUANT TO ADJOURNMENT).

THE COMMISSIONER: Yes, Mr. Baldwin?

MR. BALDWIN: Mr. Brewin will speak to this.

MR. BREWIN: My lord, we feel that we cannot oppose the application for an adjournment, but we feel that this is different from a lawsuit. It is a public inquiry, and I do not want to follow my friend in all these arguments and comments, or get into any controversy with him, but we do feel if there is any question of either side being taken by surprise, the way this

30

Discuss on.

thing has developed -- we should not oppose any adjournment. Of course it is expensive to us, but we have contributed to the situation that has developed, and we do not oppose the application that my friend has made.

THE COMMISSIONER: Well, thank you, Mr. Brewin. I am most reluctant to allow any adjournment if it should not have been necessary, and I thought every possible step had been taken earlier on to avoid such a thing happening.

10 I have now been engaged in this inquiry for a year, and there is every indication that the remaining personal claims alone cannot be finished until the end of June, so you will appreciate I am very unhappy at the thought of an adjournment, and I am wondering whether this might be a solution to it: If I direct the claimant to go on and put in his claim or the evidence that he is proposing to adduce --

20 is that going to cause embarrassment to Government counsel, when it is understood at the conclusion of the claimant's case my disposition would be to allow some little time, if any additional time is needed, in order to make the cruise as indicated the Government counsel desires to have made, in face of the difficulty that we have encountered yesterday and today.

MR. McPHERSON: My lord, the only problem there that

30 would involve counsel would be this: In going

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ahead with the claimant's case at this time, Government counsel might feel at a disadvantage in cross-examination of the claimant's witnesses by not having information he might get subsequently. I think that is a minor point.

10 Another point, I would like to have an opportunity to discuss with Mr. Hunter is this: If an adjournment was considered necessary at the end of the claimant's case, Mr. Hunter would then be shouldered with the responsibility of putting in the Government's defense, and I would like to have an opportunity to discuss with him whether he feels he should either be present or take part in the claimant's case, in the cross-examination of the claimant's witnesses, as he will have to take the case subsequently because I do not feel now it would be possible to finish this case before the end of November knowing there is another cruise being made by then which will take
20 ten days. That is November 20th before they will have their present case completed through their own witnesses. Now, in that case it would be Monday --

THE COMMISSIONER: Now that is something new. That is something I have not appreciated. Is it true you are not going to be ready to complete your case until you get this further cruise?

MR. BREWIN: I think in a sense that is correct,
30 my lord. We do not know that it will take all

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of the ten days that is mentioned. The whole trouble with this is the more it is developed, we get something more.

I entirely appreciate what your Lordship has said about the unsatisfactory nature of having delays but I feel if we are going to have an adjournment at all, I believe it might even save time to have it adjourned at this stage.

THE COMMISSIONER: It is the case, is it, that the claimant is not ready to complete his case?

10 MR. BREWIN: Well, of course, we have evidence to go on with, and my learned friend could commence with the cross-examination, and so on, which would occupy the intervening time and we would then be able to put in all our case. We would have to face that, if subsequently we found other material that it was not necessary at this stage we would have to use it in cross-examination, and we could go on if we had to, but we feel if there is to be an adjournment
20 it might be better to adjourn it as it stands now, because Mr. Kagetsu will have to come back again later at any rate.

And there is another thing in regard to the delay. The time might not be entirely wasted in that there are other cases and other matters in connection with this inquiry that can be prepared and go on, which would have to go on at sometime.

30 THE COMMISSIONER: Of course the difficulty with that

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is this: A program has been laid down, and the necessity for a lengthy adjournment virtually throws that program out the window. It is most unsatisfactory from my point of view, and yet the necessity for it is the direct result of the failure of the claimant to frame his claim in the way it should be framed.

10 MR. BREWIN: Well I don't want in open Court to go into the whole background of it, and I think your Lordship will appreciate there were special circumstances which I do not want to discuss now.

THE COMMISSIONER: Well perhaps it would be just as well not to go into the details of it. The net result of it is that both counsel would prefer to have the whole thing thrown over, is that the situation?

20 MR. McPHERSON: Well, my lord, I guess I would have to prefer that, although I reluctantly raised it from a personal point of view, and I would like to say in regard to the new cruise that is being made, your Lordship will appreciate the fact if that cruise were to be available in ten days from now, Mr. Kagetsu and all the other witnesses would be finished -- but if I had that cruise it would certainly assist me but I feel, and very reluctantly, that I cannot go on at the present.

30 THE COMMISSIONER: I am afraid there is not any alternative. I am going to adjourn this claim now until Monday morning, and, in the interval, I will direct the solicitors for the claimant

Discussion.

to amend their claim as I directed yesterday so as to set out the quantities of timber which they allege are to be found on the different blocks enumerated in item 2; the values which they claim for that timber, and also the values which they claim in respect of the other items enumerated: that is, items other than timber enumerated in item 2.

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There should be no difficulty in filing that by Monday so that we shall all know what the claimant is proposing to establish, and what the Government has to meet, and I hope that no further application will be made for an amendment, and I can tell you quite frankly a very strong case would have to be made before I will accede to any further amendment. Now, is that quite clear as to what is required?

20

Item 2; detailed quantities alleged to be contained in the various blocks; the values of that timber; the values assigned to the other items, such as foreshore rights, booming grounds, and so on.

And in view of the fact that counsel has been furnished with the figures in relation to the items contained in 3, 4, and 5 -- those detailed sums which make up the aggregate claim, should also be set out in the claim.

30

And on Monday once the amended claim has been filed, you may take it that there will be an adjournment for such time -- can

Discussion.

counsel agree now on the time, or would you prefer to make it indefinitely? I think it would be desirable to fix the time, because Mr. Kagetsu is here from Toronto, I understand, and rather than have it in the air it would be much better to have a definite time fixed.

What do you say, Mr. Baldwin?

10 MR. BALDWIN: My lord, with respect to supplying the quantities on the various blocks, that would be nothing more than a guess. In the letter I gave my learned friend yesterday evening, we complied as best we could with your Lordship's direction of yesterday.

THE COMMISSIONER: Mr. Baldwin, are you not confusing claim with proof? You have presented a claim of \$142,000.00, and it is inconceivable to me that you have not something on which to base that claim. That was not plucked out of the air.

20 MR. BALDWIN: It was, as I said yesterday, it is an estimate by the claimant of the total amount on these areas.

THE COMMISSIONER: Very well. Let us know finally what the estimate is in respect of each item, and if you fail to prove it, that is that. Surely after this first claim was filed in November, 1947, by this time you would have some information as to how these total items are made up.

30 MR. BALDWIN: The best information we have, my lord,

Discussion.

is what we have now -- the scale under that timbermark and the amount remaining as shown by the inspection in C.D. Schultz & Company's report. That is far better than any guess the claimant may make.

10 THE COMMISSIONER: That is evidence. The amended claim is in the nature of a pleading, and any solicitor who has ever drawn a pleading knows that his total claim is made up of certain items, and he has presumably evidence to support the various items, because he knows what he is aiming to prove. And I want to know what you are aiming to prove, and I want it in black and white, because there has been so much vacillation in the claimant's claim, it is important from my point of view it should be pinned down to something.

MR. BALDWIN: With the greatest respect, item 2 was all sold by the Custodian as one
20 block.

THE COMMISSIONER: That is immaterial.

MR. BALDWIN: Shortly it is the value of that one block.

THE COMMISSIONER: Not in my opinion. You are asserting a claim of \$142,000.00 and presumably you know how it is made up.

MR. BALDWIN: Yes, we say the timber was worth \$4.00 a thousand and the amount of timber on those limits --

30 THE COMMISSIONER: Well let us have it clearly in

your claim so that it is clearly expressed once and for all in the claim, and when it comes to proof you have these documents which were put in this morning which I take it you rely on in part, and the same thing I direct should be set out -- the details of items found in 3, 4, and 5, so that I know what you are seeking to prove and the defence knows what it has to meet.

10 MR. BREWIN: My lord, we will furnish this information but I take it your Lordship appreciates fully that we may be in a position to argue that a separate block, for example, might be only worth so much, but taking the whole thing together it has an appreciated value.

THE COMMISSIONER: Yes, that is beside the point. That is a matter of evidence. You might say on these ten blocks there being that much timber, they are worth more by virtue of them being contiguous, or something to that effect, but that is not a matter of pleading. I am

20 directing you to furnish the particulars.

MR. BREWIN: Well, we will furnish the particulars, my lord.

THE COMMISSIONER: And they can be brought in in the form of an amended claim.

MR. BREWIN: We will furnish an amended claim and I suppose we shall have to amend if it is satisfactory.

30 THE COMMISSIONER: Well I hope it is more satisfactory

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than those two that have been filed.

We will extend this until Monday, and the amended claim is to be filed at that time. You see there is no sense in Government counsel going out to prepare his defence in respect of the claim that is now framed and then be told two weeks or a month hence that the claim is something radically different.

10 MR. BREWIN: Yes, I appreciate that, my lord. We will give him the basis on which we are making the claim.

THE COMMISSIONER: All right. We shall have that filed between now and Monday and the amendment shall be spoken to on Monday morning.

Can we get anything to go on with now -- say, for instance, a personal claim?

20 MR. McPHERSON: Well may I deal first with the second point: Your Lordship asked Mr. Baldwin for how long we should have an adjournment. I will take that up with Mr. Hunter, and we can speak to that on Monday morning.

THE COMMISSIONER: Yes, it is possibly desirable that both of you should have a little time to think over what length of time you need. That can be spoken to on Monday morning.

30 MR. McPHERSON: And the other matter of Mr. Kagetsu's personal claim as far as I know, I would assume it could go on on Friday or Saturday, but I would like to check it with Mr. Hunter first. That is the house and car.

Discuss on.

THE COMMISSIONER: Well subject to what Mr. Hunter has to say, do you think he would be ready say on Friday with the personal claim?

MR. BALDWIN: Oh yes, my lord, there are only two items as my learned friend says.

10 THE COMMISSIONER: Subject to what Mr. Hunter has to say, we will plan to proceed with the personal claim on Friday, and I will ask you to communicate with the Secretary if anything stands in the way of it, Mr. McPherson. You had better let him know anyway.

MR. BREWIN: I don't know whether Mr. McPherson will be in this situation -- and I don't know whether we should do it now at this stage. Can I discuss with your Lordship what will be going on next week? I mention that because Mr. Hunter made a suggestion to me there was some legal matter he wished to argue and I have not seen him since.

20 THE COMMISSIONER: I am in counsel's hands and anything that you agree on to proceed with is satisfactory to me, and perhaps if you consult Mr. Hunter -- I guess it is only Mr. Hunter who is concerned in that.

MR. MCPHERSON: Yes.

THE COMMISSIONER: It will not be yourself, Mr. McPherson. Of course there is the argument.

30 MR. MCPHERSON: Of course if this case is adjourned until Monday, it will give me a few days to work on the corporate claims.

Discussion.

THE COMMISSIONER: If counsel will consult with one another, and let me know what case we can proceed with on Monday, and we shall now adjourn until Friday morning.

MR. McPHERSON: I telephoned Mr. Russell and it is impossible for him to be here until four today and if that does not suit your Lordship, it is possible he may come on Monday if your Lordship could state a definite time.

10 THE COMMISSIONER: I think we had better set four o'clock on Monday. It is going to take a little time.

MR. McPHERSON: Yes, I think it will take a couple of hours, anyway.

THE COMMISSIONER: Very well, we will adjourn now until Friday at 10:00 a.m.

(PROCEEDINGS ADJOURNED UNTIL FRIDAY,
NOV. 12/48 AT 10:00 A.M.)

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I hereby certify the foregoing to be a true and accurate report of the said proceedings.

E. R. Blythe
Deputy Official Stenographer

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