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Vancouver, B. C.

November 23rd, 1948. 10.00 a.m.

(PROCEEDINGS RESUMED PURSUANT TO DJOURNMENT)

THE COMMISSIONER: Yes, Mr. Baldwin.

MR. BALDWIN: I will call Mr. Fred Brown, my lord.

FRED BOYD BROWN, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Brown?

A Vancouver.

Q What is your occupation?

A Timber business -- logging.

Q How long have you been in that occupation?

A About 28 years.

MR. BALDWIN: I don't know if your lordship wishes me to pursue Mr. Brown's qualifications or not. He was before you in the Royston case.

THE COMMISSIONER: No, I do not think his qualifications will be challenged.

MR. BALDWIN: Q; I show you a map of the south half of Vancouver Island --Exhibit 3, I believe it is in this case.

THE COMMISSIONER: Exhibit No. 4.

MR. BALDWIN: Q; Exhibit No. 4 in this hearing. Do you have any timber in any of this area?

A Well, we operate a piece of timber for the Van West Logging Company at Royston which is right behind this -- right in here.

Q I see, and you purchased that timber from who?

A From Mr. Stekko -- the Stekko family.

Q And what stumpage did you pay for it?

MR. McPHERSON: I will object to this question until the witness states what year it was bought.

THE COMMISSIONER: Yes, let us have the year it was bought first.

MR. BALDWIN: When was it bought, Mr. Brown?

A In June 1945.

Q And how much did you pay for the stumpage?

A We don't know -- until you cut it up. We assume it was around $4.75.

Q That was the basis of your purchase?

A Yes, we bought it at an upset price, but we figured we were paying for it at approximately $ 4.75.

Q How far is this timber and in what direction is it from Deep Bay?

A It is 12 or 15 miles north of Deep Bay.

Q And how far from your booming grounds was the -- well you might say the centre of gravity of your timber area, -- the average?

A From ten and a half to eleven miles -- approximately eleven miles.

Q Ten and a half to eleven miles to your booming grounds? A. Yes.

Q And there was road construction involved in taking this timber out, I presume, Mr. Boyd?

A Yes, we built a truck road in there. It had been operated by railroad, but we did not use the railroad. We put in our own truck road direct.

Q I see. Now was this timber that you bought from Stekko -- I presume you can tell me -- can you tell me was it in the E. & N. belt?

A Yes.

Q Was it exportable? A. Yes, supposedly.

Q And royalty free? A. Yes, and royalty free.

Q Now what do you mean by saying it was supposedly exportable? A. Well, the Timber Control have put a quota on the export of Crown grant timber, and the quota allotted to us was a very small one, so we were only able to export a very small percentage of what we had been logging.

Q Well when you bought that timber, you were of course, aware of that ban being in, weren't you?

A Yes, but the Act was at the time -- that six months after the war was over we would have the right to export it again but that has not taken place yet.

Q Well, at the time you bought that timber did you consider that an element of value -- the exportable feature? A. Yes.

Q And about what would you assign to that factor of the value -- how much?

A Oh probably anywhere from 50 cents to a dollar a thousand. W here you have the privilege of selling it on the two markets you usually get more for your logs when you have exportable timber, instead of one, that you have to sell locally

entirely.

Q And that ban, I suppose, was in effect in 1943 and '44? A. Yes.

Q Now were you aware of the sale, or the offer -- or the invitation for tenders on the Deep Bay property? A. Yes. I think nearly all of the operators were aware of all the timber that was being offered for sale at that time by the Custodian.

Q I show you an advertisement which calls for tenders, and I point out to you -- did you ever see an advertisement such as that?

A Yes, yes I have.

Q I will read to you the first paragraph:

"This timber is offered for sale on the understanding that the purchaser will undertake to commence immediate operations".

What effect would the presence of that clause in this call for tenders have upon you as a possible purchaser? A. Well, we were -- at least I was purchasing it for an American company, or was representing an American Company and if we could not hold it until the ban was lifted to some extent, and we had to operate it immediately, it would have the effect that we probably would not have bid on it, to that extent.

Q You say you would not have bid on it?

A If that was part of the contract that we had to log it immediately, and there was a ban on the export of logs, I doubt whether we would have bid

on it at that time -- on a small tract of timber like that.

Q Well there was a ban on the export of logs, was there not? A. Yes.

Q And that would have the same effect presumably on others.

THE COMMISSIONER: Well now, do not lead the witness. Let us get the evidence from him.

MR. BALDWIN: Q; What would the effect be upon other possible purchasers who had the same interests in the American market as you had?

A Well, it is hard to say. There was some American spot timber at that time for immediate operation, but they were larger tracts, the ones that I recall, but on a small piece of timber I think it would have affected a lot of the American buyers, if they were forced to operate it immediately and continuously, yes.

Q It would have affected them how?

A That they might not even bid on it.

Q What do you think the effect --suppose you did bid on it, what would be the effect of this clause I have referred to on the price?

A I don't think it would make very much difference, because you knew the competition that existed here with your local mills, and anybody in the Industry would have a pretty fair idea of what they were going to bid on it. Either you would not bid at all, or you would bid high enough to get the timber. It was fairly general

knowledge what timber was worth.

Q Well let me put it this way: supposing you had decided to tender a bid, would the amount of your bid be governed in any way by the presence of this cluse?

THE COMMISSIONER: The witness has said no.

MR. BALDWIN: I don't think so, my lord.

THE COMMISSIONER: All right. That was what I understood to be the effect of his answer.

Q What was the situation, Mr. Brown?

A I would say if we bid on it it would not make much difference as to the amount of money we bid, but it might make a difference whether we would bid or not.

MR. BALDWIN: Q; What was the trend of the market through 1941, '42, '43 , '44 and '45?

A It was definitely up. I mean the value of the timber was increasing, to my recollection; not so much in '41 and '42, as it did in '44 and '45.--- there were the biggest increases in value in those years.

THE COMMISSIONER: Q; What was the situation in '43, Mr. Brown?

A It was starting up. It was definitely better. People were looking to buy timber at that time, in quite a few instances.

MR. BALDWIN: Q; Now, you paid $4.75 for this stumpage that you bought from Royston. What was the E. & N. to your knowledge, selling timber for in that belt?

THE COMMISSIONER: Well now, fix the time please.

MR. BALDWIN: Q: At the time that you bought?

A In '45 --

Q In June of '45? A. Well, they had raised their prices at that time. I personally had not been in direct contact with any sales that were made, but my impression is that it was around $3.50 to $3.75.

Q Do you recall what their prices were in 1944?

A No, I don't.

Q Nor in 1943? A. No, in '42 we were endeavoring to purchase a small area -- just several million feet, and at that time it was $2.85 on their cruise, but it was only a fringed piece of two or three million.

Q Would you expect to pay less or more for a small fringed piece as you descibed it?

A I would say less.

Q Less? A. Yes.

THE COMMISSIONER: And that I take it, was timber that had not been opened up.

A Yes, that is right. It was just an area lying outside the lines we were logging; but I think that was their general practice as a matter of fact at that time. It was around $2.85 for any timber that they were selling.

MR. BALDWIN: Q; How far from the booming grounds was that timber? A. The E. & N. timber you mean?

Q Yes, that timber you speak of?

A Oh, it was six miles.

Q Six miles? A. Yes.

Q Was the E. & N. selling to any purchaser that came along? A. No, I wouldn't say that. They try to confine their sales -- it has been their practice for years -- to operations -- mill operations on Vancouver Island rather than to sell to open market loggers. That is still their general policy. It is not true in every case, but it is the general policy.

Q What utilization did you make of the timber at Royston that you bought from Stekkl?

THE COMMISSIONER: Well, I think you had better explain to the witness what you mean by that. I take it you are referring to the minimum --

MR. BALDWIN: Yes, I will rephrase the question.

MR. McPHERSON: Before the witness answers this -- while I am not objecting to this examination I am not admitting anything that had to do with logging in 1945 had anything to do with logging before that date.

MR. BALDWIN: That is a matter for argument, I presume.

THE COMMISSIONR: Quite right.

MR. BALDWIN: Q: Down to what D.B.H. were you cutting in Royston --

THE COMMISSIONER: In 1945.

MR. BALDWIN: Yes. A. We did not actually produce any logs until 1946 and we were cutting down to an eight-inch top at that time.

Q And what D.B.H. ? A. 12 inches approximately.

Q Were you operating in 1943? Were you cutting?

A Not in that area. We were cutting in other districts.

Q In what district was that?

A Inglewood -- Nimpkish Lake area -- we were operating there at that time.

Q And what diameter were you operating on -- down to what? A. The same, down to 12 D.B.H.

Q And what is the nature of that stand?

A Well, it is on a general average bigger timber than the Royston timber. There is some timber at Royston as big as the Inglewood timber but the majority of it isn't.

THE COMMISSIONER: Q: Are you able to say as to what the general practice as to utilization was in the period of '43 and '44?

A I would say the general loggers were -- or very few of them -- going down below ten-inch tops, except some small mills that were logging for their own operations; but for the open market it would be difficult to sell logs under 10-inches.

THE COMMISSIONER: I observed in reading Chief Justice Sloan's report, in commenting on the Haysmith experimant, he refers to the original logging having been down to 9, to 10 inch tops, which he describes as "close utilization".

THE WITNESS: That is right.

Q You agree with that? A. I agree with that.

MR. BALDWIN: Q; Did you buy any timber in 1943, Mr. Brown?

A No, I cannot recall that we did.

Q In '44? A. No, we sold timber --

Q Well -- A. Go ahead.

Q I beg your pardon? A. We sold some but we did not buy any.

Q You sold some? A. Yes.

Q And what price did you sell for?

A It was not Crown granted timber, it was licensed timber.

Q Where was it? A. At Vedder River.

Q At Vedder River? A. Yes, that is at Harrison Bay.

Q What year was that? A. In 1944.

Q And what did you sell it for?

A It would average about $2.75.

Q $2.75? A. Yes.

Q That was not Crown granted timber?

A No.

Q It was not royalty free?

A No.

Q And not exportable? A. That is right.

Q If that had been royalty free and exportable, what would you add to that stumpage price?

A Well, you would probably get the difference in royalty at that particular time. It carried $1.00 royalty. We would probably get $3.75 or $4.00 for it.

Q What was the nature of that stand compared with the Royston stand? A. Well, it was different entirely. It was higher grade

timber and probably a little rougher to log but a much higher selling price than the fir and cedar. There was more No. 1.

Q What price would you have been prepared to pay for the timber in Royston that you bought in 19452- in 1944 -- in June 1944 just one year prior?

A Well, it was hard to say, in looking back as to what conditions are. We would not have been prepared to pay as much for it in '44 as we would in '45. That is sure.

Q But you cannot estimate how much less?

A No, I can't, it is hard to judge.

Q I show you Exhibit 23, on this hearing. This is a scale -- a record of the scale cut in"1-C-6 Crescent", from blocks 195 in the Cowichan area and 403. Will you let me have your opinion as to the quality of timber shown on that scale sheet? A. I would say it was a good average quality., and in regard to fir, if anything, it is a little above. The cedar in that area is not considered particularly good, especially for high grade shingles or lumber; but the fir and hemlock I would say, is of a very good grade.

THE COMMISSIONER:

Q What is that exhibit number again?

MR. BALDWIN: 23, I believe, my lord. It is the extract of the sale by the Stoltze Logging Company .

THE COMMISSIONER: I just want the number.

MR. BALDWIN: Q I show you Exhibit 2, which is the record

of the scale taken under mark "2-X-9 crescent". You will observe the percentages here on the bottom of the first page. What do you say as to that stand of timber?

A Well, this is a higher percentage of fir, apparently, and very similar to our Royston timber. I think it is very good. It is good average fir. It is a desirable type of timber on the present market.

Q Thank you, Mr. Brown, your witness.

CROSS EXAMINATION BY Mr. McPHERSON:

Q Mr. Brown, you have some connection or had some connection with the Canadian Forest Products?

A Yes, sir.

Q And am I correct that in March 1942, the Canadian Forest Products purchased a large tract of timber from Michael F. Cudahy ?

A Yes.

Q And am I correct that that was one of the biggest timber deals in British Columbia?

A Well, not the purchase from Cudahy, I don't think it was. Our main purchase was from the International Harvester Company of which the Canadian Forest Products was a subsidiary.

Q Now that was a deal based on the going contracts?

A Yes, I would say that the Cudahy deal was in the neighborhood of 300 or 400 million.

Q And that would mean that the stumpage was based on the going price and so much for towing -- less

royalties? A. Yes.

Q And it was also based on the species and grade?

A Yes.

Q And am I correct under this contract the stumpage ran from 20% down -- A. Yes.

Q -- to 6%? A. Yes 6% on the hemlock I am not too familiar with that, it is a long time ago.

Q Well anyway, the stumpage did not go 25%, did it?

A No, 20% was the highest.

10 THE COMMISSIONER: Mr. McPherson, will you explain to me just what this term means, 20%.

MR. McPHERSON: Mr. Schultz gave evidence that 20% was the proper percentage to pay. Your lordship asked him if he had any idea of averages.

Q Now I take it that there were all those discounts, on which you arrived at the average -- namely the payment for towing and stumpage on logs and it would be below that, because you would have to deduct 20% first?

20 A It would be below the gross selling price. It would be probably $3.00, deducted from the gross selling price before the stumpage price was figured -- that would be for royalty and towing and 2% discount.

Q Would you think 25% discount for cash, on a cash deal for timber, would be a reasonable discount?

A Yes, I would think so, depending on the contract, but timber has always sold at a higher rate of

30 stumpage on a stumpage basis than it would on a

cash basis.

Q Do you know any cases where discounts would go higher than 25%? A. I cannot think of any particular instances, but I would think there have ben numerous occasions.

Q In any event you don't think that 20% discount for cash would be unreasonable?

A No.

Q Now you operated this timber that was purchased from ~~my~~ Cudahy2 by rail, didn't you?

A Well, we sold out so my personal experience was just opening up. We didn't actually cut any of Cudahy's timber. It is being cut now, but not under our operation.

Q Can you give his lordship any figures at all on the cost of shipping logs over the C.P.R. line and on Vancouver Island, per thousand?

A No, I couldn't. I hve not had any personal experience with that at all.

Q Well, you have operated logging railroads?

A Yes.

Q What would you estimate was your cost in shipping over railways?

A Well, that would depend on what date.

Q Say in 1943? A. Well, it would depend on the length of haul and a lot of things would enter into it. In the case of the Nimpkish Lake the last logs we hauled out of there was $1.25 to the beach and our rail at the other end -- the cost was $1.50 and then we would haul to

the lake and then there would be the towing out from there and that is the last figures I remember in 1943, but it would be considerably lower than that.

THE COMMISSIONER: Q: What was the length of your haul from the lake to salt water?

A 12 miles, and we were rather proud that our cost was only $1.25 at that time.

MR. McPHERSON: Q; And then you had the haul from the logging operations to the lake?

A Yes.

Q Was that by truck or rail?

A We were hauling by truck, but they are hauling by rail now.

Q And that involved an extra costs?

A Yes, $1.50.

Q So the cost of transportation to bring your logs out was $2.75 a thousand.

A Yes.

Q Now with regard to logging by rail, and I suppose it would apply to trucks also, would you agree with me that it was more economical to load the big logs on car than load the small logs?

A Yes, definitely.

Q And you agree with me it is more economical to log big timber than small timber?

A Yes, definitely.

Q And would you agree with me it is more economical to log small timber alone than a mixed operation of small and large?

A Yes, because you would use different types of

equipment -- if you are logging six and eight inch timber it is better to have a small operation by itself and you have special equipment for it.

Q And when you refer to the fact that you had cut down as low as ten -- eight to ten inch top, would you agree with me it is not customary, and it was not customary in 1943, to cut down to a ten-inch top with that general equipment?

A Yes, I think nine and ten inch top was as low -- at least 85% to 90% of the loggers were cutting that.

Q There has been some evidence given here, Mr. Brown, about some land in the Deep Bay area, You are familiar with the Deep Bay area?

A Yes.

Q There is a claim before his lordship for agricultural land, and this agricultural land -- so you may have a picture of it, the agricultural land lies between the salt water and where the timber is being cut. What would you think of having stump rangers inside of your timber limits say -- running a fair half-way into your timber?

A We would not like it personally.

Q Would I be correct in saying that a person buying timber in that background would not like to have stump rangers there because the fallers leave all their equipment in the woods?

A Yes, we have quite a problem at Royston.

Q And isn't there also the problem of fire?

A Yes, that is the most serious one.

Q You stated to his lordship, that you had some knowledge

of the Custodian's timber being for sale?

A Yes.

Q And am I correct that you did carry on at one time some negotiations either with Carl Stewart, or Mr. Kagetsu at Deep Bay?

A We looked at the equipment. I never went in the woods. I had a report on the timber, and for our purposes there was not sufficient timber to warrant purchasing it at that time. At least we did not think there was.

Q How much timber were you told was there?

A About 15 millions as I recall it -- somewhere in that neighborhood, -- 15 to 18 millions.

THE COMMISSIONER: Q; Where did you get that information from? A. Well, I either got it from Mr. Stewart, or I might have got it from Mr. Wray here. I am not sure. That is just a rough memory. I haven't any correspondence on it.

MR. McPHERSON: Q: But you were in touch with Carl Stewart at one time about it?

A Yes, but we were not very seriously interested, and I did not go into it very carefully.

Q Was there a Mr. McLean, a partner of yours at the time, or associated with you?

A No, not in logging.

Q Well, did you at any time discuss with Carl Stewart a possible price of $75,000 for the whole thing?

A Yes, we talked about it. We looked at the equipment. We thought we could use some in our operations, but we decided we couldn't. It was not suitable, and on

account of the small amount of timber in that area we did not pursue it any further.

Q If you had bought the Deep Bay ---

THE COMMISSIONER: There is one question I would like to put to the witness, Mr. McPherson, following up your previous one. How was this figure of $75,000 arrived at? Did it emanate from yourself-- or the prospective purchasers, or from the vendor?

A From the vendor. I think they had a value on the equipment of some $30,000 and the balance they figured was for the timber and for the roads. They had a railroad into it, which we figured had no value from the point of view of operating, because we would have trucked, the same as we did at Royston.

MR. McPHERSON: Q: Now at Royston, you converted it to trucking operations?

A Yes.

Q Why didn't you use the railway that was in there?

A Well, we did not think it was economical. We thought we could bring it out more efficiently by truck. That railway had a lot of high grades and switchbacks, and it was in poor condition and required a lot of rehabilitation and we thought a truck road would be more efficient.

Q Well, would you say the same conditions applied to Deep Bay? A. Yes, I would think so. I would not have used the railway myself if we had purchased it.

Q A claim has been made here by the claimant of fifty-cents on the timber as the increased value of the timber. The claimant argues that 50 cents a

thousand on the timber is the increase in the value of the railway. Do you think that the railway at Deep Bay in 1942 and '43, added anything to the value of the timber?

A Not to my knowldge, no.

Q Now with respect to your purchase in 1943 -- '44 was it that you purchased --

A '45.

Q -- '45 when you purchased Royston?

A Yes.

Q You remarked to my learned friend from the standpoint of American purchasers, you would not have been as interested in buying if there was an export prohibition on the timber?

THE COMMISSIONER: No, I do not think you got it right, Mr. McPherson -- if he was compelled to cut immediately, he said.

THE WITNESS: That is right.

MR. McPHERSON: I am sorry.

Q The point was if you were impelled to cut immediately you would not buy -- that would influence the question of whether you would buy or not?

A Yes, it would influence our own people.

Q Am I correct in 1943 to '44 and '45, there was a shortage of timber?

A Yes, '44 and '45, very definitely.

Q Would I be correct in saying most people who were going into themarket to buy timber were buying it because they needed the logs?

A Yes, that is correct.

Q So this condition of operating immediately inso far as the local market is concerned, would not affect the buyers decision to bid, would it?

A Not the local buyers, no. I was referring entirely to our own operation.

Q And in view of the fact there were these prohibitions on exports, the foreign buyer was pretty well cut out anyway, whether he had to operate immediately or not, wasn't he?

A No, they were looking for timber, and still are, even with the prohibition on Crown granted timber, on the assumption they will change in future. They are still interested.

Q Well, do you say the foreign buyer might have been interested, regardless of the prohibition on export?

A Yes, I think he would have.

Q Now with respect to this clause in the advertisement requiring immediate operation, am I correct that the Custodian had power to compel immediate operation of the timber?

A Well, he had unlimited power over the operations but he did not except in very few instances enforce that that I know of.

Q But he did have the power?

A Yes, he did.

Q Do you think that the American interests would have been interested in timber the size of Deep Bay timber? A. It was possible, yes. They bought small pieces of timber like that in the

last several years -- in the last two years.

Q But you yourself came to the conclusion that it was not an intersting proposition?

A Not for us. We were trying to start an operation that would give us some years of life, and there was not sufficient timber there to justify it in our opinion.

Q The timber that you mention in the Vedder River area at $2.75 a thousand -- was that opened up?

A Yes.

Q It had already been opened up?

A Oh yes, we were logging.

Q Was that a stumpage -- A. Yes, some of it was. The majority of it was on a stumpage basis.

Q You made a remark in passing that you would not have paid as much for Royston in '44 as you paid in '44? Why not? A. Well, so far as our company were concerned, there was a greater need for logs and timber.

Q In '45? A. In '45, yes.

Q Would you agree with me you would not pay as much for Deep Bay in '43 as you would in '45?

A Oh, very definitely, yes.

Q Now in looking at the scale sheets that my learned friend showed you -- exhibits 22 and 23, was it --?

MR. BALDWIN: Yes, that is correct.

MR. McPHERSON: Q; Exhibits 22 and 23 -- am I correct that you really cannot state anything about the value of that timber by looking at these sheets -- that is the market value?

A No, except the general knowledge among the loggers and millmen as to where good timber comes from and where the bad timber comes from , that information gets around.

Q Yes, but when I say the value, I was thinking of the value of it as standing timber?

A Oh, I was not attempting to --

Q I am speaking of the value of standing timber?

A No, you cannot tell that without looking at the timber on the logging ground -- to see how far it is from salt water and the cost of getting there,

THE COMMISSIONER: Any re-examination, Mr. Baldwin?

MR. BALDWIN: Yes, just shortly, my lord.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q You told my learned friend, Mr. Brown, that you did not like to have stump rangers in between your operation -- between your cutting operation and the booming ground?

A Yes, that is right.

Q Well now, when you finish cutting at Royston what do you propose to do? I can explain that question. What do you propose to do? Do you think the land you have cut over will have any value for fruit raising or for agriculture?

A Well, our plans at the present time is to keep it for growing second growth timber.

Q For growing second growth timber?

A Yes.

Q Now in the construction of your -- or rather in the development of any block of timber where road construction is necessary, it is valuable, is it not to have a road already built for you, rather than to have to build it?

A Oh yes, if it is useable it is of definite value.

Q And if you had a railroad grade -- a railroad bed in the timber, that also would have a value, would it not?

MR. McPHERSON: I wonder if my learned friend would not lead the witness in this way in re-exmination. I would like him to ask Mr. Brown a question without leading.

THE COMMISSIONER: Well, with a different type of witness you might, but I do not think it makes any difference with Mr. Brown.

MR. BALDWIN: I will rephrase the question.

THE COMMISSIONER: Well, let us have his answer?

A The railroad grade, if it was going in the direction you wanted it to go with a truck road, you would use it, but you would have to widen it. No railroad grade is wide enough to carry modern trucks over. You would use it as we did at Royston. We used several miles of the old railroad grade but we widened it up and it cost us almost as much as to build a new road through that ground; but you had it almost directly into your timber.- if the grade was all right, to make the haul as short as possible for your trucks; whereas a railroad grade, to keep it to a useable grade of four or five percent would

cover a much longer distance than our truck road does now and therefore we did not use the old railroad grade for that distance unless the railroad grade happened to be suitable.

Q I show you Exhibit 13, Mr. Brown, which is a sketch plan of the Deep Bay operation. Now there is your railway grade coming in from this corner here and there is your timber as shown?

A This is the booming ground end of it.

Q Yes, this is the booming ground end to the east of it? A. Yes.

Q Now would the road -- the old roadbed of the railway be of value to you say from this point here -- the water tank -- the eastern most of those two water tanks down to the booming ground?

A That is the road from here to here?

Q Yes. A. Well, it would depend largely where it was located -- that is --

Q This is the railway, the one that is marked --

A With crosses.

Q With crosses across?

A Well, it could be. You would have to actually see it, for a truckroad and a railroad you don't consider small bridges as a serious thing -- we often put them in, but with a truck road you don't want them in. They rot out on you and there is the danger of fire. For instance at Royston there were several miles of trestles and on our truck road we haven't a single trestle. We eliminated all of them, and that is a desirable

practice in building a truck road; and I don't know whether the road would be of any advantage or not unless you exmmined it. It might have some advantage in certain spots. I don't know that they used it, did they, the operator that is in there now?

Q The operator that is in there now built a new road, but he is also using the other, I understand.

A I see.

Q However, that is a matter of proof later. Now when you told my learned friend that there was not enough timber on Deep Bay to interest you sufficiently to make further inquiries, what amount do you mean by that?

A Well, I was under the impression that there was somewhere 15 to 18 million and we were looking for an operation that would give us some 100 million or other available timber; and I was also given to understand that the E. & N. timber and adjoining timber - that was being held for one or two different mill operations, and was not available to us if we went in. We were not a sawmill. We were an open market operator, or looking for an operation that would not give the C.P.R. any freight and they were more interested, which is only natural, to sell to people who were going to log adjoining to that who would give them freight. That was their general policy.

THE COMMISSIONER: What were the operations in there?

A Chemainus had the timber on one side, and while the Alaska Pine did not have any operation in there, they had applied to the E. & N. for that particular piece of timber. I was told that by Mr. McBain at the time of the E. & N Land Department.

THE COMMISSIONER: Is that all, Mr. Baldwin?

MR. BALDWIN: Yes, my lord, that is all.

THE COMMISSIONER: Thank you, Mr. Brown.

(Witness aside)

THE COMMISSIONER: Do you want to recall Mr. Schultz now.

MR. BALDWIN: I will call Mr. Schultz, but does your lordship wish to adjourn at this time?

THE COMMISSIONER: I think not. Is Mr. Schultz likely to be about another half hour?

MR. McPHERSON: I would think so, my lord.

MR. BALDWIN: I would eepect that the re-examination on 195 and the direct examintion on this, and my friend's cross examination would be more than half an hour.

THE COMMISSIONER: Well, would counsel like to recess now?

MR. BALDWIN: It really makes no difference to me, my lord.

THE COMMISSIONER: Well, we will adjourn now.

(PROCEEDINGS ADJOURNED FOR SHORT RECESS)

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

THE COMMISSIONER: Yes, Mr. Baldwin.

MR. BALDWIN: Your lordship directed yesterday that Mr. Schultz should supply the Commission with

certain further figures about the cut -- 1 8 inches and below on this block 195.

CHARLES DAVIS SCHULTZ, resumes stand.

REDIRECT EXAMINATION BY MR. BALDWIN:

Q Haveyou those figures? Mr. Schultz?

A We compiled that on the whole area-- according to our records the timber under 18 inches is 5 million feet. Our figures are for 4,929,000.

THE COMMISSIONER: Under 18?

A 4,929..... five million feet, which is 10%, and the mature timber we have 7½ million feet standing over 18 inches and 650,000 under 18 inches.

THE COMMISSIONER: Q; That is the timber that was standing when you made your examination?

A Yes.

THE COMMISSIONER: May I have those figures again?

A 7½ million standing over 18 inches; 650,000 under 18 inches.

THE COMMISSIONER: Yes, thank you, Mr. Schultz.

A Now there should be an amendment in regard to cold deck and felled and bucked.

Q Yes, Mr. Baldwin, you may proceed now.

MR. BALDWIN: Q: Now, Mr. Schultz --

THE COMMISSIONER: Excuse me one moment, will you, until I find my notes. Yes, very good.

MR. BALDWIN: We are still dealing, Mr. Schultz with this examination of yours of Block 195. Now was this stump examination made on the same basis

as a commercial cruise of the area would have been made. A. No, that was done for court purposes. We don't usually do our cruising in that manner.

Q Well, what do you say as to the difference between them. How is a commercial cruise carried out?

A Well, there are various methods. Every organization and cruiser probably has its own system. We use a unit system. The difference more left to the judgment of the cruiser. We estimate the timber in volume as we carry along in our strip on the usual work but in this case we measured everything that we could.

Q Did you measure the diameters?

A Yes.

Q And did you measure the length of your strips?

A No, it was all chained and the width of the strip was measured. We used five men on this job whereas we usually just work with two.

Q You said something in cross examination by my friend yesterday about any deviation in this course being multiplied by 25. I would like you to explain that, if you will, please?

A Well, the factor on a 4% examination would be 25. The samples are worked out to an average per acre -- say 40,000 to an acre, and if there is a probble error of 10%,-- that is on the sample -- there would be a probable error of 4,000. That percentage does not increase as applied to the whole pro rata. In the 40

million there would be four million, whihh is still ten percent on the whole. The percentage of variation is constant. Both will be multiplied by the factor of twentyfive, with an increase proportionately.

Q Would would you say as to the relative accuracy of the 20% ocular cruise as compared with your 4% measured cruise?

A To obtain a final volume -- an accurate measure-
10 ment of samples on the lower percentage of coverage-- or let us put it this way -- will you cancel that please? Greater area of sample would not necessarily give a greater -- a better final result than a lower acreage or proportion of sampling, when such samples were measured in detail.

Q Measured in detail you said?

A Yes.

Q And this cruise was measured in detail, was it?

20 A That is correct.

Q Those samples? A. That is correct -- the 20% examination I might add is 20 -- or 10 or 40% examination is for other purposes.-- To get more topographical information , and you get more information on the changes of stand, and it would not necessarily affect the final volume estimate.

Q Now in cross-examination by my friend yesterday, my impressions of your evidence was that Bloddels,
30 for whom you were working at the time, were one of

the few companies that were cutting down to six-inch tops. Is that the purport of your evidence?

A No, necessarily. I think --

Q In 1943? A. Oh, I am sure more managements -- other managements were specifying six-inch tops, In fact, yes, I know that.

THE COMMISSIONER: Well then, Mr. Schultz, you were here when Mr. Brown was giving his evidence this morning, and if my recollection serves me right, he said in 1943 and 1944, 85% of all the operators in the province were cutting down to 14 inch D.B.H., and not lower, I take it?

A I thought he mentioned eight to ten, Wasn't that what he said?

Q Counsel can correct me if I am wrong, but that is my recollection.

MR. MCPHERSON: I think that is what he said. He finally summed it up at that particular time.

THE COMMISSIONER: I may have a note on it here. 85% of logging operators in 1943, were cutting down to nine and ten inch top diameter and not below that? A. Yes. Well, I can think of one, the North West Bay was cutting down to six-inch top.

Q You will notice what he said -- 85%?

A That is right.

Q Do you quarrel with his statement, or do you subscribe to it?

A The proportion -- it is just a matter of judgment I think probably. I think I am of the opinion it

would be a little larger than that.

Q Yes. All right.

MR. BALDWIN: Q: Now, Mr. Schultz, if you were buying a block of timber, and you were having it cruised by someone, what specifications would you require, if you were buying Block 195? What would you tell the cruiser to cruise for, or down to?

MR. McPHERSON: In what year?

MR. BALDWIN: In the year 1943.

A Well, I always liked 12 to 18, or 20 and 20 inches and over, and I would specify a percentage coverage, depending what the purpose of it was for, and I would want information on quality and an estimate on the peelers, if any, and an estimate on the grades, so that I could obtain an estimate of valuation.

Q Yes, the main point of the question was what you would have had it cruised at.

A I see.

Q Now, in direct examination, Mr. Schultz, you gave me a figure of between four and five dollars for stumpage on 195, in '43, and in cross-examination by my learned friend you said you could not put an exact figure on that stumpage because certain factors would have to be determined before you could. Would you tell his Lordship what those factors would be, in the case of Block 195?

A Well, one would be the analysis of the value

of the products to be extracted. You estimate the opening up expense or capital expenditure necessary. And you estimate operating-- the expense cost of operating which would involve all of the detail necessary for roads, and all that detail, and then what terms of the purchase for the block would be a factor, and the terms of contract.

Q By the terms of the contract, what do you mean by that?

A Well, some --

Q Just give me an example.

A Well, if I had two hundred million feet of timber to take out in five years, and I did not have the equipment for it, it would mean I would have to have a certain amount of equipment and buy more to get that two hundred million feet out, and I would think twice about it,--yes, and the time of the contract -- the time you had to liquidate the stand would also be an important matter; and there are other clauses that come into those contracts that affect it.

Q Well now, just taking that. I show you an advertisement. Did you ever seen one of those?

A No.

MR. McPHERSON: My lord, I do not like to object to this re-direct examination, but he did not bring anything about this out in chief, and I have not cross-examined on it.

THE COMMISSIONER: Well, we are not holding counsel

strictly to procedure that would be adopted on a trial. If there is something he overlooked in the first instance, I will allow him to proceed now, but if you have anything further to ask I would allow you that privilege and will permit you to cross-examine him.

MR. BALDWIN: I think this is fair enough re-examination because my learned friend asked for the factors to be considered.

THE COMMISSIONER: I have ruled in your favour, Mr. Baldwin. I do not think you can get anything better than that, can you?

MR. BALDWIN: It was just a remark.

Q Did you answer the question?

A What was the question?

Q I don't recall it myself. I will draw your attention now to paragraph 1.

THE COMMISSIONER: Would you like the reporter to read the question to you?

MR. BALDWIN: I don't think it is important enough.

Q Now I will draw your attention to paragraph 1 whichwreads as follows:

"This timber is offered for sale on the understanding the purchaser will immediately commence continuous operations".

What would be your reaction to that?

A Would that mean in a day or a week after that purchase was completed that operations would have to commence immediately?

Q Well, how would you interpret it if you had seen

this advertisement in the paper?

A Well I would be frightened of that because I would not have an opportunity to make operating plans. If I rush men and equipment into the place, I might be in the wrong place. I would be frightened of that as an operator.

THE COMMISSIONER: I think one might interpret it in a reasonable way and any purchaser would be given reasonable time to get his operation started.

A Yes, I would want that.

Q Otherwise,no operator could afford to take the chance? A: No.

MR. BALDWIN: I take it then that your Lordship takesk judicial notice of the fact that any operator before going into a block would have to have detailed plans made of that block?

THE COMMISSIONER: Yes, he must have.

MR. BALDWIN: Now is there anything else? What else do you say about that? What other effect would it have on you? What other reason would you give for your action?

A It would depend on my position. If I were a well established operator, and had timber reserves and was looking to increase my inventory of standing timber, I m ight be interested in purchasing timber but I would not want to hve to purchase timber that I had to operate tomorrow if I were in that position.

THE COMMISSIONER: Shortly put, you consider the imposition of that term would deter some buyer --

some prospective buyer?

A There is no question of that.

Q Would it have any effect on the price?

A Yes, I think it would. For instance, if I were sitting in a position whereby some body came to me here and offered me the timber for a dollar a thousand and said, "You can have this timber", and I had the money in the bank, and I thought it was a good buy, and that I could get a buy for a lower price, even with the restrictions on it, I would consider it; yes, I would.

Q Have you overlooked the fact that this was put up for competitive purchase?

A Was it an auction?

Q It calls for tenders.

A For tenders--well, I think if an operator thought that a low tender would be accepted, he would try it.

Q Yes, Mr. Baldwin.

MR. BALDWIN: Q: Mr. Schultz, if you were to buy Block 195 in 1943, how would you develop it? My learned friend asked you considerable questions in cross-examination about the logging cost of getting logs out from Block 195, and so on. Now, how would you have developed Block 195 had you purchased it in 1943?

A Well, as I mentioned previously I have not made a study for the valuation, but as far as the system of analyzing that, I would consider all factors. For instance, in that area it is possible to dump logs into Cowichan Lake which

I believe is from eight to ten miles away, and it is possible to do what the present operators do -- haul to rail and load on railway cars. It is possible to do what Mayo is doing in the block just adjacent, and who is operating part of his road, to put a small mill beside the rail, and to operate such as those operators are doing -- the Hillcrest, Western Forest Industries, and a few that are operating in the Cowichan region. I would probably give considerable consideration to a mill, so as to make my handling costs lower if I could finance it.

Q Now in this Exhibit 15 -- your cruise -- your stump examination of 195. Will you tell his Lordship how you arrive at these lines, representing the borders of the areas in which there is standing timber and on which there is felled and bucked timber?

A Well we started on these posts -- which are the posts we found, and offset into the center of those blocks, and measured by chain and compass down the middle, and where we hit the timber edges we plotted them on our map; and then we surveyed through the middle of the block, and as we hit the edges we plotted them.

THE COMMISSIONER: Q: You plotted the timber? by survey methods? A: By

Q By survey methods? A: That is right.

MR. BALDWIN: Q: And do they agree with your areas --

the lines -- do they agree with the lines on the plan of the Forest Service -- Exhibit No. 2, I believe, that you had when you went up there? Do they agree with these?

A Well, you would not get the same area from them. They agree -- but the Forest Service indicates the position of these areas as I pointed out yesterday -- this is for administrative purposes, and it is not supposed to give the exact area or a line.

THE COMMISSIONER: Your survey would be more accurate?

A Oh yes. They don't state that they do that.

Q Well, are the lines shown -- which is it, Exhibit 2?

MR. BALDWIN: Yes, the one of 195. I am not sure which it is at the moment.

A I imagine it is Exhibit 1. That is the one.

THE COMMISSIONER:Q: Is that the one?

A Yes, that is the one, my lord.

Q Do these dotted lines on Exhibit 1 substantially show the remaining timber that is there?

MR. BALDWIN: It would show where they are. For instance, this piece here -- there is a piece there -- you might take it up to his Lordship and show him.

THE COMMISSIONER: That is the piece remaining -- in the left hand upper corner (indicating on plan). A: Yes, that is right. There is that piece there. They show it. They indicate it. And then this piece here. There is another one -- this piece here.

That corresponds to that in general -- and this is felled and bucked -- this is the standing timber here as indicated by that line there, and it may have been when they did this that this was not cut through but it is a general picture of the thing.

Q Yes, that is what I assumed it was.

A It is just a general picture, my lord.

MR. BALDWIN: That is all, Mr. Schultz, thanks. Your witness.

THE COMMISSIONER: Do you wish to cross-examine him on any of this?

MR. McPHERSON: Yes, my lord, I will just ask one or two questions.

RE-CROSS EXAMINATION BY MR. McPHERSON:

Q With respect to this sale -- this advertisement for sale, Mr. Schultz, would you agree with me that people who were buying standing timber in 1943 were buying it because they wanted to log it; that they needed the logs?

A A great many were needing them ad at the same time a large number were buying to increase their timber inventory, because they wanted to be in business a long time, and tey could see a diminishing supply ahead.

Q Well, keeping in mind that this timber was on the market for approximately a year and a half before the liquidator sold it, as the evidence indicated, how did you account for the fact that there were no sales made, even on the

clause you had to operate it immediately -- the negotiations that were going on were not requiring immediate operation and yet they were unable to sell the timber. Now, howdo you account for that?

MR. BALDWIN: I don't know that there is any evidence that there would be no requirement to operate it immediately.

THE COMMISSIONER: I think your friend is referring to the efforts made by Mr. Kagetsu to sell it.

MR. McPHERSON: And Mr. Stewart -- it has nothing to do with the Custodian's office.

THE WITNESS: Will you repeat that?

Q The evidence is that Mr. Carl Stewart, acting for Mr. Kagetsu, and/or Mr. Kagetsu had been endeavouring to dispose of this property for about a year and a half before the Custodian sold it? A: Yes.

Q And there is no evidence that there was any restrictive clause in any negotiation that they had that it had to be operated?

A Yes.

Q Now how would you account for the fact they were unable to sell it when that clause was not in there? A: Well, that is something I cannot account for. It is surprising they could not sell it on a rising market.

Q Well now, Mr. Schultz, you agree with me the Timber Controller, during the period we have been discussing up to 1945, at least had full

power to take over any timber in this Province and to demand the operators should operate it, had he not?

A He had very wide powers, I know.

Q So anyone holding timber in this area was subject to the legal requirement to operate it, in law?

A I suppose.

Q Now, taking into account the war conditions, and the shortage that existed with reference to logs, the clause in this advertisement -- and it also appeared in the Royston advertisement -- you heard that evidence this morning --

A Yes.

Q And in the Royston case the clause was there -- I do not know whether my learned friend will object to this but if he objects I am afraid I will have to agree with him -- but, my lord, you have heard the Royston case, and in the Royston case, whilst there was a clause requiring operation, it was not operated. That is, the Custodian was not unreasonable to insist that it was operated.

THE COMMISSIONER: I do not knowwhether we went into any evidence on that. I think it is a matter of conclusion I shall have to draw.

MR. BALDWIN: The picture we are looking at is before the operator or purchaser goes in.

THE COMMISSIONER: I think that is a matter of argument.

MR. McPHERSON: Q: If you were bidding on the Deep Bay

timber and you read that advertisement, I am correct, am I not, you would assume the requirement to log would have an escape clause in your agreement, if such a condition arose -- such as strikes, labour shortages, and so on, in offering to bid you would assume you would have some protection against acts of God, for instance?

A Well, I would find out about that before I went in.

Q And if you made a bid and you got a contract which provided you did not have to log if there was any stoppage of labour -- if there was any restriction on the output of labour, you did not have to log; and if the weather was not good, you did not have to log; or if there was danger of fire -- or you did not have to log if there was any regulation in the Province of British Columbia which affected your right to log, and you did not have to log if there was a falling market --

A Those clauses would be satisfactory.

Q Wouldn't you agree with me that most timber operators in this Province, who were bidding on this property as a result of that advertisement, would expect to get some similar type of protection against wartime conditions, and so on?

THE COMMISSIONER: It would not make very much difference if Mr.Schultz agrees with you or not.

After all, that is one of the questions that I shall have to deal with.

MR. McPHERSON: Thank you.

Q There was a new point you made in evidence -- that was on 195. You suggested putting a small mill in there as you logged?

A Not in the timber -- on the rail, so you would be near the rail.

Q So you would haul your logs to the rail and then have a small mill there; is that right?

A Yes, that would be a consideration in the development.

Q Well, if your statement the other day is correct, that it was customary to cut down to as low as eight inch tops, why would you/ther putting a small mill in if it was more economical to cut without a small mill?

A Well, I would put a small mill in rather than pay the increased transportation cost on logs, and the cost of hauling them a greater distance. I think that was the point.

Q Of small logs for a small mill?

A No, all logs.

Q Will a small mill handle big logs?

A I am thinking of a small mill -- or let us say a mill. I am thinking of utilizing the product to the best advantage.

Q You are suggesting that a person who has bought logs in 195 should build a sawmill up there?

A No, I would consider that as a factor if I was

considering the development.

Q You mentioned the Hillcrest Lumber Company this morning. I am correct, am I not, that the Hillcrest Company bought a Swedish gang-saw and put it in there because their timber was small timber?

A In analyzing their timber I understand they found it necessary to put in a Swedish gang-saw.

Q Now in making your calculations on Block 195, and how you would log it, were you proposing to log it to Cowichan Lake?

A No, I was asked what factors I would consider.

Q Would you consider logging to Cowichan Lake on the road you went in on?

A Well, the same road. It is eight to ten miles right through -- I would consider once having the logs on the truck of going straight through and dumping them in the lake, which would be a consideration.

Q And now that you have your logs in Cowichan Lake, what would you do with them -- take them out and put them on the railway again?

A If there was a possibility of arranging a sale to the Cowichan mills in Cowichan Lake -- the operator putting up a mill at Cowichan Lake if they could not make a proper arrangement with the existing mills -- those would be the only two considerations he would have in taking the logs there.

MR. McPHERSON: Well I assume by my ending my cross-

examination here, my learned friend is going on with the examination on Deep Bay, or am I to go on?

MR. BALDWIN: My understanding was that I would commence a very short direct examination and my learned friend would cross-examine on it.

THE COMMISSIONER: I follow you now. Go ahead then. Now this will be confined to Deep Bay timber.

MR. BALDWIN: It will be confined to this report, my lord.

DIRECT EXAMINATION BY MR. BALDWIN:

MR. BALDWIN: Before beginning that phase of it, I would like to put in this advertisement as an exhibit.

THE COMMISSIONER: What advertisement?

MR. BALDWIN: Of Block 195, which was the one shown to both these witnesses this morning.

THE COMMISSIONER: Very well.

(ADVERTISEMENT MARKED EXHIBIT NO. 1388-28).

MR. BALDWIN: And I would ask my friend to put in the agreement of sale of Block 195 at the same time.

MR. McPHERSON: I don't know that I have it here, but I think I would like to reserve my position of putting that in when I have the witness in the box. I shall have to identify the agreement.

THE COMMISSIONER: I take it what your friend is concerned with is with the terms of the agreement -- that they shall be before me.

MR. McPHERSON: They will be, my lord. I had not

intended to put in the original agreement.

MR. BALDWIN: A copy will be sufficient.

THE COMMISSIONER: Well you will put it in later.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: And it is available if your friend wants to use it.

MR.BALDWIN: As long as I have my friend's assurance he is putting it in, that is all I am concerned with.

THE COMMISSIONER: Very well, proceed.

MR. BALDWIN: Q: Mr. Schultz, I show you Exhibit 14 in this hearing entitled, "Inspection of Blocks 504, 566, 617, 274, 263, 234, 267, 276 and Lot 88, Newcastle District. British Columbia." Is this your inspection report?

A That is right.

Q And when was it made?

A In the early part of November of this year -- this month.

Q And how long was spent in making it -- in getting the material to make it?

A Two days in the field, but there was more time spent on it actually. The entire job would be about four days, because we collected all available information and checked the surveys and everything we could on the area before we went in.

THE COMMISSIONER: You are putting this report in now?

MR. BALDWIN: This is already in, my lord; it is Exhibit 14.

THE COMMISSIONER: All right.

MR. BALDWIN: Q: How would you describe this inspection?

A That is an expensive examination, a reconnaisance of the area involved, supported by all existing factual information that we could find previous to making the examination.

Q And what information did you have prior to going in there to help you?

A We had the British Columbia Forest Service coverage map of the area.

Q Yes. A: And we had land surveys. We checked the rangers' operation map.

Q And what was the result of it -- what is the total found in these blocks?

THE COMMISSIONER: Well, it is shown there, isn't it?

A Yes, it is all shown there.

MR. BALDWIN: Q: It is all shown there, but I did not know whether your Lordship wishes it in the record or not.

THE COMMISSIONER: No, I think not.

MR. BALDWIN: The document speaks for itself, and my learned friend will no doubt bring out some details of it in cross-examination.

Q In the written part of the report, Mr. Schultz, I think you say, "There is also an area of timber located in the northern portion of Block 504." That is in paragraph 1?

A Yes, I did not actually go into that but when I was up here I could see therewas timber there, and there was also construction being carried on

in that direction.

Q That is, road construction?

A Yes.

Q Your witness.

CROSS-EXAMINATION BY MR. McPHERSON:

Q When were you first requested to make this cruise, Mr. Schultz?

A I don't remember the exact date, but it would be just previous to doing the work -- just the day before, probably.

Q And while it has not any date -- it just says, "November, 1948", do you know the date of it?

A I have it on my diary record -- I don't know the exact date, but I have it.

Q Now was this a similar type of report as the reports you made in connection with Block 195? You were making it for Court purposes.

A No, it wasn't.

Q You were not making it for Court purposes?

A Well I did not have an opportunity to make an analysis that was satisfactory to myself for Court purposes. It was a reconnaisance only.- it was the best we could do--all that we were asked to do in this short time was to give a reconnaisance report, and we did the best we could in the time allotted, and that report represents just what it states in the first page.

Q You stated there was an extensive reconnaisance behind this report. Would you say this was an

extensive reconnaisance?

A Yes.

Q It was? A: Yes.

Q And yesterday in cross-examination on Block 195 when I showed you the Forestry Report, which you have referred his Lordship to again this morning about the boundaries of the timber, you indicated you were not very much impressed with this Forestry Report, because they were made by the men in the field, is that right?

A No, I did not say I was not very much impressed with it. I appreciate the purpose intended of it. It was a good job for the purpse intended.

Q Who is this "D.R.W." who drew this table for you? A: That was one of our men.

Q And then it was drafted by "J.N.B." Who is that?

A He is our draftsman in the office.

Q Mr. Schultz, I show you a rather interesting thing. Will you take a look at Exhibit No. 2, and compare it with your map? I suggest to you that all you have done is to trace the Forestry map; isn't that correct?

A Well --

Q Isn't it correct? A: No, it is not correct.

Q Am I not correct that it is identical with the exception you have added in a few circles and made a few additions to this map, but the basic map is identical -- boundaries, timber areas, and so on? A: Well now, just a

minute, in Block 16 on this Forestry map it does not show any boundary of timber on the southern portion. There is no timber tract there shown at all.

Q Just answer my question. I am asking you if your basic map has not been traced from the Dominion Forestry map?

MR. BALDWIN: Will my learned friend define what he means by "basic map "?

MR. McPHERSON: Q: The outline of the roads, the creeks, even, and arrows for the bridges.

A Yes, exactly. The outline for the surveys were taken from the map, but the timber boundaries had been adjusted with all the information we could get in the time and during the period we were on the job.

Q Was this map traced from this map?

A That map was used as one of the bases for compiling this information.

Q I suggest to you the only difference between these two maps, even with your timber boundaries, you show this line on the southern corner of Block 566, and you will notice that the Forestry map even has the timber lines in and the dotted lines are following, identical with the lines in Mr. Schultz' map -- right across 566 -- following that creek -- at the south-west corner, and you will notice the Forestry line -- that is the line of logging, as I understand it -- and everything to the west

is presumably timber -- everything coloured green in Mr. Schultz' report; and I suggest what you have done is simply to add the outside boundary of the timber?

A Yes, that is the exact point. Let me show this clearly. There are no timber boundaries on this map. They are log boundaries, and the only logging boundaries, and we have put in timber boundaries to the best of our ability .

THE COMMISSIONER: That is Exhibit 2 you are comparing?

MR. McPHERSON: Yes, my lord.

Q Isn't it correct the logging boundary is one of the timber boundaries?

A Yes, we used all information we had.

Q And you used a map which we didn't like yesterday when I examined you on the timber boundaries.

A It is a matter of degree.

Q Isn't it a matter of the purpose for which you wanted it? A: The purpose intended here is a similar purpose in many ways to the purpose of the Forest Service operation map which they are bringing up to date, and no one could do more in two days time than that.

Q Now, Mr. Schultz, the boundaries showing the logged off areas in 504 up on the north side--

A Have been traced exactly.

Q And the felled and bucked boundaries are identical in yours? A: Yes, and I mentioned I had not even been up on 504.

Q Well where did you see the construction on 504 if you were not on there?

A I saw the road.

Q Well, if this were logged in 1948, as you say, the marks there (that means the roads) they were all the way in, and up here is felled and bucked -- they were all in in 1948. Doesn't that mean the roads were already in there?

A Not necessarily, this was a winter show.

Q Why do you say this was going to be a winter show? A: Because we asked the operator.

Q Is there any standing timber on those blocks -- on 504? A: Yes, there is felled and bucked timber and we have since taken air photographs to show it.

Q And do your air photographs show that boundary line running on 263, and 504?

A No, the air photographs show the patches of timber and not the boundaries.

Q So the air photographs do not mean anything as to where the standing timber is?

A We can plot the location of timber from air photographs.

Q Even as to the boundaries of the blocks?

A We have to check the relationship between the boundaries and the blocks and the relation of the timber, and correlate it, because often the surveys are out of location -- when the air map is made from Fanny Bay/extended -- and

Q I point out to you the map that you use as a basic map is dated August 10th, 1948., and your

map was made on November 6th, 1948, as indicated in the corner, is that correct?

A November.

Q November 10th, my learned friend has put on here.

A No, August 10th .

Q August 10th--that is correct, isn't it?

A We use that as one of our bases.

Q So that your map was made three months later?

A That is correct.

Q And you agree with me --

A If that date is right.

Q And you agree with me it shows the logging boundaries almost identical with yours?

A Yes, the area logged -- yes, that is correct.

Q Well, Exhibit No. 22 that my learned friend filed, shows that approximately two million feet were taken off this area presumably in those three months. Now where did the two million feet come from if the logging boundaries are still the same?

A This report is simply as mentioned in the first page. It is from information only and I was not even happy about presenting it in the report, and it is not a satisfactory report to take off detailed information, and except for the large figures -- the large estimates as indication of timber -- I would not support the information -- in fact, I cannot say anything more about the report than what is actually written in there.

Q Well, in arriving at your estimate of the timber,

I take it you include all the areas coloured green? A: That is correct.

Q Have you any information of the land owned by the E. & N. east of this, and is owned by the Deep Bay? A: Well, we have that.

THE COMMISSIONER: You see, some of your green encroaches on the E. & N. Land.

A Yes.

MR. McPHERSON: And you will notice some of your green encroaches to the west?

A Well, in taking off the area we applied the area within the boundaries.

MR. McPHERSON: Not within the area of the green?

A No, in trying to work out the average per acre we used the area within the holdings.

Q So you did not include any timber --

A --outside, no.

Q Now you did not inspect Block 504, did you?

THE COMMISSIONER: He has said not. He has said not. He did not go on Block 504.

A It says so right in the report there.

MR. McPHERSON: Q: And you did not inspect Block 276? A: 276?

THE COMMISSIONER: That is down at the bottom.

A No -- 276, no. This is quite a valley there, and this is Wilfred Creek, but I could see there was timber there and it follows back, but the exact location of that timber edge I could not see.

MR. McPHERSON: Q: And you took that timber into your estimate, did you?

A I don't think so. I just said there was timber there. There is no estimate.

Q No, I see you didn't. Can you explain to his Lordship why that timber would not have been logged when the rest of it was logged in '38?

A Not without more information on it than I have got.

Q What about the remaining timber on 566? Did you think it was readily accessible?

A Oh yes, the roads are right there.

Q In fact, the roads have gone past that area? They logged that area in '47?

A Well, I think they are still logging there. They are logging in that area right now. Oh no, they left it for a winter show, but there is one cold-decked pile standing on 566.

Q How High would you say the remaining timber is there -- in what altitude?

A Well the altitude is about 2000 feet.

Q How many acres of land would you say are coloured green on your map?

A Well I have got the exact figure in the office. Offhand it looks like 600 acres.

Q Now with respect to Block 566, how many acres would you say was there of standing timber shown in green?

MR. BALDWIN: 566?

MR. McPHERSON: 566.

THE WITNESS: About 40 or 50 acres.

Q About forty or fifty acres. Now with respect to the cold-decked timber on that block, you show 120,000 on page 2 of your report -- 120,000 in Block 566 -- A: Yes.

Q --as felled and bucked, you show 120,000 and you show cold-decked on that block 400,000?

A Yes.

Q That is 520,000 total? on 566, and then you have forty acres of standing timber, and in your report you state on 566 the standing timber is 1,720,000? A; Yes.

Q You will agree with me that that works out forty-five thousand feet of timber per acre?

A Well, actually the average, as I remember it, -- there would probably be more acreage than I say -- I think the average is 35 or something like that.

Q Do you say the average timber left on Deep Bay was 35,000 to the acre?

A Well, 617, I think I used 25,000.

Q 25,000? A: I think that was the figure I arrived at.

Q To the acre? A: Yes, but we are in the process of stripping 617 right now.

Q Am I not correct that 617 was the best block of timber left in Deep Bay?

A It appeared that way to me.

Q And yet the other timber worked out forty-five thousand to the acre, or thirty-five thousand, which you think might be more appropriate. That is correct, isn't it?

A What is your point?

Q When I asked you the question first and got the figures, I pointed out it worked out 45,000 to the acre, and you corrected me and said you took thirty-five?

A Yes.

Q And now 617 is only 30,000?

A I think so.

Q And is the best timber? A: Well, are you thinking of volume? The best timber is not necessarily the highest volume per acre?

Q I was thinking of the highest volume per acre. Would you agree with that?

A Well, we are cutting fine hairs on something. We have not got sufficient statistical background here.

Q Your suggestion of a winter show on the north-east side of 504 -- Mr. Kagetsu's map -- perhaps I shouldn't say Mr. Kagetsu's map, because it has not been proven yet -- I understood the evidence given by Mr. Kagetsu was that he had logged off 504 up to about where that felled and bucked timber line is shown there. That is, he had his railway running, as shown on this Exhibit 14 -- Mr. Kagetsu stated his railway ran on to here, and then they took up that track.

A I show a switchback there -- that is right.

Q And then they were going to build a railway up into this timber with the idea of going into the

timber behind? A: Yes.

Q And there was timber all along here, and this was the timber he was saving to cut as he built his railway. And I suggest to you there is no timber left on 504?

A There is timber left on 504 . I am convinced of that, but how much, I don't know.

Q Don't those dotted lines mean roads?

A That is right.

Q Doesn't that mean that the road is already in there? A: Well, it means that the grade is in. It does not necessarily mean the surfaced road is in.

Q Well, there would have to be a surfaced road up to this creek, because that has been completely logged? A: There would be a surface road through the areas. Now, mind you, I just viewed that from a distance. There should be a surfaced road through the felled and bucked areas, all right -- that is if the felled and bucked areas are in the right place.

Q Then I am right: Your extensive reconnaisance consisted of an estensive reconnaisance of 617 and 566, am I right?

A And seeing as much as I could in the time available.

Q What is this other line running along here parallel with the truck road, do you know?

A I don't know.

Q There aren't two roads there, are there?

A One might be the old railroad. I frankly don't

know. Let me see -- this is the truck road I know and we only travelled in on one road, I can tell you that.

Q Can you give his Lordship any idea as to the smallest trees that were being cut -- that is, the minimum diameter, D.B.H., when you were there? A: I am afraid I couldn't, no.

Q Now what would you say was a reasonable discount for cash on stumpage in the Deep Bay operation?- a reasonable discount for cash as against a stumpage sale?

A I would not want to say. I don't know the original position of the timber -- how much was put up -- I don't know enough about it, to be quite frank, to give you an answer to that.

Q Well, what would you say would be a reasonable discount for cash generally in 1943, in the logging industry?

A Oh, it varies from ten up to -- there has been a as high as twenty-five percent; sometimes more and sometimes less. There is quite a bit of range depending on how both parties feel about it.

THE COMMISSIONER: You heard Mr. Brown's evidence this morning. He said 25% was by no means unusual. What is your comment?

A: Yes.-a price of $4.00 and if someone said cash, $3.00, it possibly would be accepted.

MR. McPHERSON: Just one question that I think his

Lordship would be interested in. How much timber did you estimate was on 403?

MR. BALDWIN: My lord, what has this got to do with cross-examination on this report? He is asking him about discount and several questions that I did not bring up and I do not see what it has to do with the question.

MR. McPHERSON: I thought in view of my learned friend's re-examination, I was entitled to ask the question.

THE WITNESS: Did you say 403?

Q I did ask you the other day, and I forgot the answer, and I have not the transcript, but I am anxious that his Lordship should have your opinion as to howmuch timber you estimated was left on 403 when you cruised 195?

A Well, we were not on 403, and just saw the adjacent timber.

Q And you would not care to give any estimate?

A No.

THE COMMISSIONER: Have you any re-examination?

MR. BALDWIN: No.

(Witness aside)

THE COMMISSIONER: Have you another witness to go on with now?

MR. BALDWIN: No, my lord.

THE COMMISSIONER: You are finished then, Mr. Baldwin, or have you other witnesses?

MR. BALDWIN: I have one witness, anyway.

THE COMMISSIONER: Do counsel want to adjourn until

2:15 p.m. today?

MR. BALDWIN: I would like to, my lord.

MR. McPHERSON: The only question about this afternoon-- I would like to know how many witnesses my learned friend is going to call because I have to get my own witnesses here and I understand your Lordship does not wish to lose any time by adjournment.

THE COMMISSIONER: What is the situation, Mr. Baldwin? You have only one witness?

MR. BALDWIN: As far as I know at present, but I can let my learned friend know when we come back, or I can 'phone him at his office as soon as I know, but I have one .

THE COMMISSIONER: And how long will your one witness be?

MR. BALDWIN: I do not think he will be very long. I think he will be a similar length of time that Jr. Brown occupied this morning.

THE COMMISSIONER: I think you had better govern yourselves accordingly and have the witness here by three o'clock. We shall adjourn to resume at 2:15.

(PROCEEDINGS ADJOURNED UNTIL 2:15 P.M.)

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

E. Blyth

Official Court Stenographer

30

Kennedy Baldwin

JAPANESE PROPERTIES CLAIMS COMMISSION

B E F O R E

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

Vancouver, B.C.

November 23rd, 1948.

CASE No. 1388.

DEEP BAY LOGGING COMPANY

Pages 622 to 661)

Copies.

Vancouver, B.C.

November 23,1948 2.15.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: I call Mr. Charles N. Pretty.

CHARLES NELSON PRETTY, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Pretty?

A On Cypress Street, Vancouver.

Q And what is your occupation?

A Timber broker.

Q How long have you been so engaged?

A Since 1910.

Q And how long so engaged in Vancouver?

A Since 1910.

Q Would you in that capacity be familiar with the market trends in log prices and stumpage prices?

A Reasonably so, yes.

Q What would you say was the trend from the beginning of the last war up to date?

A There has been a gradual increase in stumpage; sometimes more rapidly than others.

Q And in say, 1942, 1943 and 1944 how would you describe the curve?

A There was a moderate acceleration in prices. It increased more rapidly I would say after 1944.

THE COMMISSIONER: Q: You are now referring to stumpage prices, are you?

A I am referring both to the price of stumpage and the price of logs, because they more or less

parallel one another to some extent.

Q 1942 to 1944 there was a ceiling on logs, was there not, whereas there was no ceiling on stumpage? A. There was a set price made by the Loggers Association. I don't know whether the government compelled them to remain at any set level but the Loggers Association gradually increased prices. It may have been in co-operation with the Price Control Board. I think it was.

Q This is new. I have been told by other witnesses that there was a price control on logs in the period for 1940 to 1944. Is that wrong?

A Well, I couldn't answer that accurately as to whether the price was controlled at that time or not. I believe it w as.

THE COMMISSIONER: Proceed, Mr. Baldwin.

MR. BALDWIN: Q: In the year 1943, Mr. Pretty, you negotiated, didn't you, the assignment of a contract from Almworth Company to H. R. McMillan Company? A. I di .

Q With regard to timber?

A Yes.

Q Where was that timber? A. It was located adjacent to Nanoose Bay and North West Bay on the watershed at Englishmans River and another stream that flows into Nanoose Ba y.

Q And how far was that area from the water?

A As I remember it would have been at least about three or four miles from the water and from there

on back roughly 20 to 25 miles.

Q Is that area in the E. & N. belt?

A Yes.

Q It carries no royalty that timber on those limits? A. I believe it carries a 50 cent royalty.

Q A 50 cent royalty?

A Yes.

Q Is it Crown granted timber land?

A Yes, it is Crown granted timber land but some of the Crown granted areas which came into effect at a certain date carry royalties; whereas others staked at a later period didn't.

Q Was that timber exportable?

A Yes.

Q It was exportable? A. Yes.

Q In 1943 would you value the exportable feature of timber at any amount?

A That is highly problematic. I wouldn't think the exportable feature had very much importance at that time because at that time the government had placed an export embargo on logs ,particularly fir. I think they allowed some hemlock to go but no fir, and that was practically all fir.

Q You mean you would not apply any value on logs to the exportable feature?

A There wouldn't be very much value when the government wouldn't allow them to export. I don't think fir is exportable today.

Q I just want to be clear on this. Your remark

applies to logs, does it?

A Yes.

Q And not to stumpage? A. Well, the price of stumpage is more or less reflected by the -- that is, that particular phase of it as to whether logs can be exported or not and if they can't be exported it wouldn't enhance the stumpage naturally.

Q Would you tell the Commissioner what price the McMillan Company paid the Alworth Company for the assignment of their contract of that block of timber.

A They paid 1,350.000 dollars for the assignment of the mill and the mill at Dollarton and the lands on which the mill was located.

Q How much timber was on the area?

A There was roughly 800,000,000 feet-- something between 800 and 900 million feet, I believe.

Q What would be the stumpage value on that contract?

A Well, the contract was built up on a cutting basis. There was a $2.50 base price set in the contract which was the minimum price that the Dollars were to pay for the timber. Then if timber increased in price progressively they were to receive 25% on No. 2 and No. 1 standard logs, 15% on No. 3 and peewee logs. This tract has proved to contain roughly 40% peewees and possibly another 10% to 15% No. 3 in among the standard logs, which would mean that the increase actually worked out scientifically, amounted to

18% of any appreciation in price above $11.00 $17.00 and $26.00; that is $11.00 for No. 3, $17.00 for No. 2 and $26.00 for No. 1 logs. Hemlock appreciated at the rate of 10% but there was a very small quantity of hemlock on the property and hemlock was very difficult to sell at that time. The general picture worked out to roughly 18% increase in the price of the logs. It was added to the stumpage as logs advanced in price.

Q Then if in June,1943, the going price for fir logs was $27.50, $20.50,and $15.50 what would your stumpage work out at?

A The stumpage would work out at $2.50 base price plus 18% of the difference between $17.00 on No. 2 logs and $20.50. That would be 18% or $3.50.

Q You had calculated that, have you?

A Yes, roughly.

Q Yes. A. Then McMillan paid $1,350,000 for the contract, and the value of the mill was roughly $350,000 to $400.000 which would leave approximately $1.00 a thousand they had to pay above the price the Dollars paid. Those figures computed would give the price McMillan paid at that time for the timber. I think it was between $4.00 and $4.25.

Q Between $4.00 and $4.25?

A Yes. I think I worked it out to $4.23 a thousand. That is approximately but it should be very near.

THE COMMISSIONER:Q: Let me understand you. Does the $4.25 take into account the fact that a mill was included in the transaction?

A Yes. The McMillans havnn't any use for the mill. Their only incentive to buy the property was to buy the logs to lengthen the life of their operations-- they were short of timber -- and that was proved by the fact that practically as soon as they bought the property they commenced to tear down the mill and sold off the machinery , and inasmuch as it increased the cut beyond what was justifiable with the timber reserve they own --

MR. BALDWIN:Q: Do I understand you correctly when you say that price of $4.23 a thousand takes the mill into account by excluding it?

A Yes. I allowed a value of roughly $400,000 for the mill which was previously deducted and that still left something over $1.00 a thousand.

Q And that figure is with respect to timber on which there is a 50 cent royalty payable?

A I am quite sure there is a 50 cent royalty.

CROSS EXAMINATION BY MR. McPHERSON:

Q Were you buying and selling logs during the war? A. No, I never bought and sold logs. I logged timber but I haven't bought it for sale.

Q So you have been a broker of standing timber and not logs? A. Yes.

Q Would that be the reason you don't know anything

about the price controls, whether there were price controls or not?

A That is probably the reason because I didn't come in close contact with that particular part of the business.

Q Were you logging at that time yourself during the war? A. No. I logged until 1941 and discontinued until four years ago, when I restarted again. I placed my equipment on airport construction during the war.

Q With respect to methods of logging in 1941 and the methods of logging in 1944 was there any change in method that you noticed between the time you stopped logging in 1941 and started in 1944, as to the size of timber being cut?

A Well, they are cutting timber today which they were not cutting at the beginning of the war; that is, it wasn't considered good enough to cut at that time.

THE COMMISSIONER:Q: Could you answer the last question in terms of diameter breast high?

A So far as actual D.B.H. I don't think the rules have changed but they are cutting timber today that is much inferior, that is, grades that carried some defect you couldn't sell them at the beginning of the war in 1941 and 1942. They were undesirable, the market wouldn't absorb, but for a period of time and up really almost to the present time, almost any kind of log that will saw a board is utilized, but some

discretion is commencing again at the present time.

Q I have been told by various witnesses somewhat conflicting stories as to the size of timber that was being generally taken say in the period up to 1936 and the size of timber which has been generally taken subsequently.

A I think the government qualifications are the same today as they were roughly six or seven years ago; that is the government timber sales. It is possible in the case of hemlock that smaller logs are being taken at the present time, but generally speaking, from the experience I have had, there is very little difference.

MR. McPHERSON: Q: What other considerations were included in this deal with McMillan than the timber and the mill?

A I can't think of anything of value other than the timber and the mill.

Q Weren't there roads in there?

A Yes, there were roads in there. You have brought up a subject I have forgotten. The property was developed. I would think perhaps there might have been some equipment and development, something between $150,000 and $200,000.

Q That is McMillan in addition to getting this mill and timber got some logging equipment and roads?

A Yes.

Q And the figure you said of $150,000 to $200,000 that is just your estimate? That isn't what

M cMillan may have valued it at?

A He may have valued it differently.

Q And the valuation placed on the mill of $400,000, was that your valuation or was that stated in the agreement? A. Actually I doubt if McMillan got that much for it. That could be easily ascertained. It would likely amount to somewhere in the neighborhood of $250,000.

Q I am not so much interested in what he got for it when he came to dismantle it but the figure of $400,000 you gave was not the consideration for the mill shown in any agreement?

A There was no consideration shown in the agreement at all.

Q So the $1,350,000 you have given is how you think it would break down?

A Yes, that is just my opinion of the breakdown.

Q W hose cruise was this deal based on?

A It was based on/Mazurka's cruise and various checks that had been made. Thomas

Q Do you know whether Mr. Eustace Smith checked it?

A Yes, Eustace Smith checked it.

Q Do you know whether or not Keith Shaw of the M cMillan Company checked it?

A I don't know, but quite probably he would have checked it.

Q And you stated it was 800 million feet and it cut out between that and 900 million feet?

A I stated that was the expectancy.

Q So there wasn't very much overrun, was there?

A Of course, the Eustace Smith cruise is very much under the Mamurka cruise.

Q What was it? A. I think it was roughly about two-thirds, and I think that would be considerably over the Eustace Smith cruise. As a matter of fact it is proving so. I have had definite information in regard to that.

Q When was that cruise by Eustace Smith -- in 1943?

A Some time before that. Whether Keith Shaw made a recheck or whether he just relied on the figures of the previous cruise, I don't know, but I knew there was a Eustace Smith cruise in existence on part of the timber in Block 142 and the areas adjacent to Nanoose Bay.

Q And when you speak of it being considerably over the Eustace Smith cruise, could that be accounted for by the fact that Eustace Smith might have cruised down to only 18 inches D.B.H.?

A I don't think that would have anything to do with it. Many of Eustace Smith's cruises have been very conservative.

Q Do you think that people buying timber in this province consider Eustace Smith's are conservative?

A They have generally been considered conservative.

Q And when people buy timber on the basis of his cruise they take that into account in bidding for the timber?

A It is unsafe to take anyones cruise as being quite authentic. The very best of cruisers will very

vary to a very great extent.

Q Wouldn't you agree with me that the question of over run on any cruise is not only dependent upon the size of the timber or the minimum size of the timber that the cruiser estimated but also dependent upon changing market conditions as to what is economical to take out?

A The market conditions undoubtedly influence what you can take out, particularly if any defect in the timber.

Q Is this the timber limit that McMillan put a small mill in? A. I couldn't say what he has done.

Q You don't know whether he put a gangsaw in here?

A On the timber itself.

Q No, into this mill; or did they tear the mill down completely. A. I don't think McMillan put a gangsaw particularly for this timber. He may have because there was a lot of small timber there; but gangsaws are very economical in any mill. They are a necessary part of a successful operation.

Q I take it that your figure of $4.00 to $4.25 a thousand is based on the fact you have deducted from $1,350,000 your valuation of the mill?

A Well, I had forgotten the development but I do distinctly recall the Dollarton Company valued the depreciation on the timber at $1.00 a thousand.

Q If McMillan got the equipment and roads and that mill, wouldn't that make a difference in the

stumpage values? A. I think McMillan had a very good idea what he could realize from the mill and the value of the improvements before he bought.

MR. BALDWIN: I don't like to interrupt my learned friend's cross-examination, but may I point out the witness clearly said the mill was not included in that figure arrived at for stumpage.

MR. McPHERSON: I am not suggesting that the mill was included. What I am suggesting is if you take $400,000 off $1,350,000 and you divide by 800 million feet of timber, I suggest it is through those mechanics you arrive at somewhere between $4.00 to $4.25 but in addition to this $400,000 for the mill Mr. Pretty should have made some valuation for the equipment.

THE COMMISSIONER: Put that to Mr. Pretty.

MR. McPHERSON:Q: In arriving at the valuation of the timber at $4.00 or $4.25 a thousand shouldn't you have deducted the value of the equipment and the roads? A. The fair valuation of what McMillan received for the mill property and the fair value of the roads should be taken away from that price, but I wouldn't think that adding the two together that McMillan would realize over $450,000 out of it; but that is something that could be ascertained within a very few cents if anybody wants to take the trouble to find out.

Q In this deal you have been speaking about, wasn't

the stumpage based on the sale price of the logs?

A Yes.

Q What happens if the market drops?

A If the market drops the price of stumpage drops.

Q Haven't we been assuming up to now the market stays behind? A. Yes.

Q Am I correct that the market for hemlock is almost non-existent today?

A That is something that is very problematic. Hemlock is not in demand today.

Q So you disagreed with me that McMillan in buying this, he may not pay anywhere near $4.00 if the market falls?

A If the market goes less than the 1943 value then the stumpage price would diminish perceptibly. That is, there is a basic price of $2.50 and no matter if logs went down to $10.00 they would still pay $2.50, but if the price of No. 2 fir dropped below $20.50, McMillan would pay 18% less down to the figure of $2.50.

Q Would it be correct to say that McMillan had to pay a premium in order to get the timber?

A That would be correct to state that. The Dollars wouldn't sell the timber without.

Q How would you say this type of deal would compare with a cash deal? What discount do you think would be reasonable for cash?

A That is a very difficult question to answer. I have seen cases where people have paid 25% or 50% less for cash, depending how badly the owner wishes

to sell. If the owner was in a position to hold out the usual discount for cash would be something around 10%.

Q Would it also depend on how badly the buyer wanted to buy? A. Naturally it works both ways.

Q Would you say that the deal you have outlined involving the sale in question is comparable in any way to a deal involving 17 million to 27 million feet? A. That again, is a problematical question. It would depend as to what potentialities were back of either tract of timber. You can't give a general answer to it.

Q Here you have a stand of timber somewhere from 15 million or 17 million to 27 million feet and you have no other timber available? You have no mill. A. Frankly I disagree with that, because it just so happens I passed along the highway and looked at the country lying behind.

Q You don't agree with what?

A The fact there wasn't potential behind.

Q Behind what? A. This 17 million or 27 million feet.

Q Are you referring to Deep Bay?

A Yes.

Q And you think there was timber behind?

A I am quite sure there was.

Q But suppose I tell you that the timber behind was under option to other parties would that make a

difference? A. Yes.

Q Let's assume that is the case, that there was no timber available behind?

A Do you make the positive statement that the timber behind wasn't available or wouldn't become available?

Q The government will produce evidence to prove that.

THE COMMISSIONER: I take your premise to be, as you stated a moment ago, that all available timber was then held under option by other parties and could not be obtained at the time this transaction was put through?

MR. McPHERSON: Yes, either by the government or the purchasers.

A That would deprocate the value of the 17 million feet, no question about that, at that time.

THE COMMISSIONER: Q; Could you assist me by estimating as to how much lower a willing purchaser would be likely to pay in those circumstances?

A Well, in my own case if I were buying a piece of timber to log and it had 40 to 50 million feet behind it, I would gladly pay another $1.00 a thousand for the timber rather then if there was only 17 million feet and had no future beyond the 17 million.

Q And it makes no difference whether 17 million or 27 million? A. No.

Q Am I right then in assuming that the willing purchaser I am imagining would knock off one dollar from the $4.25 price that he might otherwise be

prepared to pay in view of those circumstances?

A I think that is a fair statement.

MR. McPHERSON: Q: And on the basis of his lordship's questions, what stumpage would you arrive at then for the Deep Bay timber?

A Comparable with McMillan's $1.00 a thousand.

Q That would be $3.00 or $3.25?

A Yes.

Q And in addition something further for the equipment we have discussed? A. No, I wouldn't say that. I doubt whether, as I said before, McMillan, including the equipment and the mill, realized over $400,000 or $450,000. That is, the value of both the equipment and what they received from the sale of the mill.

Q And what value would you put on the roads?

A Somewhere between $150,000 and $200,000.

THE COMMISSIONER: I understand the witnesses' answer to be this. The total price of $150,000 shouldn't be diminished on account of the mill and the opening of the timber by more than $450,000?

A That is it. I doubt whether McMillan got that much advantage from the two combined.

MR. McPHERSON: Q: But I understood you to say that in your opinion at the time the deal was made you estimated $400,000 for the mill?

A Well, I made that statement , but in remembering back the Dollarton Company and myself figured they were getting about $1.00 clear on the timber and right down it would be roughly on the improvements

and the mill, the difference between $1.00 a thousand included in the price of the mill $350,000 --

Q You suggest that the Dollarton Company were getting $1.00 a thousand for their timber clear?

A I suggest they were getting $1.00 clear at least, yes.

Q Would you say that is the stumpage the vendor was getting for his timber then?

A I don't understand.

Q I don't understand how you arrive at the $1.00.

THE COMMISSIONER: The $1.00 is the dollar in excess of what McMillan was going to have to pay by assuming the Dollarton obligation to the E. & N. Railway Company, is that it?

A I will put it as clearly as I can. McMillan by paying $1,350,000 to buy the mill and improvements and timber would allocate at least $1.00 for the timber and the balance for the improvements and the mill.

Explained again on p 649

MR. MacPHERSON: Q: With respect to the Deep Bay timber, if you had 17 million to 27 million feet of timber, if evidence was produced, as it has been by the claimant, that he had taken the best timber out, and if you in buying that timber were to build a road rather than operate the railway, would that affect your stumpage values?

NO

A Well, the railway grades being in provide a very good truck grade. All they require is gravel to some extent. So actually the road cost shouldn't run into very much money other than a few small spurs into the various areas. I couldn't see what

the logging possibilities of the 27 million feet were without actually seeing it, and I didn't see it, but the scale sheets on that timber would indicate the class of timber and so on.

Q Scale sheets wouldn't necessarily indicate the logging conditions, would they?

A One never gets really good timber on scattered ground. It has to be more or less a dense stand.

Q How many feet of timber per acre is a fair logging proposition would you say?

A Oh, anything from 25,000 per acre up is reasonably good.

Q And anything below 25,000 you would say was poor logging? A. I would say it was a pretty thin operation. I am speaking of the ground you actually cut over, not the entire area.

Q With regard to the logging right of way, if you were going to use the railway grade for logging purposes, would you have to widen it?

A Not necessarily. You might have to put in a few spots for passing trucks, but with the modern road-building equipment, that is a very slight expense.

Q Would you follow this railway grade all the way into your timber, or would you take shortcuts?

A That is something I couldn't say without having seen the ground and studied it. It would depend on how the railroad was built. If the railway was poor changes would necessarily be made. If the work was well done there would be no necewwity for changing.

Q Wouldn't you agree with me that the great advantage of a truck operation is you can take steeper grades?

A Yes.

Q And that may have been so in this case?

A I don't know what has been done.

Q Would you use the railway bridges for your trucking operation?

A That again is something you can't answer without having seen what the topography of the country demanded.

Q My learned friend had a witness this morning who testified that in the case of the Royston operation it costs more to rebuild the railway grade than to build a new road and therefore he built a new road. That was Mr. Fred Brown. What would you say to that? A. That again is simply an answer that might be so in one place and wouldn't fit in another place at all. If there was a lot of railway bridges naturally you wouldn't use them. If there was a secondary (?) way to reach the timber it would be necessary to build a road; but I would suggest that the costs of putting roads into the Kagetsu area were not excessive in any case even if they had to build a new road.

Q Were you ever into the back of the Deep Bay property?

A I have been over some of the timber adjoining.

Q Have you ever been in the Deep Bay property?

A Not the back end, no.

Q How far have you been in on Deep Bay?

A As a matter of fact I have just been past the entrance to the road going up to the --

Q That is you have been on the Coast Highway?

A I have been on the Coast Highway and as I was slightly interested in it I looked over it.

Q You know Mr. Fred Brown?

A Quite well, yes.

Q Mr. Fred Brown in his evidence this morning stated he looked at the Deep Bay operation and considered the railway, the type of operation that it was, and on cross-examination he advised me that if you were going to use the right of way you would have to widen it. Do you agree with that?

A Yes, I would agree with that. One does widen it generally up to a point; not very much.

Q And Mr. Brown also stated in cross-examination that in building a road you would attempt to avoid the railway bridges because you would have to widen the planking, you would have maintenance and fire risk. Would you agree with Mr. Brown on that?

A Yes, but how many bridges are there?

Q I am just asking the general question about building logging roads?

A What is general may not apply in this particular instance. You are asking me a lot of questions that are impossible to answer.

Q I am asking the question because you volunteered information as to how easy it was to build roads in the Deep Bay area , but you haven't been on the Deep Bay property?

A I have been on adjoining ground, and while I haven't been over it --

Q How many logging operations have you operated?

A I have built in the neighborhood of probably 40 or 50 miles of truckroad; some of it very difficult and some fairly easy.

Q Assuming for a moment that my statement is correct, that the claimant himself said he had to move the best of the timber from the Deep Bay area, the most accessible timber from the Deep Bay area --

THE COMMISSIONER: In terms of the railway, wasn't it?

MR. McPHERSON: Q: Yes, in terms of the railway, from the Deep Bay Logging holdings. If that is the situation, would you still say that the timber there was worth $3.00 a thousand?

THE COMMISSIONER: $3.25.

MR. McPHERSON: I am asking at $3.00.

THE COMMISSIONER: He said $ 3.25.

MR. McPHERSON: Q: I thought he said $3.00 to $3.25. Isn't that correct. Didn't you say $1.00 off the $4.00 to $4.25?

A I said that the larger tract where there was a background of timber it would be worth $1.00 a thousand more. I stated $4.23.

Q Let's take $3.23 as your original price for Deep Bay timber. I have suggested another factor in arriving at the price. Would you still think Deep Bay was worth $3.25 a thousand if my statement is correct? that the accessible timber to the railway had been removed?

A Yes; possibly more. That would be a minimum I would suggest.

Q That would be on a stumpage basis, would it?

A I would suggest it would be worth $3.25 on almost any basis.

Q You are suggesting then if you sold it for cash you should get $3.25?

A I am suggesting you would get at least that much, yes.

Q We are speaking about 1943?

A Yes.

Q Suppose you had other timber which you were interested in. Do you know Block 195 in the Cowichan District? A. No, I don't.

Q In arriving at a stumpage value would you take into account in arriving at what you would pay for timber in 1943, would you make any allowance for the fact you might have to haul by truck and then road onto railway cars and then haul by railway? A. The additional haul from Cowichan Lake has appeared to have been a handicap , and I think it is quite a handicap, but the stand per acre has been heavy and successful operations have been carried on there in spite of that handicap even when fairly high stumpage rates had been paid for the timber. Timber in that country has gone 100,000 feet per acre and when you get a really heavy stand of timber the operation can be conducted very much cheaper than when you have a low stand.

Q But you would make some allowance for the fact you had to build roads to get to it even before you got into the timber?

A I wouldn't care to pass any opinion on timber I don't know.

Q I would ask the general question then. If you are going to buy a block of timber and it is not accessible to roads and you have to build roads into it and then you have to haul out to a railway by truck, how would you take those factors into consideration in arriving at your stumpage price?

A Those factors must undoubtedly be taken into account but there are other factors must come in and that is the cost of logging, the density of stand per acre and the quality of the timber. Cowichan Lake has been regarded as high quality timber.

Q Do you know what price you have to pay to haul logs over the C.P.R. in the Cowichan area?

THE COMMISSIONER: In 1943.

MR. McPHERSON: In 1943.

A As near as I can remember about $2.70 a thousand. That included the booming, as I remember.

Q Do you know whether there was a minimum quantity of logs on the cars?

A There was a minimum quantity.

Q Do you know what that was?

A 6,000 feet to the car, I believe.

Q With respect to the increased cost of stumpage parallelling the increased ceiling price of logs, I understood you said they rose pretty well together, is that correct?

A All the factors had to be taken into consideration with regard to quality, and logability, and also the disadvantages, such as a long haul.

Q I made a note here that you said that the increase in cost of stumpage and the increase in the price of logs just about parallel each other, is that right?

A I made that statement, yes.

Q Do you know that is true from 1941 on to 1945?

A Technically it should be correct, but whether it is factually, it is very difficult to know.

Q Isn't it correct that during 1941, 1942, 1943, 1944, and 1945 the loggers went to the timber controller and got an increase in price because of the increased cost of logging?

A That is correct.

Q Would I be correct if I said that the increased cost in logs far exceeded the increase in the price of stumpage during those years?

A The percentage of increase?

Q Yes? A. Well, that is something that is very difficult to answer. I think the government timber sales are probably about the best barometer of the price of logs as anything. As I remember there was quite an appreciation in the stumpage prices in government timber sales starting from roughly 1939 and gradually increased with the increase in the value of log sale prices.

Q Indicating the percentage increase about the same?

A I think so, but I am not sure. That is something one would have to check up carefully to make an

accurate statement on.

Q I have a report from the Forestry Department showing the average price per thousand, Mr. Pretty of Douglas Fir. It shows 1942 as $2.41. Then I have exhibit 12 which is the British Columbia Loggers Association average selling price for logs and under 1942 I find fir was selling at $28.57. Do you think that would be about right?

A No.1 fir?

Q Yes. A. Or is that the general average?

Q That is No. 1 fir. All grades I take it is general average.

A Yes. Take No. 2 for instance,. That is more or less nearer the general average. What was the selling price there?

Q $18.81? A. And the stumpage was $2.41?

Q Yes. A. Plus royalty $1.50?

Q The royalty was consistent, wasn't it?

A Very nearly.

Q We have in 1942 $2.41 per thousand stumpage and logs selling at $18.81, and in 1943 the same logs have jumped to $20.70 and the stumpage has only gone up to $ 2.76, which is 25 cents.

A It is roughly about 10%.

Q Then we go on to 1944 and we have logs at $22.35

and the stumpage down to $2.57. Then we go on to 1945 and we have stumpage of $2.74 and the logs have gone up again to $23.15. And then we have 1946, the logs have now gone to $29.82, which is over $5.00, and the stumpage has only gone up from 1945 to 1946 from $2.74 to $2.97. And then we have 1947 and those logs have gone up to $41.28 and the stumpage for the first half is $3.37 and the second half $5.74. I suggest to you that these exhibits show the stumpage didn't increase parallel with the logs?

A I would say they are very near.

Q I notice in the year 1944 stumpage fell?

A But the general trend to follow the price of logs.

THE COMMISSIONER: You have got the figures there. Isn't this a matter for argument?

MR. McPHERSON: Yes, my lord.

THE WITNESS: I was speaking generally and I think that generally those figures bear it out as far as I can see.

THE COMMISSIONER: Any re-examination?

RE-EXAMINATION BY MR. BALD IN:

Q You are familiar with the Cowichan Lake area, are you? A. In a general sort of way.

Q Do you know if there are any mills in Cowichan Lake?

A Yes, there are a number of successful mills in Cowichan Lake.

Q And ~~have~~ I told you that Block 195 was 8 to ten miles from Cowichan, would you consider that an unduly long haul to the mill?

MR. McPHERSON: My lord, I wonder if --

THE COMMISSIONER: This is breaking new ground. I wish you would exhaust your examination in chief, but go ahead.

MR. McPHERSON: My lord, I didn't cross-examine on the question of Cowichan Lake and I think if my learned friend is going to talk about a ten mile haul he has to establish whether Mount Baker or some other mountain is between.

THE COMMISSIONER: I have ruled, I will hear the question. Let's get on with it.

MR. BALDWIN: Q; Would you consider that an unreasonably long haul?

A No, the Lake Logging Company haul up to 20 miles and haul very cheaply by rail.

Q I believe there is some confusion arising from my learned friend's cross examination as to what you meant by the $1.00 that McMillans paid. Could you explain that to his lordship. Would you describe it as a one dollar premium over what the original stumpage price was according to the contract?

A That is definitely the idea, yes. McMillan's paid $1.00 above what Dollars would have had to pay the Alworth Agency, and the Dollar Company had to pay the Alworth Agency $2.50 plus the 18% bonus on appreciation on the price of logs

or increase in the price of logs.

Q You told the Commissioner, I believe, that if certain conditions existed at Deep Bay, namely that there was no further timber available, and on the basis of 17 million feet in the block there, you would knock off roughly $1.00 from your other price?

A I did, yes.

Q And you brought that down to $3.23, under cross-examination, from $4.23?

A Yes.

Q And when you did that were you taking into account the fact that there is no royalty payable on these properties at all, as opposed to the Bollarton Company on which there was 50 cents royalty?

A No, I haven't taken that royalty into account.

Q In other words it would be increased by 50 cents? A. It would be increased by 50 cents.

Q Both on the $4.23 and $3.23?

A Yes.

Q My learned friend asked you also with regard to these cutting contracts whether or not if the market were to fall this price would not go down and you agreed with him it would go down? A. Yes, in the same proportion it went up.

Q According to the going price per logs?

A Yes.

Q In the purchase of a relatively small area which can be logged within say a matter of four or five years, and the purchase is made on a rising market, would the vendor not feel he had to cover higher stumpage within the next few years, assuming a rising market, assuming the trend you have described to his lordship. The stumpage in other words would increase with the going price for logs.

A If one could be sure the market would continue to rise undoubtedly.

Q By the same token in a larger area such as the Dollar Company, which was concerned with something around 800 million feet, would the vendor also not take into account in arriving at his price the fact that he might be selling at a very low price ultimately before the area was liquidated.

THE COURT: Surely that is obvious, isn't it? If you have got a price fluctuating with the market and the market goes down, it is obvious that he might be selling at a low price at some stage.

A I think it was assumed when that contract was made that there would be fluctuations in the price, and if the price of logs went down it was fair to the logger or the purchaser that he should not have to pay too high a price when logs declined in price to make it a workable contract they provided it would work both ways.

Q Was there any time limit for the logging?

A Yes, but it was a long time limit,-20 years.

Q What is the usual practice of a good logging operator, an efficient logging operator, before he buys a block of timber?

A To make a thorough examination of the property both as to the timber and roads and everything pertaining to it; that is all the different costs of opening it up and the general conditions of logging when he gets in there.

Q And if he is buying for a lump sum would you say he is more careful or otherwise?

A I don't think there would be any difference. He makes very careful investigations under all circumstances.

MR. McPHERSON: May I ask one question on this Cowichan Lake question, my lord.

THE COMMISSIONER: Very well.

RECROSS EXAMINATION BY MR. McPHERSON:

Q Have you ever been in Block 403, the Lake Logging Company block? This is Exhibit 1?

A I think it is logged off as I remember it. No, I haven't been in that block.

Q In view of my friend's question about logging to the lake, if this line here represents the height of land in 403 would you log Block 195 to Cowichan Lake or go this way if the land is falling this way, (indicating).

THE COMMISSIONER: What is "this way"?

MR. McPHERSON: To the east, my lord.

A Undoubtedly it appears it should be logged down toBear Creek.

(Witness aside)

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. BALDWIN: I call Mr. Gardiner, my lord.

HAROLD GARDINER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Gardiner?

A Vancouver.

Q In the City of Vancouver?

A Yes.

THE COMMISSIONER: As far as I am concerned you do not need to qualify Mr. Gardiner. He is well-known to me.

MR. BALDWIN: Q: Mr. Gardiner, I show you a copy of Exhibit 2 --

MR. McPHERSON: Excuse, me, My lord, I am at a disadvantage, who is Mr. Gardiner?

THE COMMISSIONER: He is a Forest engineer who has been practicing here for a great many years.

MR. BALDWIN: Q: This is a map of various blocks comprising what was the Deep Bay operation. You see Fanny Bay here, Block 167 here, Block 566 the western extremity of this map. Have you been in this area recently?

A Last year north of here and a little west.

Q And what were you doing?

A Making a timber cruise and a topographic survey.

Q And who was the timber cruise for?

A The E. & N. land department.

Q What was the nature of the land you were cruising? A. Timberland in the rear of the blocks shown here and further to the north.

Q And also 617? A. Yes, west of 617.

Q And was that land owned at that time by the E. & N. railway?

A It is known as vacant E. & N. land.

Q It was known as vacant E. & N. timberland?

A Yes.

CROSS EXAMINATION BY MR. McPHERSON:

Q Do you know Mr. Gardiner, whether that land was under option to anybody?

A No, I don't.

Q And who were you cruising it for?

A The E. & N. Land Department.

THE COMMISSIONER: Q; When was this work done?

A A year ago, it began in May.

MR. McPHERSON: I don't understand this, my lord. The claimant hasn't produced any evidence yet to show there was any timber available there, and I am wondering whether Mr. Gardiner is the witness who is establishing there was timber there or available. I take it he doesn't know whether it was available.

Q Is that right? A. I don't know

whether it was under any definite option or not. We simply covered the ground under in- instructions from Mr. Irwin, Assistant Land Agent, of the E. & N. Railway Company.

(Witness aside)

MR. BALDWIN: That concludes the claimant's case, my lord, with the exception of recalling Mr. Schultz.

THE COMMISSIONER: Yes.

MR. McPHERSON: I wonder can I assume that there will be no further witnesses on behalf of the claimant other than Mr. Schultz.

THE COMMISSIONER: That is the understanding.

MR. BALDWIN: In that connection, my lord, I would say that if the government adduces evidence, as my learned friend has intimated he will, that all this land that was boxed in, that Deep Bay area, the claimants reserve its right, as your witness, my lord, to rebut that evidence if necessary.

THE COMMISSIONER: Yes. Your case in chief is finished, with the exception of Mr. Schultz.

MR. BALDWIN: That is correct.

MR. McPHERSON: My lord, I just don't understand the suggestion. That is why I was puzzled about the last witness. I understand it is the claimant's responsibility to make his case, and I don't understand there has been any evidence given yet that there was any available timber. I don't know whether my learned friend is hoping

to have your lordship call a witness to establish that, but I think he has to call the witness.

THE COMMISSIONER: I am not calling any witnesses to prove matters of that kind. That obviously is a matter the claimant must establish.

MR. BADLWIN: My learned friend intimated today, that the government was definitely going to call evidence to show that was not available.

THE COMMISSIONER: That has been my understanding.

MR. McPHERSON: Well, my lord, I think it is a very important point of procedure. The government has given my learned friend reports of P. S. Ross, in which it is stated they attempted to get this option on the timber in the back and we have indicated the government couldn't get that option. Surely the claimant is not entitled to wait until I put in my case and then say that is your evidence. I have been referring to this option all during this case.

THE COMMISSIONER: As I understand it, your friend does not propose calling further evidence that timber is available.

MR. McPHERSON: I understand if I attempt to show it wasn't available then he intends to call further evidence, and I am asking that he should be barred from doing that. He should call that evidence now.

THE COMMISSIONER: If you intend to establish there was timber available adjacent to the Deep Bay property, it is for you to establish it in chief.

If you are asserting that this timber of the Deep Bay Company has a peculiar value because other timber was available in the immediate vicinity, that surely is a matter for the claimant to establish in chief.

MR. BALDWIN: That may be, my lord, but my learned friend today indicated for the first time as far as I am concerned, that they were going to call evidence to show that this was definitely blocked off. There has been no evidence one way or the other so far before your lordship.

THE COMMISSIONER: Yes, there has, in the statement of P. S. Ross & Sons, filed as an exhibit earlier. to the effect they have applied to the E. & N. Railway company for other timber prior to having sold the Deep Bay timber and were informed by the E. & N. Railway there was none available.

MR. BALDWIN: I am not aware that has been filed. In any event it hasn't been proved.

MR. McPHERSON: I don't want to get involved in an argument before your lordship but I cross-examined Mr. Kagetsu and my recollection is I asked him all about that timber and whether he had an option on it before he left, and I led up to show that the government will contend -- when your lordship asked me about that timber I was very emphatic in saying that the government contends there wasn't any timber available. I don't want to be caught in the position that

I put in my witnesses and then have my friend prove his case.

THE COMMISSIONER: I have told your friend that if he expects to establish as part of his case that this Deep Bay timber had a peculiar value because there was other available timber adjacent to it, it is for him to establish it in chief.

MR. BALDWIN: Is the claimant not entitled, if my learned friend leads positive evidence now, that this block was definitely boxed in, is the claimant not entitled to call evidence in rebuttal. There has been no definite evidence one way or another before your lordship ye t.

THE COMMISSIONER: But I understand that you are going to contend that the Deep Bay timber had a peculiar value because of a fact there was other available timber adjacent. Many of your witnesses have been examined in chief on that basis and I have assumed that was your case.

MR. BALDWIN: My lord, the claimant's case is not based on the boxed in value and we had adduced no evidence to show the other; neither has my learned friend.

THE COMMISSIONER: Mr. Baldwin, it is you who are presenting the claim. What is the basis of your claim. I h ve experienced a good deal of difficulty with it and many amendments. Is it based on the assumption that there was additional timber available which therefore gave your whole holdings

a peculiar value.

MR. BALDWIN: No, my lord.

THE COMMISSIONER: Then we are not concerned with it at all, and if the government comes in with -- they have got nothing to meet. I don't know why they should call any witnesses on the subject of adjacent timber.

MR. BALDWIN: The only extent that should be taken into account is the enhancement of the valuation we have set on it.

THE COMMISSIONER: That is just the point I put to you and your answer is in the negative, that you were not claiming any peculiar value in the Deep Bay timber because of the fact there was other timber available adjacent to it.

MR. BALDWIN: We are assessing the possibility and probability that Mr. Kagetsu would have extended these.

THE COMMISSIONER: Then if that is part of your claim, it is for you to prove it. I do not see it set up in the claim.

MR. McPHERSON: If I might, in fairness to my learned friend, the way I had understood his claim is this, speaking of memoery of what Mr. Norris said at the opening.-- my recollection is that Mr. Kagetsu is claiming an enhanced value to the railway of 50 cents a thousand and I have always understood that was based on the fact that Mr. Kagetsu was hoping to get the timber in the background.

That would give his railway an enhanced value.

THE COMMISSIONER: I thought the enhanced value of the railway was based solely on the timber he has still control of?

MR.BALDWIN: That is correct.

MR. McPHERSON: It is not my intention to call witnesses to prove there was or was not timber available, but the reports which I have filed as exhibits, deal with this matter. I don't want to put in the reports referring to that matter if my learned friend is going to say I have raised new questions, because I don't think I have. I think it is his duty to prove that part of his claim.

THE COMMISSIONER: Your friend has said he is not basing his claim in any sense on any adjacent timber. So we will rest it at that.

MR. McPHERSON: Then it follows from that he is not calling any more witnesses other than Mr. Schultz.

THE COMMISSIONER: That is something for him to determine. If there is any proper manner by way of rebuttal, he is entitled to call witnesses, and he does not have to declare so in advance; but we now know what his claim is. It is not related in any sense to adjacent timber or the availability of it.

MR. McPHERSON: Before I go on there is another point, in view of the fact that my friend is not putting Mr. Schultz in at this time, but after he puts Mr. Schultz in I will be entitled to call witnesses

in rebuttal.

THE COMMISSIONER: Yes. Your friend has been given a special concession to break his case and you are not to be embarrassed or inconvenienced by the fact that that is being done.

MR. McPHERSON: The only other point before I open the government's reply, would be the question that Mr. Keith Shaw, who has been suppoeaned by your lordship . I understand he is a difficult man to have in a particular place at a particular time and in view of the fact that your lordship is endeavoring to close this case by Friday, might I suggest that something should be done to have Mr. Shaw here on Thursday or Friday.

THE COMMISSIONER: Can you get Mr. Shaw. I have called him only because I have ben asked to by counsel.

MR. BALDWIN: Friday would be agreeable to me, if it is agreeable to my learned friend.

THE COMMISSIONER: I am in counsels' hands.

MR. McPHERSON: Will my learned friend be getting in touch with him?

THE COMMISSIONER: I will direct you to as representing the government. I forget who asked him to be called.

MR. BALDWIN: It was the claimant, my lord.

MR. McPHERSON: I would call Mr. Wray to the stand if your lordship feels I should open the government's case now. I wouldn't finish with Mr. Wray by 4.30 .

THE COMMISSIONER: It is immaterial to me, except for the fact we want to finish by Friday. If you are perfectly satisfied you can finish by Friday by opening tomorrow morning.

MR. M cPHERSON: I am, my lord.

THE COMMISSIONER: Very well, we will adjourn now until ten o'clock in the morning. I would like to see counsel in my Chambers.

(PROCEEDINGS ADJOURNED TO NOVEMBER 24th, 1948 AT 10.00 A.M.)

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

Deputy Official Stenographer

Vancouver, B.C.,

November 24, 1948, 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. NORRIS: Mr. Commissioner, before my learned friend commences, I am pleased to state I appear again before your lordship.

THE COMMISSIONER: I am glad to see you, Mr. Norris.

MR. NORRIS: I would like to put in before my learned friend commences, timber contract dated the 27th day of May, 1936, between the San Juan Bay Lumber Company, Limited, and the Malahat Logging Company, Limited. My learned friend has had it available for him some days.

THE COMMISSIONER: It covers what timber?

MR. NORRIS: Port Renfrew, certain timber at Port Renfrew. It is just a question of costs and a question of prices, it has no relation to the particular--

MR. McPHERSON: My lord, I have had this available to me for examination, but I will have to object to it being filed as an exhibit because I have had no opportunity to cross-examine anybody. They have not called anybody to prove the document.

MR. NORRIS: We have a certified copy from the Land Registry office.

THE COMMISSIONER: Is there anyone available that can explain it.

MR. NORRIS: There is nobody available. It speaks for itself. It is a matter for argument. It is a matter of the weight your lordship will apply to it.

THE COMMISSIONER: I will receive it. Mr. Norris will appreciate that without an opportunity to cross-examine, it cannot be given the weight that it would be given otherwise.

MR. NORRIS: Your lordship will understand some times it is extremely difficult to get anybody to prove this or to deal with it or refer to it. It has just to be referable to the other evidence that is in.

THE COMMISSIONER: That is why I am letting it in.

(DOCUMENT MARKED EXHIBIT NO. 1388-29)

THE COMMISSIONER: What is the date of that , please, Mr. Watson?

MR. WATSON: The 6th day of November, 1948.

MR. NORRIS: No, no. Excuse me, it is the 27th day of May, 1936. It is between the San Juan Bay Lumber Company, Limited, and the Malahat Logging Company, Limited.

MR. BALDWIN: Perhaps I might speak to the matter my learned friend and I were speaking to your lordship on yesterday in Chambers. I am satisfied as to the Deep Bay limits there was an option -- there was no option available to the Custodian at the date of the sale.

MR. McPHERSON: I call Mr. Wray.

ROBERT FREDERICK WRAY, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McPHERSON:

MR. McPHERSON: I assume, my lord, it is unnecessary to

qualify Mr.Wray in view of the fact he appeared in the general evidence?

MR. NORRIS: You might tell me exactly the point.

MR. McPHERSON: Q: Mr.Wray, you are a partner with Frederick Field? A: Yes.

Q Frederick Field are the representative in Vancouver of P. S. Ross & Sons?

A That is correct.

Q In the course of your duty as a partner of Frederick Field, you had something to do with the Deep Bay Logging Company and Block 195?

A Yes.

MR. McPHERSON: Does my learned friend want me to qualify him as a chartered accountant?

MR. NORRIS: No. I don't quite know what his job or appointment was.

MR. McPHERSON: Q: Mr.Wray, will you tell his lordship something about the early days of Mr. Kagetsu's affairs with respect to the Custodian's office,and your knowledge of Mr. Kagetsu.

A The first information on Mr. Kagetsu was with reference to the investigation of his company to determine whether or not there was any enemy debt or any enemy shareholdings. There was an enemy shareholding.

MR. NORRIS: I wonder if you would go fairly slowly?

THE WITNESS: In the Deep Bay Logging Compay. Out of 5,000 shares issued, there were 100 shares in the name of a shareholder in Japan, which would constitute an enemy shareholders.

MR. McPHERSON: Q: Were there any enemy debts?

A In addition to that there was an enemy debt of Mr. Kagetsu of $75,000.00, due to the Yokohama Specie bank.

MR. McPHERSON: My lord, in view of the fact there is no questionin this case about the legality of the Custodian's intervention, it was not my intention to bother to put in all the various appointments.

THE COMMISSIONER: I can see no necessity for it.

MR. NORRIS: What appointments do you mean?

MR. McPHERSON: Partnership records and inspectorship and so on.

THE COMMISSIONER: I see no necessity for it.

MR. McPHERSON: Q: Now, Mr. Wray, after the evacuation program started, did you have any contact with Mr. Kagetsu?

A Yes, Mr. Kagetsu, with Mr. Stewart, Mr. Arikado, his bookkeeper, and officials of the Custodian's offfce and myself -- we had a meeting early in April, 1943, where in Mr. Kagetsu gave --

Q Who were at the meeting?

A There was Mr. Kagetsu, Mr. Stewart, Mr. Arikado, and officials of the Custodian's office and myself.

Q I call your attention to a statement made by Mr. Kagetsu in his examination at page 78 of the transcript, my lord. In cross-examination of Mr. Kagetsu, I asked, "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."
Was Mr. Carl Stewart with Mr. Kagetsu at that meeting? A: Yes.

Q I think you said 1943.

A I am sorry-- 1942.

MR.NORRIS: Q: April,1942? A: Yes.

MR. McPHERSON: Q: At the time of the evacuation?

A Yes, at that meeting we received from Mr. Kagetsu the inventory of the equipment at the Deep Bay Logging Company and discussed with him the timber, which at that time he stated was approximately 17 million feet.

Q Now, are you positive that Mr. Kagetsu did advise you there were approximately 17 million feet? A: Quite positive.
It was discussed as to what should be done with the property and the suggestion was that Mr. Kagetsu -- a sale should be attempted --

THE COMMISSIONER: Just before you go on with this conversation, what did Kagetsu have to say with regard to the timber, to distinguish the timber held by himself from timber held by the company?

A It was my understanding at that time, sir, that all the timber at Deep Bay was the property of the company. It was only subsequently we

found out that was not so.

THE COMMISSIONER: All right, proceed, Mr. McPherson.

MR. McPHERSON: Q: Now, is it your recollection you all discussed the question of the disposal of the assets?

A Yes, and it was agreed that a sale of the property was desirable and, if possible, it should be completed before Mr. Kagetsu was evacuated.

Q Now, Mr. Wray, I call his lordship's attention to Mr. Kagetsu's evidence at page 83 of the transcript, where in I asked Mr. Kagetsu:

"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?"

MR. NORRIS: Which page is this?

MR. McPHERSON: 83.

THE COMMISSIONER: You are reading from page 82?

MR. McPHERSON: Page 83 of the transcript, my lord. I asked Mr. Kagetsu this question:

"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 then. I never discussed it."

Q Mr. Wray, you are quite positive, are you, there was some discussion about the amount of timber?

A I am quite positive, yes.

THE COMMISSIONER: Q: Did you make notes at the time?

A I made a note of that meeting, sir.

Q Have you the note before you?

A Yes, sir.

Q Would you read the note as you have it. When was it made? A: The 14th April, 1942.

MR. NORRIS: May I see that, Mr. Commssioner? I may want some time to consider this. It has not been produced up to this moment.

THE COMMISSIONER: If you need time in order to cross-examine on it, that is quite satisfactory. It would be well if this document were either put in or read into the record. It will be material when it comes to the weight.

MR. McPHERSON: My lord, I don't know what is in the document myself. I was merely asking the question on the basis of the memory, and I am pleased there is a document.

THE COMMISSIONER: It is hardly conceivable Mr. Wray would keep all these details in his mind.

MR. NORRIS: I think the simplest way is to put the document in. He says it was made at the time and we will have it.

MR. McPHERSON: You may read it and I will determine whether I want to put it in or not.

MR. NORRIS: I think it had better be put in as a matter of record.

THE COMMISSIONER: Mr. McPherson and Mr. Reporter, it will be put in as an exhibit.

MR. McPHERSON: Will you read the part in relation to

the timber, Mr. Wray?

(DOCUMENT MARKED EXHIBIT NO. 1388-30)

MR. McPHERSON: Is there something in there about the question of disposal of the assets? or the sale of the assets?

(Exhibit 30 read.)

THE COMMISSIONER: This will be Exhibit 30.

MR. McPHERSON: Q: Now, Mr. Wray, did you as a result of that meeting receive any correspondence from anyone concerning Mr. Kagetsu's affairs?

A Yes, just previous to that meeting there was a letter from Mr. Stewart that was addressed to the Custodian's office, of which we received a copy.

Q Have you a copy of the letter which you received? My lord, I would like to put this in from Mr. Carl Stewart. You have a copy of it, Mr. Norris? It is dated April 9th. I require my copy.

MR. NORRIS: 1942.

MR. McPHERSON: April 9, 1942. I put a copy of that letter in as an exhibit.

THE COMMISSIONER: Will you read it before it goes in?

MR. McPHERSON: (Reads letter referred to).

(LETTER DATED APRIL 9,1942, MARKED EXHIBIT NO. 1388-31)

Q Mr. Wray, what about the position of the company, that is the financial position of the company, and what steps did you take after Mr. Kagetsu delivered the inventory to you?

A After the inventory was delivered to us, we hired a Mr. Murray as watchman and took him up

to the property and examined the property generally. He took a—

MR. NORRIS: May I get the date?

A The date he went up there would be April, 1942. He checked the inventory with the two of the Japanese remaining there. He stayed on the property until I think it was 1944, when he took ill.

MR. McPHERSON: Q: What about the question of paying his salary and his wages?

A There was no money in the company, and by June, 1943, we owed x him well over $1,000 for his wages.

Q I show you a map which has been filed as Exhibit 13, Mr. Wray, and without referring to the part coloured green, can you tell his lordship anything about where that map came from?

A I am unable now to prove the origin of this map, but I do recall asking Mr. Murray to find the map for me, and whether he located this or it was found in the company's records, I could not say, but in any event that map was in our possession and came from either one of those two sources.

Q I take it you did not prepare the mpa.

A No.

Q Is this the map that was delivered to Eustace Smith at the time that he made his cruise?

A Yes.

Q And what can you say about the green added in

there? A: He put in the green and made some copies of this map for us.

MR. NORRIS: Q: When did he do that?

A At the time he was asked to make his report on the property.

Mr. McPHERSON: Q: And I take it none of these figures in here were put in by you.

A No.

MR. McPHERSON: My lord, I would like to file this particular copy of this map as an exhibit.

MR. NORRIS: That, I understand, was put in previously subject to proof. Save insofar as it is a map that Eustace Smith had and Eustace Smith put these marks on there, I don't know what it does prove. It is for Mr. Eustace Smith to prove that. It does not prove anything.

MR. McPHERSON: If it does not prove anything, it does not hurt my learned friend.

THE COMMISSIONER: It has some endorsements on it.

MR. McPHERSON: It has not only endorsements on it, but I showed it to Mr. Kagetsu and cross-examined him upon it, and now I am trying to establish and will attempt to prove where the map came from.

MR. NORRIS: It must have some relevance. If Eustace Smith made those marks, Mr. Smith can say it is a map on which he made some marks, but this witness does not seem to know where it came from and he cannot prove anything about it.

THE COMMISSIONER: I think the objection is well taken.

If it is to have any value, it should be identified by Eustace Smith. But if you are going to have it identified by Mr. Eustace Smith, you can put it in subject to this identification.

MR. McPHERSON: It is not a question of having it identified by Mr. Eustace Smith. What I am endeavouring to do is to show that this is a map which Mr. Wray gave to Mr. Eustace Smith and which Mr. Eustace Smith operated on. Mr. Eustace Smith did not make this map.

MR. NORRIS: From the time that Mr. Wray gave it to Mr. Eustace Smith, that is all right, but anything prior to that— where it came from — is not proved.

MR. McPHERSON: Q: What happened to the books and records of the Deep Bay Logging Company?

A The books and records were stored in Mr. Kagetsu's basement at his house in Vancouver.

Q Can you give his lordship any further information about this map?

A As I said before, I cannot recall definitely where that map came from, but I really believe it was a map that Mr. Murray obtained for me.

MR. NORRIS: That is not evidence.

MR. McPHERSON: Q: Have you any letter from Mr. Murray showing he was enclosing a map?

A No, I made several visits to the camp and it may have been given to me at that time.

MR. NORRIS: If I knew what my learned friend was trying to prove through this witness, it might

be something I would agree to.

MR. McPHERSON: I am sure if he did know what I was trying to prove, he would object to the map going in.

MR. NORRIS: Then I had better object.

MR. McPHERSON: My problem, my lord, is the fact Mr. Murray, I understand, is dead and I cannot produce Mr. Murray, and I have established in cross-examination of Mr. Kagetsu that his son did make maps.

THE COMMISSIONER: Yes, but you were not able to establish he made this map.

MR. McPHERSON: But I thought, Mr. Wray might give your lordship some information.

THE COMMISSIONER: Perhaps if you would declare what your purpose is in producing the map, it might explain the situation. At present, it is a complete fog so far as I am concerned.

MR. McPHERSON: The purpose of introducing the map is this. This map has been prepared in a certain type of ink, as you can see from the chart, and has various entries in it indicating title to the property— logging — down in the corner we get additional information that is not on Exhibit 13, and then in the same colour of ink you get 17 million feet and you get 60% — If I can establish this is a company map, then you have your 17 million feet.

THE COMMISSIONER: You had Mr. Kagetsu in the witness box. You might have examined him on it at the

time.

MR. BALDWIN: May I say when my learned friend introduced Exhibit 15, I certainly understood it was just a copy of it. I didn't know there was any difference between Exhibit 15 and this map, which my learned friend was examining Mr. Kagetsu on.

THE COMMISSIONER: This is the first time I heard of it.

MR. McPHERSON: I didn't understand there was any difference either, and then when I cross-examined Mr. Kagetsu, I asked him about this figure of 17 million at the time. However, it is immaterial, my lord.

Q Mr. Wray, can you tell his lordship something about what was going on with respect to Mr. Carl Stewart and the Deep Bay timber and Block 195?

A Yes, Mr. Stewart was, throughout 1942, attempting to sell the property. We, at that time, in particular with reference to the Deep Bay Logging, were only supervisors. We had not been appointed to control or deal with the company's property.

MR. NORRIS: I have had some conversation with my learned friend, and it probably is not binding upon him, with regard to Mr. Stewart. I would like an opportunity -- before this witness can speak of it, of discussing the matter perhaps in your Chambers, with my learned friend, before your lordship.

THE COMMISSIONER: Before any question is put of Mr. Stewart's actions?

MR. NORRIS: Perhaps it would be better. I thought there had been some understanding with him, with regard to Mr. Stewart.

MR. McPHERSON: I didn't realize there was any understanding. I presume it should not be taken on the record --

MR. NORRIS: No. If there is any question, perhaps we can discuss it at the break, and my learned friend can pursue some other line with the witness. I don't want to embarrass my learned friend.

THE COMMISSIONER: We can recess now, if counsel prefer to do that.

MR. NORRIS: That would be better.

THE COMMISSIONER: I will be glad to see counsel in my Chambers.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

MR. NORRIS: Mr. Commissioner, I am not asking your lordship to rule on it, but I would like to take formal objection to any evidence of conversations with Stewart as representing Kagetsu. My submission will be that Stewart, in fact, did not represent Kagetsu. Perhaps the evidence could be admitted subject to that.

THE COMMISSIONER: I note the objection. I propose to allow the evidence to be adduced. I say simply that on the face of the evidence as adduced to date, it does appear to me that Mr. Kagetsu so acted as to create the impression in the mind of the Custodian and his representatives that Stewart did in fact act for Kagetsu. If that

cannot be refuted, then the fact that the Custodian proceeded to deal with Stewart as if he were Kagetsu's representative cannot be questioned. However, we will proceed with the evidence, subject to the objection.

MR. NORRIS: I was speaking to my learned friend just now about the correspondence. There are certain letters I would like to put in. I don't want to interrupt the cross-examination of this witness, nor particularly want to put them in on cross-examination, because nothing may be drawn from them by cross-examination. It is simply these letters were written and speak for themselves. I suggested to my learned friend he might put them in later. I can put in what I like and he can put in what he likes.

THE COMMISSIONER: You mean letters exchanged between the Custodian and Stewart?

MR. NORRIS: And Kagetsu.

THE COMMISSIONER: Is there any objection?

MR. McPHERSON: No.

THE COMMISSIONER: Just to shorten it up?

MR. NORRIS: Yes.

MR. McPHERSON: Q: Mr. Wray, would you explain to his lordship what the situation was between P. S. Ross and Mr. Carl Stewart and Kagetsu in 1942.

A During 1942, we considered that as our appointment as supervisors did not give us the authority or did not suggest that we should dispose of the property. Mr. Stewart was trying to sell

both properties throughout 1942 and we stood aside.

Q And you mentioned the appointment as supervisor. I take it that during 1942 -- if my learned friend does not object, it was during 1942 you were acting as supervisor for the Deep Bay Logging Company--

MR. NORRIS: If there are documents relating to that, they should be put in.

MR. McPHERSON: That was the point I mentioned there. I was not going to bother.

MR. NORRIS: We can put these in later with the correspondence.

MR. McPHERSON: That can be done, my lord.

THE COMMISSIONER: Yes.

MR. McPHERSON: Q: During this period that you have referred to, did you have any inquiries at all about Deep Bay property or Block 195?

A Yes. Any inquiries we did have, we referred to Mr. Stewart.

Q Did you have correspondence from Mr. Stewart? referring to those inquiries?

A Yes, on the date of the 25th November, 1942, he gave us a report on his negotiations during the past year.

Q I show you a copy of a letter dated November 25, 1942. A: Yes.

Q Is this a copy of the letter --

MR. McPHERSON: My lord, I would like to file the letter dated November 25, 1942, from Carl Stewart to P. S. Ross & Sons, attention of Mr. Wray.

The purpose of filing the letter, my lord, is that in that letter it refers to the question of stumpage, the offers which Mr. Kagetsu and Mr. Stewart were able to obtain, and attached to the letter is a report of Mr. Stewart's efforts to dispose of the company, listing the various people that he had been in touch with.

MR. NORRIS: I object to that on the same basis, my lord. The exhibit is what?

THE COMMISSIONER: Will you read that out, so I know the gist of it.

MR. McPHERSON: (Reads letter referred to.)

(LETTER DATED NOVEMBER 25, 1942, MARKED EXHIBIT NO. 1388-32)

MR. NORRIS: I take it I am not required to make my various objections.

THE COMMISSIONER: No, it has been taken in general terms.

MR. McPHERSON: Q: Mr. Wray, can you tell his lordship anything about this option which is referred to in here, approximately when it was obtained by Mr. Korner or his representative?

A Shortly after we obtained the supervision order, which was in May, 1943, we called --

Q 1942. A: I beg pardon, 1942 -- we called on the Land Department officials.

THE COMMISSIONER:

Q That would be of the E. & N.?

A Of the C. P. R. Railway, Mr. Field and myself. We were advised that this option had been given to

Mr. Korner and we did protest that our information was that Mr. Kagetsu had had the area plotted on the understanding it was to be allocated to him, and Mr. MacMillan in particular advised us that this option had been given and whether we liked it or not, the C. P. R. reserved the right to deal with its own property.

Q Did you get any information as to when the option had been granted?

A Well, it was my understanding that it had been granted about that time.

Q Yes. A:Mr. MacMillan suggested we should see and make a reasonable deal with Mr. Korner, and upon contacting Mr. Korner he stated that he wished to make a cruise and examne the property. Despite our urging of Mr. Korner to get this cruise completed, itwas in June, 1943, before we got anything concrete from it, and that was from the man he had intended to log it, Mr. Robson, who offered us $12,000 for the timber.

MR. McPHERSON: Q: What did you think of that offer?

THE COMMISSIONER: For which timber?

A For the timber of the Deep Bay Logging Company alone.

MR. McPHERSON: Q: I take it Mr. Wray, when you refer to the Deep Bay Logging, you are not separating what Mr. Kagetsu held in his name from that of the company. A: No.

THE COMMISSIONER: I understand that.

THE WITNESS: We did not consider the offer was at all acceptable, and in fact we wrote Mr. Korner at the time and told him that we were exceedingly annoyed that he held this matter of the sale of the property up for several months and finally only produced this, what we considered, a very frivolous offer.

MR. McPHERSON: Q: From the point of view of P. S. Ross & Sons, was Mr. Stewart handling Mr. Kagetsu's affairs during 1943?

A Yes.

Q What happened in 1943? Did you see Mr. Kagetsu in 1943? A: Yes, Mr. Kagetsu was in Vancouver in the middle of June, 1943, and this offer of Mr. Robson was referred to him and he refused this offer. We then advised him it was the Custodian's intention to offer the property for sale, and pointed out there were debts owing that would have to be taken care of, and ~~that~~ Mr. Kagetsu agreed that the property should be put up for sale.

Q You are quite sure that he did agree at that time the property should be put up?

A Yes.

Q Now then, did you publish an advertisment, advertising the property?

A Yes.

Q This Deep Bay property?

A Yes. At this point I had other work very pressing, and Mr. Field pretty well took over the

disposal of the property.

MR. NORRIS: Q: What date?

A The end of June or July, 1943.

MR. McPHERSON: Q: And what did happen to Block 195 at this time? A: 195 had been sold by the end of June, 1943.

THE COMMISSIONER: Q: Had been what?

A Sold.

MR. McPHERSON: My lord, I will go on and deal with Block 195. I want to put it in chronological order.

THE COMMISSIONER: Yes.

MR. McPHERSON: Now Mr. Wray stated Mr. Field took over about this time the administration of Deep Bay affairs.

Q Have you been back to the Deep Bay property at all? A: Yes.

Q When were you there last?

A About two months ago.

Q Will you tell his lordship what observations ~~p~~ what things you observed there, with particular reference to the buildings and the foreshore and the log dump on the right-of-way?

A The buildings are, I would say, 50% demolished. The present operator is not using any of the buildings that I could ascertain.

MR. NORRIS: I submit this is fairly irrelevant.

MR. McPHERSON: Q: Mr. Wray, had you seen these buildings before? A: Yes, I made several trips to the property.

THE COMMISSIONER: I can appreciate the relevance.

The claimant asserts the buildings have a value. The Custodian says to the contrary. Now, it is some evidence to suggest they had no value. It does not prove they had no value.

MR. NORRIS: Two months ago the witness goes back and finds some buildings demolished and so on. How are we concerned with what happened two months ago, what the position was two months ago in view of the fact this property was in the hands of somebody else who had other policies?

THE COMMISSIONER: Quite true. It may have been an entirely different type of operation, but the fact remains that was the condition he found and it may have some bearing.

MR. McPHERSON: I only have to recall some cruises that were made as late as three weeks ago.

MR. NORRIS: That is a different thing.

THE COMMISSIONER: I propose to hear the evidence.

MR. McPHERSON: Q: Did you see those buildings in '42?

A Several times.

Q And did you see them in 1943?

A Yes.

Q You have seen them recently?

A Yes.

Q What is left of them, as you have said.

A Yes.

Q Do you know the man who is operating the property? A: I have met him--

Q What is his name? A: Mr. Fletcher.

Q Did you have a talk with him while you were up

there? A: Yes.

Q Did you go into the woods with him?

A Yes, part way.

Q What did you find about his camp; where is his camp? A: His camp is below the road.

Q What do you mean, below?

A Below the main highway -- between the main highway and the tidewater, I would say at least two miles from the old dock and dump of the Deep Bay Logging Company.

Q He had built a new dock?

A Yes, he had built a new dock and new truck buildings.

Q What about the use of the railway grade in from the dock? A: The old railway grade from the log dump -- his present log dump -- pardon me; the old railway grade from the log dump to the old campsite, which was possibly two or three miles in the woods, is not used at all.

Q Now, with respect to the books of the company, Mr. Wray, I will show you a ledger which has been identified by the accountant as the company's ledger. A: Yes.

Q What do you say about the operations of this company from a financial point of view, Mr. Wray?

MR. NORRIS: What do you mean? I submit he should address himself to some particular aspect.

MR. McPHERSON: I don't wish to lead the witness. I think the witness can go ahead and answer the question.

THE COMMISSIONER: The witness can make his own comments on the books, as his examination showed.

THE WITNESS: From the standpoint of operations, there are several profit and loss accounts of the company; annual profit and loss accounts of the company in the back of the ledger, and with the exception of 1927, which showed a profit of $1,000.00, the remaining years that are in the ledger, and numbering nine, show losses.

THE COMMISSIONER: Q: What years are they?

A The profit and loss accounts are here from '25 to '27; '28 to '34 are missing, and 1935 to 1945 are here.

MR. McPHERSON: Q: Have you prepared a statement which I can put in? I take it my learned friend does not object.

MR. NORRIS: No. I would like to have a copy of it.

MR. McPHERSON: My lord, the statement was only prepared last night and I was unable to get a copy for my leaned friend.

MR. NORRIS: I would like an opportunity of going into it.

MR. McPHERSON: Now this statement is headed "Summary of Operating Profits & Losses, Deep Bay Logging Company, Limited." I would put it in as an exhibit, rather than putting the book in, unless your lordship would like the ledger.

THE COMMISSIONER: I think it would be better to put in the extract, as long as counsel has an opportunity to compare them and satisfy himself they

are true copies.

MR. McPHERSON: Yes, I think my learned friend will agree that he has had the ledger available, and all I have done is take the figures.

MR. NORRIS: I would like an opportunity of checking it, that is all.

(SUMMARY MARKED EXHIBIT NO. 1388-35)

THE COMMISSIONER: Shortly put, what do those extracts from the profit and loss accounts show?

A With the exception of 1927, as noted, the remaining years for which we have a statement shows losses raning from $271.00 in 1939 and as high as $7,478.20 in 1935. In 1940, there was a loss of $2530.51. In 1941, it shows a loss of $412.58.

MR. McPHERSON: Q: Mr. Wray, did the book indicate to you the quantity of logs taken out of this property per year?

A Yes, that is already in with Exhibit 22, giving the out-turn -- pardon me, not Exhibit 22 -- showing the E. & N. -- the purchase of the E. & N. property and the out turn and sales.

Q That is Exhibit 21, I take it.

A I believe so.

Q And you are saying that Exhibit 21 shows the production of the company?

A There is a supplement to that showing annual production for several years.

Q What figures do you get out of the book; that is, Exhibit 21? A: I will read them

from the books, if you wish.

Q I just want the average, Mr. Wray.

A Oh, the average would be between 9 and 10 million a year.

MR. NORRIS: That is from the books?

A From the books, yes.

MR. McPHERSON: Q: Mr. Wray, you have given evidence that the company was losing money, and Mr. Kagetsu, in his evidence, in his re-examination, I believe it was, indicated to my learned friend that he would not have sold his timber at the same stumpage as he was selling to Deep Bay for, to anybody else. Have you any information from the books of the company as to the stumpage written off?

A Yes, I have a summary here from 1933 to 1941. In 1933, fir was written off at $2.75 a thousand; hemlock and cedar at $1.50 and $1.75. 1934, $2.61 for fir, $1.61 for hemlock and cedar, and $2.75 and $1.75. The rate changed in that year. From 1935 to 1937, three years, they were consistent and the rate was $2.61 for fir and $1.61 for cedar and hemlock. In 1938 to 1941 inclusive, the fir was $1.50; the cedar and hemlock at $1.00.

MR. NORRIS: What do you mean by stumpage written off?

A That probably should be amended to stumpage charged to the company's profit and loss account. Most of this stumpage was credited to Mr. Kagetsu, and to Kagetsu & Company, as the majority

of the timber was held by him.

Q So I take it those figures in this statement include Mr. Kagetsu's timber as well as the company's timber?

A Yes, I would say it is probably Mr. Kagetsu's timber during that period.

Q Why do they only go up to 1941?

A Operations were stopped in March, 1942, and the books were completed by an accountant in our office, and he continued the same rate of stumping.

MR. McPHERSON: I would like to file that statement as an exhibit.

MR. NORRIS: Subject to check.

(DOCUMENT MARKED EXHIBIT NO. 1388-34)

MR. McPHERSON: Q: And, Mr. Wray, if there had been a larger stumpage charge, what would have been the effect on the profit and loss of the company?

A There would have been a larger loss.

Q Mr. Wray, would you tell his lordship as an accountant, a chartered account, what that document indicates to you with respect to the timber blocks?

THE COMMISSIONER: The ledger you are referring to, still?

THE WITNESS: The record of stumpage shows in the first two years from 1933 the timber mark from which the timber sold was cut.

MR. McPHERSON: Q: That is in your opinion that is what it shows?

A Well, the timber mark is shown in the ledger page. I presume it is correct.

Q And from your examination of the timber marks and the records shown in the company's ledger, what would you say about Lot 88?

A Q.59, we ascertained from the Forestry Department, was the timber mark or timber hammer given to Lot 88. The first three invoices -- I should say the first three sales recorded in 1933 showed that timber mark. It appears again --

MR. NORRIS: Perhaps you would give us the folio of that.

A I can only say it is under the tab "R", commencing after the -- there are two accounts.

MR. McPHERSON: My lord, for my learned friend's information, the pages were identified in the cross-examination of Mr. Kagetsu and Mr. Wray is referring to the same pages.

MR. NORRIS: All right.

MR. BALDWIN: Would my leaned friend ask the witness whether or not any other timber mark appears?

MR. McPHERSON: I leave that to my learned friend in cross-examination. I don't want to change my line of examination.

THE WITNESS: I would say -- I would point out in the first thirteen entries in 1933 --

MR. NORRIS: Q: 15? A: 13.-- that Q. 59 is shown for six of them.

Q And is there anything to indicate that Q.59 represents boom sticks?

A Nothing here would indicate they are boom sticks.

MR. McPHERSON:

Q Have you any other comments on any other timber

block? A: That is the only thing of any consequence. In other words, it would appear that late in 1932 or early in 1933 —

MR. NORRIS: Is this evidence? Or is it something he thinks? Idon't know what he is thinking.

MR. McPHERSON: If my learned friend will allow the witness to go on, he is telling what the books indicate.

THE COMMISSIONER: We have no jury here. Let us hear what the witness says before we jump too fast. If there is anything wrong with it, I will have it struck out.

THE WITNESS: It would appear in 1932 or early 1933 that there was some production being obtained from Lot 88.

THE COMMISSIONER: Q: That is not a conclusion you are drawing. The record shows there was some production attributed to Lot 88. Is that right?

A I should state that some of those sales here containing Q.59 are marked stock. I presume that is at the end of the year.

MR. NORRIS: Q: Marked stock?

A Yes.

MR. MacPHERSON: Q: So that would indicate, Mr. Wray, that there were logs from 88 in stock at the end of '32? A: Yes.

Q You received a letter from the Forestry Department about the other timber marks?

A Yes, there are other timber marks.

MR. McPHERSON: Exhibit 27, my lord.

THE WITNESS: --from time to time. Q.56. It appears in 1933. According to the Forestry Department, Q.56 is a timber mark of the Brook Iowa Lumber Company.

Q With that appearing in the books of the company, what would you say that indicates?

A That part of this log output --

MR. NORRIS: I don't think that is a necessary conclusion. I don't think this witness can say.

MR. McPHERSON: I have not concluded it. I am asking what he says it indicates.

MR. NORRIS: It speaks for itself.

MR. McPHERSON: I wish to have it in any event.

THE COMMISSIONER: Q: What is the date to which you are referring, Mr. Wray?

A On January 21, 1933.

Q And the entry is what? A: 206 pieces, Q.59, Q.56, four sections; scaling royalty 148,814 -- 132,648 feet stumpage.

Q Is it possible to determine what part bears timber mark Q.56, and what part bears mark Q.59?

A Not from the books, no.

THE COMMISSIONER: I think perhaps as a matter of argument, Mr. McPherson, that it is not possible for anyone to draw a final conclusion as to how much of this was taken from the Brooks Iowa area and how much from the Deep Bay.

MR. McPHERSON: The only reason I am concerned with this question is Mr. Kagetsu, junior, was very positive as to what these books meant and referred

to the boom sticks and seemed to have a great deal of information. I am asking Mr.Wray if the books indicate what Mr. Kagetsu said they did.

THE COMMISSIONER: It was not quite put that way. You asked him to draw his conclusions. All right, we know what the entry is now.

MR. McPHERSON: Q: Canyou tell his Lordship anything else with respect to these marks as to what the books indicate or what they do not indicate?

A There is an entry onthe 10th of July, 1933, 391 pieces, D.26, A.81, eight sections, scaling royalty account 154160.

Q Who was holding that timber mark A.81?

A A.81 timber mark is in the name of Curran & Stephenson.

Q Curran? A: Yes.

Q What was the other mark?

A Q.56 -- oh, the other markwas D. 26.

Q D.26? A: Yes, in the name of the company.

Q That is in the name of the company? Mr. Wray, is there anything in the books to indicate those were boomsticks?

A Nothing in this record or anywhere else.

THE COMMISSIONER: Q: Mr. Wray, when you read out those numbers of timber marks, are you reading them in the order in which they are set out in the sheets? A: Yes.

Q So that in each of the last two entries to which you have referred, the first referame is to a

timber mark which is not the property of the company? Am I right in that?

A The first reference is to a timber mark that is the property of the company, and the last is not the property of the company.

Q You read them the other way?

A I read D.26 and A.81.

Q Unless I misunderstand you, you read them the other way. Let us have them again. What is the order in which they are shown in the books?

A The first one, January 21, 1933, 206 pieces, Q.59 and Q.56.

THE COMMISSIONER: Q.59 is the company; Q.56 is Brooks Iowa? A: Yes.

Q And the next one? A: The next one I read was July 10th, D.26 and A.81.

Q D.26 is the Deep Bay, and A.81 is Curran & Stephenson? A: Correct.

Q Are these the only two?

A There are others containing -- as I statedthere are six out of thirteen, containing Q.59 in the first thirteen entries.

Q Q.59; that is Lot 88? A: Lot 88.

Q Where does that come in in the order of the timber mark? What is the date of the first one or the last one? A: Where it is referred to in six of the thirteenmentioned, it comes in first twice, and second six times.- Pardon me, five times.

MR. McPHERSON: Q: Those pages are not numbered, are they, Mr. Wray? A: No, but they are

dated.

Q Are there any other timber marks, Mr. Wray, that you can find in the books of the company that are indicated in Exhibit 27? as not being owned by the company? A: Yes, in 1935, February 14th, 387 pieces, six sections balsam, F.98, D.26, above B.28.

Q Will you tell his Lordship who was the owner of F.98?

A F.98 timber mark was held by Manzer Brothers Limited.

MR. McPHERSON: My lord, I don't know whether it is your intention to adjourn at all or not, because if you are going to adjourn this would be a --

THE COMMISSIONER: Oh, we have had a recess, unless counsel wishes to recess?

MR. McPHERSON: Not so far as I am concerned, my lord.

THE COMMISSIONER: We will go on.

THE WITNESS: February 21, 1935, 248 pieces, six sectons of fir, B.28 and A.81. In the year 1937 the subsequent timber marks are not shown and, of course, in 1952, the prior logg output or stumpage records are not here.

MR. McPHERSON: Q: Mr. Wray, is that everything in the books that you thought should be brought to his Lordship's attention?

A With respect to the records, yes.

Q Now, with respect to Block 195, Mr. Wray, will you explain to his Lordship the development with respect to that block insofar as your office is concerned?

A Similarly when Deep Bay Block 195 was being offered by Mr. Stewart throughout 1942 and into 1943, on the 27th of March, 1943, Mr.Stewart reported that he had two offers.

MR. NORRIS:Q:When was this?

A The 27th of March, 1943; one of $100,000.00 cash, less a commission of $7500.00. The other of $110,000.00 on terms less a commission of $10,000.00.

THE COMMISSIONER: Let me have that again, please. One of --

A One of $100,000.00,sir, less a commission of $7500.00. That would be cash of $92,500.00 net.

Q And the other was $110,000.00?

A $110,000.00 on terms with a commission of $10,000.00.

MR. McPHERSON: Q: Mr. Wray, are you aware of any correspondence between Mr. Stewart and Mr. Shears in the Custodian's office setting out these offers?

A Yes, I believe there were some.

Q Were you given a copy of a letter of March 3rd to Mr. Shears from Mr. Stewart?

A Yes, sir.

MR. McPHERSON: I would like to file this letter from Mr. Stewart, my lord.

THE COMMISSIONER: Yes.

MR. McPHERSON: Your Lordship will appreciate that I am putting in a letter of Mr. Shears' and I am not calling Mr. Shears inorder to avoid lengthening the case. If my learned friend

wants to cross-examine him, I am quite prepared to call him.

MR. NORRIS: Mr. Shears cannot say anything about it. He got a letter from Stewart.

MR. McPHERSON: I thought my learned friend might make the objection I was putting in correspondence from Mr. Shears and we were not calling him.

MR. NORRIS: No, I thought we had agreed about that.

MR. McPHERSON: This is a letter, my lord -- I don't know whether you would like me to read it.

THE COMMISSIONER: Yes, the date of it?

MR. McPHERSON: March 3rd, 1943, from Carl Stewart to Mr. Shears, re Kagetsu and Block 195.

I would like to file that as an exhibit, my lord.

(LETTER READ AND MARKED EXHIBIT NO. 1388-35)

Q Mr. Wray, with respect to this timber and the debt of $16,000.00 owing, was there any discussion with the creditor as to paying the amount?

A We had some correspondence with the creditor, and I also believe the Custodian's office did.

Q And the creditor was named --

A The vendor, Gerald Arthur Tisdale. He filed a formal claim dated the 15th day of April, 1942, wherein he states the sum of $16,000.00 is owing and overdue, together with interest at 6% per annum from the 11th day of April, 1942.

Q Mr. Wray, you heard Mr. Kagetsu's evidence the other day on what this block had cost him?

A Yes.

Q Had you prepared any figures to show from an accounting point of view what the block of timber had cost him? On this point, My lord, you will recall that I was cross-examining Mr. Kagetsu and getting involved in figures and let the question go. I would like to put in evidence as to what Mr. Wray found.

THE COMMISSIONER: It is simply a matter of calculation of interest.

MR. McPHERSON: Yes.

THE COMMISSIONER: And outlay in annual dues; something of that kind.

MR. McPHERSON: Yes, my learned friend, Mr. Morris, in examination in chief, at page 17, of Mr. Kagetsu, said that the $120,000.00 included taxes and interest on all the money. He was claiming $120,000.00. The actual original figure was $121,515.00. That is what he said it originally cost him.

Q Have you a statement on that?

A Yes, the original cost of purchase price was $75,000.00. I am taking this approximately to the date of sale. The taxes for 93 were assumed by the purchaser, so, therefore, I have taken 5½ years being half of 1937 to 1942 inclusive. That amounts to $4,812.50, taxes and various protection dues. Interest, that is taken at 6% being the amount of the agreement not necessarily the worth of money at that time for six years, amounts to $26,000.00. The

total is $105,812.50.

Q Mr. Wray, when you advertised or when you were originally advertising this property for sale and subsequently sold it, did you make a report to the Custodian?

A Yes, we reported in letters from time to time. Our first formal report was dated the 21st of May, 1943.

MR. McPHERSON: And that report, my lord, contains a copy of the notice calling for tenders. It contains a list of the newspapers in which the advertisement was published. It contains a report of a cruise by Mr. Eustace Smith and a copy of a letter from Mr. Sheehan, which is referred to in Mr. Smith's report, and the bid of H.R. MacMillan. I would like to file that as an exhibit.

THE COMMISSIONER: It is not in yet?

MR. McPHERSON: No, my lord, and if I may lead the witness, the second report is the final report on the sale of Block 195 as at August, 1943, and I would like to file that as a report and I draw my learned friend's attention that it includes in the report a copy of the agreement made with Mr. MacMillan which my learned friend asked me to file yesterday.

(DOCUMENT MARKED EXHIBIT NO. 1388-36)

(DOCUMENT MARKED EXHIBIT NO. 1388-37).

MR. NORRIS: What is the date of the first report, Mr. Secretary?

THE WITNESS: The 21st of May, 1943.

MR. McPHERSON: Q: Mr.Wray, that offer did you receive from H.R. MacMillan Company for the timber?

A There was only one offer, and that was from H.R. MacMillan & Company. That was for $93,000.00 cash, and the purchaser agreed to pay the 1943 --

THE COMMISSIONER: Q: Did that offer include the assumption of the outstanding liabilities?

A No, the liability was paid by the vendor out of the proceeds of the sale.

MR. McPHERSON: Q: From the point of view of accounting have you prepared any statements to compare the offer with the offers that Mr. Stewart had received to show whether the $93,000.00 offer is lower or better?

A There were two offers he had, one net cash of $92,500.00. It would indicate that our offer was a little better. The other was $100,000.00 net on terms. I would say that the MacMillan offer was reasonably comparable or better than that.

Q Mr. Wray, during the last few days you have heard a great deal of evidence given about figures; that is, the Provincial Government average prices of the Forestry Department, and you have heard figures given on the B.C. Loggers' Association average stumpage prices. Have you prepared any statement, accounting statements which would be of use to his Lordship in comparing these values? A: Yes.

MR. NORRIS: Comparing them with the figures already put in.

MR. McPHERSON: Yes.

THE COMMISSIONER: Comparing with what exhibits?

MR. McPHERSON: I will identify them as we go along. My lord, I would like to point out to you, and to my learned friend, that I feel he is entitled to object to one of these statements that I would like to put in at this time, because it relates to a cruise made by Eustace Smith of Block 403, which adjoins 195, and on which your Lordship has not heard any evidence, but if my learned friend will permit me to put it in, I will undertake to call Mr. Eustace Smith, but Mr. Wray is in a better position to give your Lordship --

THE COMMISSIONER: Any objection, Mr. Norris?

MR. NORRIS: No.

MR. BALDWIN: The only thing is this, if the Government proposes to put in a cruise of 403, it is the first we have heard about it and we have not been supplied with any of the details such as my learned friend has complained of on our side.

MR. NORRIS: I take it we will get the details. If it turns out we have not the details, your Lordship will give us an opportunity.

THE COMMISSIONER: Yes, I do not think you need worry about that.

MR. NORRIS: We might put this in at this stage subject to that -- the witness has a statement

that he borrowed from you a minute ago and did not return.

MR. McPHERSON: On the question of 403, your Lordship will recall I tried to ascertain in cross-examination from Mr. Schultz whether or not he had inspected 403, and I indicated the line I would be taking, and my learned friend admitted that the Forestry Department Reports, the log scales, came off the two blocks; therefore, I suggest my learned friend is not taken by surprise if I endeavour to show what came off 403.

MR. NORRIS: Have I a copy of those statements?

MR. McPHERSON: You will have them. I only got them this morning. I point out this statement could not be prepared until after the claimant's evidence was in.

MR. NORRIS: I am not making any point of that.

MR. McPHERSON: Q: I think, Mr. Wray, if you would take the average prices of the Forestry Department and Mr. Smith's valuation on Block 195, as you are dealing with Block 195 at the moment -- will you explain to his Lordship what this statement means? I apologize, my lord. I have only two copies. Could the witness get an extra copy, my lord?

THE COMMISSIONER: Yes.

MR. McPHERSON: Perhaps I could file this as an exhibit now, and get it through so that you can look at it while the witness talks about it.

(DOCUMENT MARKED EXHIBIT NO. 1388-38)

THE COMMISSIONER: Would you like an opportunity to get this into shape?

MR. McPHERSON: I have not enought copies. That is the problem. They were typed at eight o'clock this morning. I did not realize there were not enough copies. I think Mr. Wray can deal with them and I can give my learned friend my own copies. I will have to have a copy made later. I would point out, your Lordship, before the witness deals with this statement on Block 195, comparing average prices as put in in the evidence of the Forestry Department -- they were read in out of the annual report, and comparing them with Mr. Smith's valuation for 195, and deducting 25% for cash, which I think have endeavoured to establish would be a reasonable deduction and which I will produce further evidence on.

Q Will you just explain to his Lordship what this statement is?

MR. NORRIS: Did you say 25%?

MR. McPHERSON: Yes.

THE WITNESS: On Block 195 tenders closed on the 12th of May, 1943. Mr. Smith's valuation was $3.00 for fir, cedar and pine, and $1.50 for hemlock and balsam, worked out to a total of $80,050.00. The Forestry Department average prices for 1943 stumpage and to that I have added the royalty, and the total of the two of fir stumpage $2.76, royalty $1.22, total $3.98.

If that is reduced by 25%, it gives a figure of $2.99 for fir. Cedar stumpage was $2.95, royalty, $1.22, a total of $4.17. Reduced by 25% it amounts to $3.13. Hemlock, $1.48 stumpage, 60 cents royalty; $2.08 total; reduced by 25%, $1.56. Balsam, $1.42½ stumpage; 60 cents royalty, total $2.02, less 25%, $1.51. Now the mean of the fir and cedar is approximately $3.06; that is the stumpage and royalty, less 25% and on hemlock and balsam, $1.53. Mr. Smith's cruise of fir, cedar and pine shows a total of 22,376,000 feet, which at $3.06 amounts to $68,470.56. Hemlock and balsam, Mr. Smith's cruise, 8,618,000 feet at $1.53, $13,185.54. Or a total based on Mr. Smith's quantities and the Forestry Department royalty and stumpage, less 25% of $81,656.10. There is a note on this same sheet that Mr. Sheehan in a letter that is in our report of the 21st of May reduces the cedar and pine from Mr. Smith's value of $3.00 to $2.50. There is also a note that Block 195 sold for $93,000.00 cash.

Q Mr. Wray, have you taken the figures and worked out the picture of Deep Bay on the basis of the Forestry Department's average prices?

A Yes.

MR. McPHERSON: My lord, I will file that.

MR. NORRIS: This has to do with 195?

MR. McPHERSON: That is 195. My lord, I would like to file a copy of the statement showing average

prices of Forestry Department and Mr. Smith's operations on the same basis as the last exhibit, only relating to Deep Bay timber.

(DOCUMENT MARKED EXHIBIT NO. 1388-39).

MR. McPHERSON: Q: I don't think you need go into the figures as you did, if you would just indicate what that establishes.

MR. NORRIS: It is on the same basis as the last one.

THE WITNESS: The Deep Bay Logging Company -- the tenders closed the 31st of August, 1943. Mr. Smith's valuation was an overall of $2.00 per thousand amounting to $29,196.00 to which he added $4000.00 for felled and bucked timber being a total of $33,196.00. Extending Mr. Smith's cruise as to quantities and multiplying or rather multiplying this by $3.06 for fir, cedar, and pine, under the Forestry Department figures and $1.53 for hemlock, we get a total of $42,321.33.

MR. NORRIS: The object of this, tenders closed item,-- what is the purpose of that?

A That is to give the date of sale.

MR. McPHERSON: It is a matter of argument. The Government is contending that the timber was cruised and advertised for sale and tenders closed and as of that date that was the date the market value was established, and that the question of completing the legal documents is immaterial. That is a question of argument, I think, my lord.

THE WITNESS: To $42,321.33 I added Mr. Smith's valuation of the felled and bucked of $4,000.00, a total of $46,321.33. That is Mr. Smith's cruise valued on the basis of the Forestry Department, 1943 stumpage prices, less 25% and including royalty.

Q Mr. Wray, with respect to the agreement that was introduced in evidence yesterday, the Canadian Forest Products Limited agreement, which my learned friend produced yesterday, will you tell His Lordship whether or not you have made a statement comparing that with the sale of Lot 195.

THE COMMISSIONER: Is it an exhibit, the Canadian Forest Products' agreement?

MR. McPHERSON: I don't think the actual document was put in. You will recall my learned friend examined Mr. Brown, was it?

MR. BALDWIN: My lord, both those contracts were in my learned friend's custody at the time., I think he cross-examined Mr. Brown on one of them, and we put in the other this morning.

MR. McPHERSON: Q: Mr. Wray, Mr. Brown's contract yesterday, was that a Canadian Forest contract?

A Yes.

MR. NORRIS: No. Is this a comparison with the one that is not in?

MR. McPHERSON: The document itself is not in, I don't think.

MR. NORRIS: We have not relied on it, so what is the

purpose of a comparison with that?

MR. McPHERSON: My understanding yesterday was Mr. Fred Brown was produced by my learned friend -- Mr. Norris was not here at the time--Mr. Brown gave evidence about that agreement.

MR. BALDWIN: Not in direct examination, merely in cross-examination.

MR. McPHERSON: He gave evidence in cross-examination, which I presume is evidence whether in direct or cross-examination.

THE COMMISSIONER: Of course it is. The only note I have on it is Exhibit 29, agreement of the 27th of May, 1936.

MR.NORRIS: That is the one put in this morning.

MR. McPHERSON: That is not it. It was in the cross-examination yesterday. If my learned friend does not think I am entitled to put in this statement, I would prefer to wait until I get the transcript.

THE COMMISSIONER: Are you talking about the timber -- a comparison with the Cudahy timber?

THE WITNESS: It is an attempt to interpret in stumpage value the total of stumpage shown in that agreement.

MR. McPHERSON: Q: And is that the agreement on which I cross-examined Mr. Brown yesterday?

A The same agreement, yes.

THE COMMISSIONER: I made one note of it. Except a reference to Cudahy timber, it does not appear so far as my notes show to have been examined

upon by your learned friend at all.

MR. McPHERSON: It was not examined upon by my learned friend but the document was in my possession at the time, and I examined Mr. Brown upon it.

MR. NORRIS: What are you seeking to do now, break down some evidence you have adduced yourself on cross-examination?

MR. McPHERSON: No, I am merely having Mr. Wray put in a statistical statement to show that the sale of Block 195 compared favourably with the deal.

MR. NORRIS: As I understand there are no particulars in with regard to the other deal, so a comparison would be of no purpose.

THE COMMISSIONER: I have not any note -- I have no note of it, Mr. Norris. Whether it is in the transcript or not, I cannot tell you from the notes.

MR. McPHERSON: I will reserve this question until afterx the noon hour, when I may be able to find out from the transcript.

THE COMMISSIONER: All right.

MR. McPHERSON: Q: What other statistical information have you there that will be useful to his Lordship? I suggest you deal with the statement referred to by the B.C. Loggers' Association average stumpage prices as against the Forest Department annual report. Both of those are in evidence. I would like to put this statement in as an exhibit. It is a comparison of fir No. 2

prices -- your Lordship will recall I examined Mr. Pretty and he suggested I should take the No. 2 fir log prices yesterday.

THE COMMISSIONER: Yes.

MR. McPHERSON: And this is a statement working out the average stumpage prices of the B.C. Loggers' Association as compared with the Forestry Department annual report.

(DOCUMENT MARKED EXHIBIT NO. 1388-40).

THE WITNESS: Yes, 1943, the stumpage --

Q Will you state first what this document is supposed to establish so his Lordship will know?

A This establishes that in 1943 as compared to 1943 -- the stumpage prices of fir, according to the Forest Department report, went down two cents, and the average selling price of No. 2 logs increased $2.45.

MR. McPHERSON: Your Lordship will recall this question of a parallel rise in prices.

THE WITNESS: The same comparison, as showing the increase of both stumpage and logs of 1946 over 1943, shows that in 1946 the stumpage was 21 cents higher than in 1943, but the price of logs had increased $9.13 in the four years. In other words, the stumpage between 1943 and 1946 increased -- pardon me, the stumpage in 1944, '45 and '46, increased 7.9 percent, and the sales price of No. 2 logs increased 44 percent.

MR. McPHERSON: In case there is any confusion, I would

point out in cross-examination, I believe, that Mr. Pretty did suggest I should take the No. 2 prices on No. 2 logs. I have taken '43, '44; and '45, in the first instance, which is the year the Custodian said the property was sold; '44 is the year my learned friend says it was sold and '45 to get the average of four years, and I have taken '46 to show what happened after the price controller lifted the controls.

THE COMMISSIONER: Very good.

MR. McPHERSON: Q: You have another statement there, Mr. Wray, relating to Block 195 and 403?

A Yes.

Q A comparison of Mr. Eustace Smith's cruise and output, the scale of the 31st of December, 1948. This is the statement I referred to which I will undertake to prove by Mr. Eustace Smith. I would like to file a copy of it as an exhibit.

(STATEMENT MARKED EXHIBIT NO. 1388/41).

THE WITNESS: This is a comparison of Mr. Smith's cruise broken down --

MR. McPHERSON: My lord, you will appreciate that the scale shows as filed for timber mark 1-C-23, admitted by my learned friend to include timber off 403, and the purpose of this statement is that Mr. Eustace Smith's cruised 195 and 403, and I will produce him to give the figures on 403.

THE WITNESS: This statement is to show a comparison between Mr. Smith's cruises of Block 195 and 403 to the out-turn or output of logs from the

two areas to the 30th of September, 1948. Mr. Smith's cruise of the two areas shows fir, 27,302,000; cedar, 5,256,000; pine, 764,000; cypress, 340,000; a total for fir, cedar and pine/of 33,662,000 feet. The out-turns under those various species are 21,702,000, cedar 7,651,000, pine 860,000, and cypress 924,000. There is a difference in the total of the four species of 2,525,000. That is to say that of the totals given by Mr. Smith of those first four species, they had not recovered that total to date, till the end of September, by 2,525,000.

THE COMMISSIONER: Let me understand those figures. The four figures, I take it, show the actual cut to be 5,600,000 feet less than Smith's cruise? A: Less than Smith's cruise; that is, cut to date.

MR. McPHERSON: That is the cut -- I would explain that is the cut that is shown on Exhibit 23. Is that right. And we are not contending at all that the timber has all been cut, and that is why it is worked out to percentages. We hope, my lord, -- that when the final figures appear before your Lordship, both sides will find out what the picture is.

THE COMMISSIONER:
Q In my case the figures in red indicate -- in red ink on the right hand side of the column are designed to show an under-cut or something less; the red shows something less than Smith's cruise? A: That is right.

MR. McPHERSON: Yes, the point being that in the case of fir, for example, up to the present time they have not equalled Mr. Smith's cruise.

MR. NORRIS: Might I ask what cruise this is?

MR. McPHERSON: What cruise?

MR. NORRIS: Mr. Eustace Smith's cruise?

MR. McPHERSON: My learned friend has a copy of it and has had it in that report since July.

MR. NORRIS: But what date is he talking about?

MR. McPHERSON: I cannot stop my examination to look up reports.

MR. NORRIS: I think it should appear in the exhibit.

THE COMMISSIONER: Just one minute. The document has been handed to you and you have not been in the case--

MR. NORRIS: Whether I have or not --

THE COMMISSIONER: Just one moment.

MR. NORRIS: With the greatest respect, I have made an objection and I ask that I be heard.

THE COMMISSIONER: And I was speaking, Mr. Norris, and I do not care to be interrupted by yourself, as senior counsel more particularly.

MR. NORRIS: Very well, my lord.

THE COMMISSIONER: All right. Go on, Mr. McPherson.

MR. McPHERSON: Q: Will you proceed, Mr. Wray?

MR. NORRIS: My lord, may I suggest that I ask for the date of the cruise.

MR. McPHERSON: I can give it. I have handed to my learned friend, last July, the P.S. Ross report, and I understood they had a copy of Mr. Smith's cruise. Is that right, Mr. Wray?

THE COMMISSIONER: It is found in Exhibit 36 -- on Exhibit 3 and it is dated April 5th, 1943.

MR. BALDWIN: If your Lordship will look at it a little more carefully -- we have no knowledge at all of a cruise by Mr. Smith of Block 403, and this last exhibit purports to be in respect to Lot 403.

MR. McPHERSON: I am sorry if I misunderstood, and I believe your Lordship must have misunderstood Mr. Norris. I think I went to some length at the opening to explain I have not yet put in any statistics on 403 because Mr. Smith had not been called, and I asked my learned friend to do me the courtesy of hearing the figures from Mr. Wray. I hope that those figures will be established. I cannot put them in until Mr. Smith is in the box.

THE COMMISSIONER: There are no figures other than as shown in Exhibit 41 -- there are no figures covering 403, and these figures, as covering 403, will be proven by Mr. Smith when called?

MR. McPHERSON: Correct, my lord. I would like to point out so that the record will be clear, I personally did not know anything about 403 being logged with 195 until this Exhibit 23 was put in.

MR. NORRIS: The point I am trying to get is the date of the cruise of 403.

THE COMMISSIONER: Your learned friend obviously does not know.

MR. McPHERSON: If my learned friend will insist, I

will put Mr. Smith in.

MR. NORRIS: My lord, I don't want to get at cross purposes with anybody in this Court, certainly not with your Lordship.

THE COMMISSIONER: You seem to be getting there.

MR. NORRIS: With the greatest respect, I simply say my learned friend has not given us the date. If he has not it at the moment, that is all he has to say.

MR. McPHERSON: I can make this statement as far as 403 is concerned; I ascertained some time after my learned friend's case started, and they put in Exhibit 23, that the logs have been coming off 403. It was obvious to me your Lordship would like to know what was on 403. Mr. Smith volunteered to me the information that after the Custodian sold Block 195, which was in 1943, -- after the Custodian sold Block 195, the MacMillan interest negotiated with Mr. Hunter for the purchase of 403, and I have built my case up to that point by examining the various witnesses on whether they knew Mr. Hunter and knew that block.

THE COMMISSIONER: So that the Smith cruise on 403 will be some time after the date of the sale of 195 by the Custodian.

MR. McPHERSON: Yes. Mr. Smith -- I gather, your Lordship, his evidence will be -- and my learned friend will be interested -- it will be to the effect that he was requested by both sides to make a cruise of 403, and it was on the basis of

his cruise the deal was completed between MacMillan and the others.

THE COMMISSIONER: All right.

THE WITNESS: In Mr. Smith's valuation of Block 195, two valuations are given; one of $3.00 for fir, cedar and cypress, and the other $1.50 for hemlock and balsam. This is prepared to give the totals of both. It shows that the fir -- I have only dealt with the first group -- that the fir has underrun to date 20%; the cedar is over quite a bit, 45%, but that the total in those categories is still under -- is still under, 7.5 %. Dealing with hemlock and balsam, Mr. Smith's cruises of the two areas total 18,186,000, hemlock and balsam. There has been cut to date or scaled to date 27,615,000, a total of overage of 9,447,000, or a total of 51.9% over Mr. Smith's cruises. The great proportion of the overage is in balsam. The grand total of all species gives Mr. Smith's cruises 50,830,000 feet. Scaled to the end of September, 58,752,000 feet. And to date they have recovered more in total by 6,920,000 feet; about 13.4%.

MR. Mc PHERSON: Q: Mr. Wray, with respect to this statement which you have prepared, it shows in effect that the over-run is in the hemlock and balsam? A: Yes.

THE COMMISSIONER: It also shows a substantial over-run in cedar, does it not?

A Yes--which is more than offset in value by the

substantial under-run of fir.

THE COMMISSIONER: Yes.

MR. McPHERSON: You appreciate, my lord, we have not attempted to read the valuation. In Mr. Smith's evidence, he will be establishing the value.

THE COMMISSIONER: Very good.

MR. McPHERSON: If it is agreeable to your Lordship, I would prefer to adjourn now rather than stand Mr. Wray down, because I would like to look into the transcript of yesterday to see if I did --

MR. NORRIS: I don't think my learned friend has put this in.

MR. McPHERSON: I think I put it in. Has not your Lordship a copy of it?

THE COMMISSIONER: Exhibit 41. Very well, we will adjourn until 2:15.

(PROCEEDINGS ADJOURNED UNTIL 2:15 P.M.)

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

Official Stenographer.

CASE NO: 1388

THE JAPANESE PROPERTY CLAIMS COMMISSION:

B E F O R E

(THE HONOURABLE MR. JUSTICE H. I. BIRD - COMMISSIONER).

Vancouver, B.C.,

November 24, 1948.

IN THE MATTER OF THE CLAIM OF

THE DEEP BAY LOGGING COMPANY.

PROCEEDINGS AT HEARING.

(Pages ~~662~~ 721 - 776)

Norris & Baldwin.

Take 69,
Jap. Com.
Nov. 24/48,
Deep Bay Co.
T.P.M.
.....n

2:15 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. NORRIS: Mr. Commissioner, before my friend starts, my friend Mr. Baldwin has drawn to my attention, and I say quite frankly it shouldn't have been necessary to draw it to my attention, but this morning I did interrupt your lordship, when your lordship was speaking.

It is a matter of great regret to me, and I aplogize to your lordship for my discourtesy. I can only sugge t, my lord, you might attribute it to the enthusiasm of youth, or the carelessness of old age, as your lordship sees fit.

You know, when objections are made some times you are carried away by one or the other, and your lordship will know best how to apply it.

THE COMMISSIONER: Thank you, Mr. Norris. I am not prepared to pay more than momentary attention to it. I have no thought it was deliberately done.

MR. NORRIS: I hope your lordship will pay more than momentary attention to my apology.

THE COMMISSIONER: Yes, that will be done.

MR. McPHERSON: My lord, with respect to the evidence of Mr. Brown yesterday, Ifind it pays to have a good memory. I would refer your lordship to page 579 of the transcript of Mr. Brown's evidence. The question this morning, my lord, you will recall, was whether or not as Government counsel I cross-examined Mr. Brown on the question of the Canadian forest products and the

Cudahy agreement.

MR. NORRIS: I want to correct my friend on that. I didn't raise the question of whether he cross-examined him, I simply said the document wasn't in. If my friend had his cross-examination, all right.

MR. McPHERSON: I say, my lord, that I stated this morning the document wasn't in, but in my cross-examination I had brought out the point I wished to deal with through Mr. Wray, and there was some question as to whether I would like to clarify it and put it on the record, because Mr. Wray will now deal with the agreement, on the basis of Mr. Brown's evidence.

You will find, starting at page 579, I asked Mr. Brown if he had some negotiations with the Forest Products and I referred to the Michael F. Cudahy agreement, and at the next page I say, dealing with that;

"Q: Am I correct . . . . . to pay."

And then you will notice down at line 20, in answer to a question that I asked Mr. Brown, he said, "A: It would be the gross . . . . . would be unreasonable. A: No."

On the basis of that evidence from my learned friend's witness, my lord, I would like to have Mr. Wray give your lordship a comparison. I think I gave my friend a copy of this this morning, (producing).

THE COMMISSONER: I notice in Exhibit 36, is it, Mr. Eustace Smith, in his report to P. S. Ross & Sons,

referred to a 20% discount for cash.

MR. McPHERSON: Yes.

THE COMMISSIONER: Rather, I think he puts it in reverse. Yes, "If the timber is sold on the stumpage basis or on logging terms, the price should be 20% higher."

MR. McPHERSON: Yes, my lord. Might I put this document in, my lord, as an exhibit so you will see it while the witness is discussing it. Would you give Mr. Norris your copy, Mr. Wray.

(DOCUMENT MARKED EXHIBIT NO. 1388-42)

MR. McPHERSON: My lord, I would like to point out to your lordship that on that statement you will notice the first figure, average sale value, 1943, $20.70. That has been taken from Exhibit 12, which has been filed by my learned friend, and the next line deduct per evidence of F. Brown $3.00, that is at page 580 of Mr. Brown's evidence.

THE COMMISSIONER: That is on the footing of cash, is it?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: That is the 20% discount?

MR. McPHERSON: No. The 20% discount comes next, but the $3.00 there is referred to by Mr. Brown at page 580. Mr. Wray will explain the figures, and I would like to identify them with the evidence, as the document wasn't filed by my learned friend.

The stumpage of 20% referred to for fir on $554 is at page 580 of the evidence. Mr. Brown

referred to 20%.

THE COMMISSIONER: Yes.

MR McPHERSON: And the deduction of 25% for cash is referred to at page 580. Under hemlock and balsam, the average sale value of $18.14 is taken from Exhibit 12, and the figure of $3.00 is Mr. Brown's evidence at page 580. Mr. Wray will expand the figure of 12% and the figure of 25% at the bottom is from Mr. Brown's evidence.

If my learned friend would care to, my lord, he could file the document, which might be of use to your lordship. It was in Court the other day, and I had assumed he would file it.

MR. NORRIS: I would be glad to give it to my friend. He can put it in if he wishes.

MR. McPHERSON: I don't know that I can prove it. I don't know that I want to put it in.

MR. NORRIS: It isn't a question of proof. This is a certified copy from the Land Office.

MR. McPHERSON: I don't know that I care to file it. I don't know the contents of it.

THE COMMISSIONER: Mr. Norris is free to put it in on the same footing as Exhibit 29.

ROBERT FREDERICK WRAY, resumed the stand and testified further as follows:

DIRECT EXAMINATION CONTINUED BY MR. McPHERSON:

Q Would you explain to his lordship what this statement indicates, in your opinion.

A It indicates, roughly, what the stumpage amounts

would be, as received by the vendor in that contract.

THE COMMISSIONER: Q: In which contract?

A The contract with the Canadian Forest Products, for fir and hemlock. The 20% that is applied to the net sales price of fir is the maximum stumpage appearing in the agreement.

MR. McPHERSON: Q: That is the highest stumpage they could get? A: Yes.

Q You have taken those prices, have you, Mr. Wray?

A That is my understanding, yes. Hemlock, I had taken 12%/being roughly halfway between the minimum of 6% and the 20%.

Q That was referred to in Mr. Brown's evidence?

A That is right. I understand the highest percentage didn't apply. The highest percentage of 20% didn't apply until the net sales price was around $20.00, but not having the agreement I couldn't be sure. Then, from these figures on stumpage we have taken off 25% to arrive at the stumpage value, in comparison x to a cash basis.

Q And how does that compare, Mr. Wray, with the sale price received for Block 195, on a stumpage basis?

A On the basis on 195, Mr. Smith's valuations were $3.00 on fir and $1.50 on hemlock and balsam.

MR. McPHERSON: Your witness, Mr. Norris.

MR. NORRIS: My lord, this witness does deal with matters other than matters with respect to which some exhibits have been filed, which I would like to check.

THE COMMISSIONER: Very good.

CROSS-EXAMINATION BY MR. NORRIS:

Q Now, Mr. Wray, when these negotiations were taking place, and an effort was being made to sell these timber limits and the other assets, there was a difficult situation with regard to the war, wasn't there? That is to say, it was necessary that there be the greatest production for war purposes?

A Yes.

Q That is correct, isn't it? And I think it is safe to say at that time it was a very crucial stage in the war.

A: Yes, it would be.

Q It was about the worst, wasn't it?

A Yes.

Q And very properly, the Timber Controller and other people who were interested in connection with production were anxious that there should be the maximum production of timber.

A Yes, sir.

Q And you were advised to that effect?

A Yes.

Q Now consequently, in these contracts of sale -- there is one of them in, I think, and the other I think my friend is going to put in -- there was a provision in spite of the fact that this was a cash sale that cutting should commence at once and be carried on?

A Yes.

Q And that was because of the situation with regard

to the war, and the Timber Controller, and so on.

A The understanding was that the cutting should commence as quickly as possible, and of course the purchasers were given certain reservations in the event they couldn't obtain labour and so on and so forth.

Q And that requirement was contained in your advertisements, wasn't it?

A Yes.

Q Now, do you remember the letter written on June 1st, 1943, to you by Mr. Shears in connection with Kagetsu? Have you that letter? Perhaps you can get it. I have a copy on my file, but perhaps you have it. A: I have two files here. 195?

Q It is the one that deals with Kagetsu. It is 195.

A Yes, I have it here.

Q You have the original letter?

A Yes.

Q That is the letter written to you by Mr. Shears?

A Yes.

Q (Reading). Now, that was a letter from which you acted in selling this timber, is that right?

A That was our authority to accept the tender.

THE COMMISSIONER: That letter is going in, is it?

MR. NORRIS: I think, if I might, I will put it in with the other letters later, Mr. Commissioner. I will undertake to put it in.

Q Now, you had some previous correspondence with Mr. Shears in connection with this, hadn't you? Have

you your letter of the 21st of May, to which this is an answer? A: This isn't in answer to our letter of the 21st of May. It refers to our report of the 21st of May. There probably was a letter enclosing it. I don't recall that.

Q Perhaps, then, with regard to this letter, it might be produced to me a little later, and I will see if it is relevant, or not.

A We even delivered these reports by hand.

Q Oh yes, that is the letter that is contained in Exhibit 56. Now, in that letter, on the second page of it, " We are advised by Mr. Eustace Smith . . . . . $80,500.00 cash."

Now, it was following your suggestion to Mr. Smith that Mr. Smith contacted a Mr. Sheehan and Mr. Sheehan made a subsequent report, and that is attached to this exhibit, is that right?

A Yes, I believe so.

MR. McPHERSON: My lord, I think I have copies of all these documents that my learned friend is referring to. If it suits him, I would prefer to put them in now, in order that we don't have to go back over it.

MR. NORRIS: I prefer to put them in in their sequence.

THE COMMISSIONER: All right. You friend is doing it, Mr. McPherson.

MR. NORRIS: Q: Now, on April 10th, 1942, Mr. McPherson, as the authorized Deputy of the Secretary of State and/or Custodian, wrote Mr. Stewart a letter.

Do you know of that letter? It will be on the Deep Bay file. It is dated April 10th, 1942, a short letter.

A It doesn't appear to be here.

Q I will read it to you and you can tell me whether you knew of the position. This is April 10th, 1942, a letter to Mr. Charles Stewart, written by Mr. McPherson: "Re Deep Bay Logging Company, ... Yours very truly, G.W. McPherson." Were you aware of that letter?

A I am aware that Mr. McPherson contacted Mr. Stewart. I didn't know the detail.

Q In any event, that letter substantially sets out the position, as you knew it, in April, 1942?

MR. McPHERSON: No, I don't think Mr. Wray knows that that is the position. I am quite prepared to call Mr. Shears on these matters, but Mr. Wray, I don't think knows.

MR. NORRIS: We can put the letter in. It speaks for itself.

THE COMMISSIONER: You see, I assume, Mr. Norris, many of the matters that transpired before Mr. Wray became active in regard to the property, that he may know of them in a general way, but not the details of them.

MR. NORRIS: Yes, my lord, that is right.

Q Have you your authority, or supervising authority of March 20th, 1942, in connection with the Deep Bay?

A: The Deep Bay Logging Company, or 195?

Q Deep Bay, March 20th, 1942. You perhaps know,

without referring to it.

A I know there was one. I think it was May, but I am not sure.

Q Deep Bay was March 20th, 1942.

MR. McPHERSON: Mr. Shears has a copy in his file, and it was an appointment of inspection.

MR. NORRIS: Q: Appointing Ross & Sons as inspectors?

A Appointing Ross & Sons as inspectors. That is dated the 20th March, 1942.

Q And following that, you were appointed supervisors on what date? A: The 22nd of May, 1942.

Q Yes. Then on April 10th, 1942, with regard to the other, 195, -- oh, that is the one we have referred to.

Now, your notification in that regard came from Mr. McPherson, didn't it?

A In what regard, Mr. Norris?

Q These two documents were signed by G. W. McPherson, authorized Deputy of theSecretary of State and/or Custodian. A: Yes, they both did.

Q Now, with regard to these two operations, that is to say 195 and the Deep Bay, why did you sell?

A Why did we sell?

Q Yes. A:Because we were so instructed by the Custodian.

Q I see, and you sold because those were your instructions? A: Yes.

Q Did you advise on the sale, or otherwise?

A How do you mean, did we advise on the sale?

Q Did you advise they should be sold?

A No, I don't think we advised that they should be sold -- in connection with 195. We may have suggested that the Deep Bay property was not improving, being left idle.

Q It wasn't improving, being left idle?

A I couldn't say. I don't think there was any definite advice to that effect.

Q I suggest to you that these properties were sold. Take the DeepBay first. It was sold when it was, and not merely held, because first of all of the desire of theTimber Controller to effect a sale, and secondly, because there were assets that needed care taken of them and you felt they might be lost or destroyed, is that correct?

A I say in connection with 195 --

Q I am speaking of Deep Bay.

A -- speaking of Deep Bay, we could have suggested the cost of maintaining it was considerable and that the property there, the machinery, was likely to deteriorate through standing idle, and therailroad, but I don't say that determined the Custodian's policy.

Q Oh, no. A: Whatever they determined, was for them.

Q As supervisors, that would appear to be the position to you? A: Possibly, yes.

THE COMMISSIONER: Q: Let me understand you. Did you give such advice to the Custodian, or not?

A I don't recall anything specific, sir, but that is quite possible. I know it was my opinion at the time.

MR. McPHERSON: My lord, on the question of the Deep Bay Logging Company, I thought it was apparent this morning that I discontinued the examination of Mr. Wray when he said from here on Mr. Frederick Field, his partner, liquidated the company, and it is Mr. Field, I believe, who can answer these questions.

MR. NORRIS: Then I will deal with him.

Q With regard to 195, you know of that, don't you?

A Yes.

Q I take it the consideration of loss, if anything, didn't arise? A: I don't think that would be a factor, no.

Q The desirability of an immediate sale was the desire for timber and the pressure of the Timber Controller? A: There again, that is something for the Custodian's determination. Whether or not the property should be sold wasn't within my province.

Q But you had letters from the Custodian to that effect? A: That is right.

Q Now, when these negotiations were taking place, that is to say, the Deep Bay and the other property, where was Kagetsu?

A I believe he was at Minto.

Q Minto, British Columbia. That is somewhere in the interior of the province?

A Yes, he did come back, as I stated before, in June, and had discussions.

Q On a visit? A: Yes.

Q Now, this morning you referred to this Kagetsu debt of $23,000.00 due to the Yokohama Specie Bank. You remember that?

A Yes.

Q I understand there was collateral held for that debt. A: As to that, I couldn't say.

Q Don't you know? A: No. We would report the existence of the debt to the Custodian's office.

Q Do you know now there was collateral?

A Only from what I have heard. I can't say.

Q All your knowledge is pretty well from what you have heard, isn't it?

A I beg your pardon?

Q This knowledge you got as to Kagetsu is what you have heard?

MR. McPHERSON: My lord, before the witness answers this question, might I point out to your lordship and to my learned friend Mr. Norris, that he knows as well as I do that at this very moment Mr. Brewin is making representations to the Department in Ottawa as to whether there was collateral.

MR. NORRIS: I don't know that at all.

MR. McPHERSON: I think Mr. Norris and Mr. Baldwin should know that, because I don't think Mr. Wray can give a legal opinion as to whether this is

collateral.

MR. NORRIS: Q: I want to know if it is a question of fact that there was collateral.

A I would say at that time, no.

THE COMMISSIONER: Give us all the information you have, Mr. Wray. If you have not any, I would like you to say so. A: I think it is a fact that I haven't any information as to collateral held.

MR. NORRIS: Q: You have no information now as to whether or not collateral was held -- information?

A No, I have no information.

Q None at all? A: No.

MR. NORRIS: Perhaps we can postpone that until later.

Q Now, you said this morning that you understood during 1942 that your appointment as supervisors didn't give you authority to sell?

A That is right.

Q You simply stood aside.

A Yes.

Q When you say gave you authority to sell, you mean P. S. Ross & Sons? A: P. S. Ross & Sons, yes.

Q And you are not referring to the Custodian?

A No.

Q Now, you produced this morning some notes of a meeting with Kagetsu. Did you keep notes of all your meetings with Kagetsu?

A No. I had a practice of making a note of any meetings of any consequence, yes.

Q He saw you in 1943, in February. Do you remember that meeting? You referred to it.

A Yes.

Q Did you keep notes of that meeting?

THE COMMISSIONER: This is in June, 1943?

MR. NORRIS: Yes, I think he did say that.

Q Did you say June, 1943?

A Yes.

Q It was in 1943, in Vancouver?

A Yes. I have a note on the file here, very brief one.

Q Yes. I think the first part of it is all that is relevant. The last part isn't very relevant. Would you read it?

A "Memo for Deep Bay Logging Company file, 21st June, 1943. Mr. Kagetsu was in this morning, and we discussed with him the offer of the E. L. Robinson Logging Company, which he considered was not reasonable, although he advised us he had placed the property in our hands and whatever we wished to do was acceptable to him. We informed him it was our intention to advertise for tenders forthwith, and the only comment was if we considered it advisable, to go ahead."

MR. NORRIS: I will put that in as an exhibit.

THE COMMISSIONER: Put it in one way or another, either in the record, or put it in as an exhibit.

MR. McPHERSON: I think the previous memo was put in.

THE COMMISSIONER: All right, we better put this in, then.

(MEMO MARKED EXHIBIT NO. 1388-43)

MR. NORRIS: Q: You referred to a man named Fletcher, who is on this property now, that is the Deep Bay property. A: Yes.

Q He is the operator of the Tsable River Logging Company, is he? A: I understand so.

Q That is one of Mr. MacMillan's chain of companies?

A Well now, that, I ~~c~~ couldn't say. It was my understanding that Mr. Fletcher and the ~~x~~ Tsable River Logging Company are the contractors on the property, and they buy the timber from one of the MacMillan companies. I couldn't say for sure, though.

Q Now you said that the old railway grade from the log dump to the campsite wasn't being used. Is that what you said this morning?

A I believe I said that the new road we were over from the present log dump to the area of the old campsite, doesn't run over the old railway bridge.

Q I want to know what you meant.

A That is what I meant.

Q The old railway grade from the log dump to the campsite wasn't being used, that is my note. Is that not correct? A: I can't say xxx to that, because I didn't go up the old railway grade, but the new road doesn't cover the old railway grade for that distance.

Q For that distance? A: Yes.

Q What about the rest of the distance of the old railway grade? A: I couldn't say.

Q You couldn't say? A: No.

Q This morning you gave us some figures dealing with ~~x24~~ 195 as to the cost of the timber to Kagetsu, and I think you said the purchase price was $75,000.00. A: Yes.

Q The taxes were $4,812.50 at the date of sale.

A Yes.

Q And that the interest was $26,000.00.

A Yes.

Q Did you compound that interest?

A No.

Q Do you know whether the interest was compounded under the contract?

A Under the contract, I couldn't say. I don't think so, though. I think the interest was paid as they went along.

Q Was there provision for the compounding of interest? A: I couldn't say.

Q I will produce to you a yellow sheet. What is that? Do you know anything about that form?

A No, I don't know anything about it. It is a Custodian office form. I couldn't say.

MR. McPHERSON: Could I help my learned friend? I believe that is one of the auctioneer's statements, isn't it, for chattels?

MR. NORRIS: "The following chattels were sold at public auction at 1027 Granville Street on March 15th." Then it refers to a record cabinet, cardboard files and filing cabinet. Have you any knowledge of what happened to the contents of the

record cabinet, the cardboard files and the filing cabinet? A: No, I haven't.

MR. NORRIS: That is all.

THE COMMISSIONER: Before you resume your re-examination, Mr. McPherson, I understand, Mr. Norris, that you desire to reserve your right of cross-examination in regard to the several statements that Mr. Wray prepared this morning.

MR. NORRIS: Yes, in dealing with the books.

THE COMMISSIONER: Yes.

MR. McPHERSON: Do I understand, my lord, that when Mr. Wray is recalled, it will only be for the purpose of dealing with the statements?

MR. NORRIS: Any questions arising out of the statements and the books.

MR. McPHERSON: My lord, I would like it to be fairly definite, because I don't want to keep going on with my case and having him recalled. Does that mean the ledger, because that is the only thing he was examined on?

MR. NORRIS: If there were other books that relate to the ledger, he will be subject to cross examination on them. It will be to clear up the matters referred to by Mr. Wray in respect of the ledger.

THE COMMISSIONER: I think that is sufficiently defined.

MR. McPHERSON: I take it, my lord, I can reserve my position to object to the introduction of any other books that haven't been introduced up to date.

THE COMMISSIONER: You will be free to do so.

RE-DIRECT EXAMINATION BY MR. McPHERSON:

Q Mr. Wray, with respect to the evidence you have given my learned friend about the Custodian deciding the policy of whether or not these assets should be sold, in examination-in-chief you referred to the fact there was an outstanding debt, and my recollection is you read a letter from Mr. Whittal about collecing the balance owing, didn't you?

A That is right, yes.

Q Did you know of the letter from the Timber Controller about Block 195?

A Yes.

Q Have you a copy of the letter?

A Yes.

MR. McPHERSON: I would like to file a copy of this letter, my lord. My learned friend has a copy of it. This is a letter from the Timber Controller, dated February 19, 1943, to the Custodian, attention Mr. F. G. Shears, signed by D. D. Rosenberry, Mr. Rosenberry states as follows: (Reading).

(LETTER MARKED EXHIBIT NO. 1388/44)

Q Mr. Wray, that letter is dated February ~~22~~ 19, 1943. A: Yes.

Q And the property was sold when?

A It was advertised for tenders in April, 1943.

Q And did you know what happened to the proceeds of the sale? Were they used to pay off the debt,

or what happened to the proceeds?

A The proceeds of the sale were used to pay off the debt and the expenses of the sale, advertising and so on and so forth.

Q What about the debt owing to the Yokohama Specie Bank? Was it paid?

A I believe it was paid. The funds were turned over to the Custodian's office. My understanding was it was to be paid out of them.

MR. NORRIS: This witness doesn't know anything about the Yokohama Specie Bank, he said.

MR. McPHERSON: This witness has stated there was a debt owing to them.

THE COMMISSIONER: He says it was his understanding it was to be paid out of the proceeds, but that does not establish the fact it was done. If there is anything of moment in regard to this Yokohama Specie Bank debt, we better have it from somebody else who knows about it, although, as far as I can see, it does not seem to be relevant to the matter wich which I am concerned at all.

MR. McPHERSON: Well, my lord, if my learned friend would permit me and it isn't taken down on the record, I could make a statement on the situation and then your lordship could decide whether or not it had any relevance.

MR. NORRIS: I suggest that my friend and I confer on that when the Commission rises.

THE COMMISSIONER: Very well, then you will do so and let me know what your wishes are?

MR. NORRIS: Yes, my lord.

MR. McPHERSON: Q: Now, Mr. Wray -- well, I think that is all, my lord.

THE COMMISSIONER: Thank you, Mr. Wray.

(Witness aside).

THE COMMISSIONER: Who is your next witness?

MR. McPHERSON: I will call Mr. Frederick Field, my lord.

FREDERICK FIELD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

MR. McPHERSON: I assume, my lord, that it is unnecessary to qualify Mr. Field or identify him, as he was called before your lordship in the general evidence.

THE COMMISSIONER: Mr. Norris was not there then.

MR. NORRIS: May I say this, Mr. Commissioner; I have known Mr. Field for many years and I have the highest regard for his qualifications. I know all about them, or a great deal about them.

THE COMMISSIONER: Mr. Field acted as representative for P. S. Ross & Sons, for your information.

MR. NORRIS: And he is a chartered accountant with long experience.

DIRECT EXAMINATION BY MR. McPHERSON:

Q Mr. Field, this morning Mr. Wray told his lordship something about the early contact of your office and the Custodian's office with Mr. Kagetsu and with Mr. Carl Stewart, and I believe that Mr.

Wray brought his lordship up to the point where you stepped into the picture so far as the Deep Bay Logging Company was concerned, and it was at that time the question of liquidating the Deep Bay Company and advertising and calling for tenders was taken over by yourself rather than by Mr. Wray, who had previously liquidated Block 195.

A That is true, yes.

Q In order to hasten the proceedings for his lordship a bit, I suggest to you from that point you commence with your evidence, at about the time you took over the supervision of the Deep Bay Logging Company. Would you tell his lordship something about it?

A Yes. I took over active control of the Deep Bay Logging Company's affairs on the 31st July, 1943, at about the time the assets were advertised for sale. I had had a general knowledge of the operation prior to that time. The assets were advertised for sale, and we had made certain reports in connection with the results of the liquidation, one dated the 15th March, 1945, one dated April 30th, 1946, and one dated the 8th July, 1948.

MR. McPHERSON: My lord, I would like to put in the three reports that Mr. Field has referred to. My learned friend has been supplied with copies previously. They could go in as one exhibit, your lordship.

THE COMMISSIONER: Yes, I think so.

(REPORTS MARKED EXHIBIT NO. 1388-45)

THE WITNESS: I do not appear to have a copy or list of the newspapers in which these ads appear, but I can say definitely they did appear in the three Vancouver papers, the Victoria Colonist, the Comox Argos and the Comox Free Press.

THE COMMISSIONER: It is shown in Exhibit 36, is it not?

MR. McPHERSON: I think not, my lord. Is that not a list of papers in which special equipment was advertised?

THE COMMISSIONER: That is for 195. Yes, that is right.

MR. McPHERSON: It is for 195. I think your lordship will notice there are some advertisements referred to for Deep Bay in the reports which your lordship hasn't received yet, but they are not the original advertisements. I will undertake to file a complete list of the advertisements tomorrow morning, my lord.

THE COMMISSIONER: Very well.

MR. McPHERSON: Q: I show you an advertisement. Would that be a fair sample of the type of advertisement you published? A: Yes.

MR. McPHERSON: I would like to file it for the record.

(ADVERTISEMENT MARKED EXHIBIT NO. 1388-42)

THE WITNESS: I would like to point out that there is no provision in that advertisement for immediate operation. The actual phraseology of the ad, I think, provides that the timber be taken off within a certain length of time, but when the ad was put in the paper there was no intimation to any tenderers that it had to be immediately logged.

Cross-examined by witness

MR. McPHERSON: Q: Now, with respect to the question that my learned friend raised in the cross-examination of Mr. Wray about this clause appearing in the final contracts, did you make any provision in the final sale agreement, or did you anticipate youwould have to make a provision of what a logger would call an "escape clause" in the Agreement of Sale?

A The actual agreement that was made with the purchasers, which I will refer to later, did contain provision for immediate operation, but there was an escape clause, providing for acts of God, labour troubles and other like circumstances beyond the control of the purchaser.

We had had previously a number of inquiries for this property, during the time that Mr. Stewart was looking after affairs. I believe there was a report put in which gave a list of people who had made definite offers, and in addition to those we had inquiries from several of the pulp companies, who, at that time, were anxious to secure hemlock logs, but while they took information about the property, they were not further interested in the matter.

Q Mr. Field, I draw your attention to the advertisement which has been filed as an exhibit, and I point out and direct his lordship's attention also to the fact it is signed "P. S. Ross & Sons, Chartered Accountants, Agents for the Custodian." Was there some difference betweenthe sale of the

Deep Bay Company and the other company assets by yourself? That is, was your position different here? A: We were supervisors. We had no power of sale.

Q How do you account for the fact you were selling these assets?

THE COMMISSIONER: Offering for sale.

MR. McPHERSON: Q: Offering for sale, yes.

A We had been in touch with the Custodian's office We also had before us the fact that the Deep Bay Logging Company Limited owed a considerable amount of money. At the time they were shut down, they owed the Workmen's Compensation Board over $5,000 , and they had other debts which were being protected by the Custodian's position, but they were actually true debts of the company.

I think our reports will show that subsequently we paid out some $16,000 in respect of debts owing by the Deep Bay Company at that time.

Q. Mr. Field, how does it happen in this case that you were not controllers with powers of a liquidator? His lordship has heard other cases where you were controllers, with powers of a liquidator. You said in this case you were not appointed controller with powers of liquidating. At the time the advertisement was published, had you made arrangements, or had discussions with Mr. Kagetsu for Carl Stewart about selling the assets?

A I understood there had been discussions between Mr. Wray and Mr. Stewart, and also with Mr.

Kagetsu. I just heard a memorandum introduced into evidence where Mr. Kagetsu was in Vancouver in June, 1943, and had agreed to us taking action of that kind.

MR. BALDWIN: This witness is obviously giving hearsay evidence.

A I have personal knowledge of this, your lordship.

MR. McPHERSON: Q: Mr. Field, at the time that you advertised this company's assets for sale, had you up to that time had a cruise made, or obtained any reports on the equipment and the timber?

A We retained Mr. Eustace Smith. At the time we had ~~dsk~~ discussed it with Mr. Eustace Smith-- earlier than that -- but due to snow conditions, and due to pressure of work, Mr. Smith was pretty well rushed off his feet during those years and he hadn't been able to make his cruise, but at the time we put the ad in we impressed upon him that he had to bring this cruise to a completion, and he did make a cruise around July of 1943 of this timber.

We also requested him at that time to give us a general opinion, based on his long experience, on the operation generally, and we received a report from him dated the 16th of August, 1943, which dealt with the timber, without placing any values on the timber, but it was a preliminary report on the timber, and if my memory is correct, Mr. Smith was called out of town and was unable to give us any further information until some

time in September.

THE COMMISSIONER: Q: Is that 1942?

A 1943, sir, the 16th of August, 1943.

Q You have a letter dated the 5th April, 1943, from Mr. Smith, have you not?

A That is in connection with 195.

THE COMMISSIONER: Oh yes, that is in connectionm with 1945. I am confusing them.

MR. McPHERSON: Q: In any event, Mr. Field, I take it that about the time you advertised the assets for sale you requested Mr. Smith to give you a report, as indicated in your report.

A That is right.

Q Would you proceed to tell his lordship what happened. A: I would like to mention one or two points in this report of Mr. Smith's, if I might just mention them. There is one item on page 1 of the report where Mr. Smith makes this quotation --

MR. BALDWIN: Q: Which report is that, Mr. Field?

A The report of the 16th August, 1943.

THE COMMISSIONER: I have not this before me, have I?

MR. McPHERSON: I don't know. I have no report of the 16th August, 1943.

THE WITNESS: This is not a report. This is a letter. It is a preliminary report. It is schedule 2, of the 15th March, 1945, I am sorry.

I just wanted to quote one paragraph to illustrate the nature of that preliminary report. Mr. Smith says, about the fifth paragraph, "The upper

"portion of Lot 617 . . . . . is quite fair timber.

In other words, this was a report dealing with the logging possibilities and the general nature of the timber.

My understanding is, your lordship, that I am dealing with timber only, and making such reference to equipment as would be part of the timber sale.

MR. McPHERSON: Q: Yes? A:There is a letter, I don't know whether it has been filed as an exhibit or not,by Mr. Skelding of the Universal Appraisal Company --

MR. NORRIS: Might I ask what the witness is reading from?

A These are my own notes, to refresh my memory. These are merely my own references to my own notes.

MR. McPHERSON: I think, my lord, that my friend will appreciate with the volume of files, it is necessary.

MR. NORRIS: I am trying to accommodate him.

Q But this is something you have made now?

A Something I made this morning, yes.

MR. NORRIS: I suppose, if it will help expedite things, he can refer to them, but it isn't strictly relevant.

THE COMMISSIONER: Q: I take it your notes are made on an examination of the files at the time those notes are made? A: Yes, at the time, for aiding my memory.

Q I do not see how you can hope to keep evidence of

that kind in volume in your mind . Go on.

A The letter of the 11th August, 1943, written by Mr. Skelding, refers on the second page to buildings, and I quote this paragraph.

MR. NORRIS: Q: This is in August?

A The 11th August, 1943. This is the paragraph I wish to quote:

"As to the buildings and certain water piping . . . . . over these houses."

MR. McPHERSON: I would like to file a copy of that letter as an exhibit, my lord.

(LETTER MARKED EXHIBIT NO. 1388-47)

MR. NORRIS: Is my friend going to call Mr. Skelding?

MR. McPHERSON: No. I will file it on the same basis as my friend filed the agreement this morning.

MR. NORRIS: Oh, no. The agreement which was filed this morning was a certified copy from the Land Registry office.

MR. McPHERSON: This is a letter received by Mr. Frederick Field, for what it is worth.

THE COMMISSIONER: You can see the danger of that type of evidence, both in relation to your agreement as well as this last letter.

MR. McPHERSON: Then, my lord, if it please your lordship, I will call Mr. Skelding.

MR. NORRIS: I don't know that I need that. I would like to reserve it and consider it and if necessary, he can call him.

MR. McPHERSON: I think my learned friend should take his position. If he wishes me to call him, I will

undertake to do so.

THE COMMISSIONER: Is this the only matter that Mr. Skelding may be of any help on?

MR. McPHERSON: Yes, my lord. You see, the equipment has all been settled, with the exception of the buildings. However, Mr. Skelding's letters do appear in Mr. Field's report and I debated whether your lordship would rule that I would hve to call him, but I am prepared to call him.

THE COMMISSIONER: If he is going to be of any help, I think you ought to call him, because, strictly speaking, this letter cannot be given any particular weight unless you do call him.

MR. McPHERSON: I will call him, my lord.

THE COMMISSIONER: Perhaps you can discuss that feature with your friend later. He may not insist on your calling him.

Q Yes, proceed. A: As a result of our advertising, on the 31st of July bids were called for by the 31st of August, and these bids are referred to at page 3 of our report of the 15th March, 1945 — the tenders, rather. Parcels "A", "B" and "C" were tendered for by the H.R. MacMillan Export Company, to which they added the log dump, booming ground, foreshore lease and rights-of-way on the roads removed, and their tender was for $40,000 cash.

These bids were open on the 31st August in the presence of the Custodian in his office, and, not having a final report from Mr. Eustace Smith,

they were allowed to remain in abeyance.

Mr. Smith, as was his custom in other cases, came to my office on the 9th of September with his report giving values.

MR. NORRIS: Q: The 9th of September, 1945, eh?

A 1943.

Q 1943, yes. A: A copy of that is schedule 3, under the report of the 15th March, 1945.

Mr. Smith pointed out that his repport was after consultation with Mr. Skelding, who had made the report on the equipment. That report was discussed by me with Mr. Smith, and I then told Mr. Smith what the bids had been, without divulging the names of the tenderers, and asked him to write me a letter giving me his opinion as to the acceptability of the bids.

I then wrote to the Custodian, making our recommendations as to which bid should be accepted, and those which should be refused, under the same date.

Q That was on the 9th of September?

A That was on the 9th of September. Some time elapsed after this offer of the H. R. MacMillan Company was considered, and subsequently wires were sent to Mr. Kagetsu, advising him of the offer. I have a copy of the wire where Mr. Kagetsu did approve the price for the timber.

MR. McPHERSON: My lord, the wires that the witness is referring to were filed as Exhibit 19.

Q Mr. Field, did you send copies of those wires to Carl Stewart? A: I am not sure of whether I sent them, or the Custodian did.

MR. McPHERSON: I trust my learned friend will not object to my leading on this. Would you look at a letter of November 1st, 1943.

A Yes, that is right, the 1st of November, 1943, I sent a copy of a wire from the Custodian's office to Mr. Kagetsu, and the reply from Mr. Kagetsu, to Mr. Stewart.

Q Mr. Field, up until the time that the wires were sent and received, was it your understanding that it was hoped that Mr. Kagetsu would accept the offer? A: Yes, that is correct.

MR. McPHERSON: I would like to file the letter of November 1st, 1943, addressed to Carl Stewart, and it refers to the fact that he is enclosing two wires, which are Exhibit 19.

THE COMMISSIONER: This is from the Custodian to Stewart?

MR. McPHERSON: No, my lord, from Mr. Field to Mr. Stewart, and Mr. Field states (reading). I think your lordship should have that letter to indicate how the policy of breaking up this company's assets developed.

(LETTER MARKED EXHIBIT NO. 1388-48)

THE WITNESS: The offer of the H. R. MacMillan Company provided for the removal of the rail, and one of the tenders we had at that time was from Messrs. Evans, Coleman & Evans Limited for parcel

"C". Parcel "C" included, in addition to the rail, the locomotives and cars. The original tender by the Evans, Coleman people was rather ambiguous, and it was necessary , in order to make possible the sale to H. R. MacMillan, to get this clarified, which was done, and a further letter was received from Evans,Coleman under date of September 28, 1943, clarifying their bid for the rail.

It was found upon investigation that there were certain leases on rights-of-way and easements and agreements with other companies, which made it necessary that a portion of the rail below the campsite to tidewater be left in place. There was some sort of a switch in order to get on to the E. & N. railway, and an agreement with the Victoria Lumber Company.

So that, we found after we had offered this rail for sale that we could only delivera portion of it. We communicated with the H. R.MacMillan Company, who at that time proposd to use the right-of-way for a truck road, and we finally agreed with them we had the wrong rail there, and they said they would have to have plank between the rail in order to make it useable for trucks, and as far as we were concerned, we had to give them the rail that was in place. The agreements under which the rail was left in place were in effect for some four or five years beyond the date of our sale. It took some time to work out all

leases and easements and so on necessary to give the MacMillan's title. It also took some time to arrange for the removal of the rails.

In 1944, we were faced with the necessity of giving possession to MacMillans, and we had to make further arrangements with Evans, Coleman to speed them up, and it wasn't until some time in the summer of 1944 that we were able to give possession to the MacMillan company. They had to get into the property during the dry season, in order to build their roads for their truck logging.

In the meantime, the Evans, Coleman people had taken up the rails.

The sale was made to the MacMillan Company, based on the recommendation of Mr. Eustace Smith, whom we had retained in other cases as our timber adviser and on whose opinion we relied when it came to valuating timber, and Mr. Eustace Smith's advice to us was the price offered was a very good one and, in his opinion, represented the fair market value in August, 1943.

THE COMMISSIONER: This relates to the timber only, does it, this offer of $40,000.00?

A The tender covered the buildings, the rights-of-way and the log dump.

MR. McPHERSON: Q: And the foreshore lease, Mr. Field?

A Yes. I might alsomention that we were faced with this situation, too, that we were aware that for 18 months attempts had been made to sell this property, but without success.

We had waited a considerable time to get an offer from Korner Bros., whose representative was Robinson, and we got a very poor offer of $10,000.00 for the timber.

Q Why didn't you sell Deep Bay as a going concern, not in the sense that it was operating at the time you sold it, but why didn't you sell it as a unit, with the railway and everything?

A That was taken into account when we advertised the company. While we broke it down into parcels, we felt it was in the power of anyone making a bid to bid for all the parcels and, in our judgment, anyone bidding for the whole thing would have had some consideration as against someone bidding for part of it.

Q Did you get any bids for the whole property, as a whole? A: After the ~~tx~~ tender of H. R. MacMillan for the timber, there were a few days when they talked to us about the possibility of paying $75,000 for the whole operation. It was never reduced to writing, and it was withdrawn very quickly. I can't give any reason why it was withdrawn, but it wasn't available to us very long. That is the only offer we had for it as a going concern, or as a unit.

THE COMMISSIONER: Q: And that was what kind of an offer from MacMillan?

A I beg your pardon?

Q That was a tentative offer from MacMillan, or a firm offer? A: My understanding,

sir, was it was a firm offer, but they didn't give us an opportunity to accept or reject it for very long. The property was offered as a group. We offered all the timber.

We were aware there was some confusion as to the question of the timber, that is, as between Kagetsu personally and the company, but it was felt that questions of ownership could be worked out at a later date. There was quite a lot of confusion, as we have since found. In some cases Kagetsu had bought in his own name, and in some cases he had bought in the name of the company. Some of these purchases that he had subsequently treated as his own, he purchased from the E. & N. in the name of the Deep Bay Logging Company, Limited.

MR. McPHERSON: Q: Mr.Field, what would you say about the general knowledge of the timber industry in British Columbia as to the fact that Block 195 and the Deep Bay were for sale? Do you think there was any general knowledge?

A I think there was, judging by the inquiries we had. I have already mentioned, in addition to the negotiations carried on by Mr. Stewart, there were various inquiries made direct to ourselves. Amongst others I can recollect two pulp companies, who made inquiries, and it seemed to be general knowledge that the property was for sale and was available.

Q In your remarks about the difficulty in determining ownership of the timber, I am not clear myself,

and his lordship may not be clear, what is schedule 8 in your report of the 15th of March? Is that an attempt to break down ownership, schedule 8 of the report of the 15th of March, 1945?

A Yes, sir. That is a letter. We requested Mr. Smith to write us, under date of October 24th, 1944, so that we might communicate with Mr. Kagetsu and divide up the proper credits for the amounts received.

Q And, Mr. Field, up until the time that you sold the property, had Mr. Kagetsu given you any information as to a division between the various blocks of timber, or had he indicated it was all Deep Bay timber? What was the situation there?

A He never suggested it was anything but Deep Bay timber. It was a complete accretion. It was only by our examination of the records that we were able to find out that some of it evidently belonged to him personally.

Q Were you up on the property at all, Mr. Field?

A Yes, I was there frequently. I was up at the time of the offering of the property for sale, and I was up, I think possibly subsequent to that time, oh, probably six or eight times, possibly more.

Q You heard evidence given here, or discussions taking place here about the timber back of Deep Bay and the option that Mr. Kagetsu in his evidence referred to, and the fact he had obtained some sort of a verbal option on the timber back of Deep Bay. Can you tell his lordship

anything in addition to what Mr.Wray has said about the option and your efforts to get that timber for the company?

A Yes. My understanding was that Mr. Kagetsu had gone to the expense of having that area surveyed, and we were under the impression that the E. & N. Railway had a copy of that survey.

We were never able to find out whether Mr. Kagetsu had an actual letter in connection with the matter, but Mr. Wray and myself visited Mr. McMullen, and Mr. McBain of the C.P.R. after we had heard that someone else had obtained the option. We were given a rather hostile reception.

THE COMMISSIONER: Q: When was this, Mr. Field?

A This was during the period prior to the offering for sale, sir. We were quite upset, because we felt that it was unfair, and not the sort of treatment that anyone should get, and one of the officials said, We certainly couldn't expect to use the C.P.R. property to sell our property. So, we were not very happy about it. It did make quite a difference to the sale of this property.

MR. McPHERSON:

Q I gather from Exhibit 32, a letter from Carl Stewart to yourself, that Carl Stewart even at the date of this letter, November 25, 1942, was in touch with you and you were discussing the fact there was an option even at that date.

A Yes.

THE COMMISSIONER: What was that date?

MR. McPHERSON: November 25, 1942, my lord. That is

shown on Exhibit 32.

Q Was it your own feeling, Mr. Field, knowing the practice of the E. & N. Railway in British Columbia, that Mr. Kagetsu should have had this timber? Was that your feeling?

A Yes.

Q And did you make every effort possible to get it?

A I think we did, to the extent of being rather curtly treated by the C.P.R. officials.

THE COMMISSIONER: You referred to a letter, Mr. McPherson, part of Exhibit 32.

MR. McPHERSON: Exhibit 32, my lord, a letter from Carl Stewart to P.S. Ross & Sons.

THE COMMISSIONER: Can you find Exhibit 32 for me, Mr. Secretary? It seems to have disappeared from here.

MR. McPHERSON: I can give you a copy, my lord, but it isn't very clear.

Q Mr. Field, in view of the fact that his lordship is interested in the question of this option, would you see if you have a letter of February 10, 1943, addressed to Mr. Shears.

A Yes, I have.

MR. McPHERSON: My lord, I would like to file this letter. I hadn't intended to file it, because I didn't know whether this option would be correct or not. This is from P.S. Ross & Sons, February 10th, 1943, to F. G. Shears (readin). Then it refers to the negotiations with Mr. McMullen and Mr. McBain. Your lordship might like to have

it. I will file it as an exhibit.

MR. NORRIS: Of course, I object to that, to the extent that it is hearsay on the date of the Korner option.

MR. McPHERSON: I don't think Mr. Field says definitely what the date is.

THE COMMISSIONER: This is a matter that could be cleared up very rapidly by reference to the E. & N. Railway Company, I suppose.

MR. McPHERSON: Q: Were you ever able to find out the date of the option from the E. & N. to Mr. Korner?

A No. I never got the exact date. I always assumed it was shortly after Mr. Kagetsu left Vancouver.

THE COMMISSIONER: Q: Kagetsu was evacuated when?

A In April, 1942, I think.

Q Here is Stewart's letter of November 25,1942, referring to the existence of the option.

A Yes.

THE COMMISSIONER: When were P. S. Ross & Sons appointed in any sense, or capacity?

MR. McPHERSON: Well, they were appointed supervisors on the 22nd May, 1942. I don't know what the actual date of the option is there, my lord. I understand my learned friends are not suggesting the timber was available.

THE COMMISSIONER: No, I understand that from Mr. Baldwin, but it might make some difference if the Custodian or his representatives had had an opportunity to protect this property to the extent of doing something about the option, and failed to

do so, but the thought that crossed my mind from this letter of Stewart's was he had not been able to do it in November, 1942, and he was still endeavouring to sell the property.

MR. McPHERSON: Yes, and Mr. Field's report indicates the efforts he made to do so.

THE COMMISSIONER: Yes.

MR. McPHERSON: I think, my lord, I could probably get that information for tomorrow morning. I will get the exact date, if possible.

THE COMMISSIONER: If you could, it might be helpful.

THE WITNESS: The only way we could have secured a firm option was to buy the timber.

MR. NORRIS: Of course, your lordship will appreciate that Stewart couldn't get an option.

THE COMMISSIONER: No. Stewart is saying in this letter of November 25th that it was the fact that the option had been granted to someone else that made it impossible for him to sell the timber.

MR. NORRIS: I don't know whether I understood your lordship, but your lordship said apparently Stewart couldn't purchase or get an option. Stewart, representing Kagetsu, wasn't in a position to acquire anything.

MR. McPHERSON: I will have to disagree with my friend there. I put it in evidence through his witness that Mr. Stewart was a Director of the Deep Bay Logging Company, and at this time the Custodian hadn't taken the company over at all.

THE COMMISSIONER: Here is what Stewart says in his

letter of November 25, 1942: "The whole picture . . . . . before now." All right.

MR. McPHERSON: Mr. Field, have you any other points you would like to bring out?

A I would like to bring out one point in connection with the sale of the timber. That is, the best offer received by Stewart in this report of the 25th November, that is the largest offer, was one of Korner Bros. at, strangely enough, $12.75 a thousand, which included the use of the equipment.

MR. McPHERSON: You will see that in Exhibit 32, my lord.

THE COMMISSIONER: Yes.

THE WITNESS: This would mean that after the timber was removed the equipment would naturally be available for sale but would have decreased substantially in value through wear and tear.

I would like to point out, as my own observation, that stumpage agreements are not considered very satisfactory in logging, unless there is a substantial depsoit made, or unless the persons making the offer are very substnatial, for the reason that obviously, and in this case particularly was such a small stand of timber that if a person making the offer fails to carry through their contract, they will leave something that perhaps will have little value to anyone else, and unless there is some substantial deposit which will insure them carrying through the complete operation, they are not nearly so favourable as a cash deal would be. That is another factor

that would influence us in accepting the offer of the H. R. MacMillan Company.

Q Mr. Field, with respect to the decision to sell this company, was it the Custodian who decided to sell the company of his own opinion, or was it as a result of what you advised the Custodian?

MR. NORRIS: How does he know?

MR. McPHERSON: My lord, Mr. Field is a man who was advising the Custodian.

THE COMMISSIONER: Put the question to Mr. Field and we will find out how he knows, or if he does know.

A It is a fact, sir, that we advised the Custodian based on our supervision and information regarding the company that there were considerable debts. We also advised them that in our discussion with Mr. Kagetsu and, I think in joint consultation, we arrived finally at the decision to sell the company.

There was considerable expense necessitated with the keeping of a watchman, insurance and taxes, and bearing in mind all those things, I think the decision was finally jointly arrived at that it was desirable to sell this property.

Q My learned friend, in cross-examining Mr. Wray, referred to the Timber Controller and suggested it was as a result of the Timber Controller's letter that you had acted. Have you that letter, or can you tell his lordship the date of it?

THE COMMISSIONER: Did not that letter relate to 195?

MR. McPHERSON: No, my lord. I would refer Mr. Field

to a letter of August 28, 1942, addressed to the Deep Bay Logging Company.

Q Have you that letter, Mr. Field?

A Yes.

MR.McPHERSON: I would like to file the letter, my lord, dated August 28th, 1942, signed by D. D. Rosenberry, to theDeep Bay Logging Company, care of P.S. Ross & Sons, (reading). I would like to file that letter, my lord, as an exhibit.

(LETTER MARKED EXHIBIT NO. 1388-50)

Q That letter is dated August 28, 1942. When did you sell the Deep Bay Company?

A August, 1945.

Q Did the Timber Controller's letter have any effect on your recommendation to sell, or on the methods adopted in selling?

A My recollection was that the matter was in the hands of Mr. Stewart for sale, and every effort was being made to dispose of the property under Mr. Stewart at that time. It wasn't until Mr. Stewart failed to get any satisfactory offers that we felt it desirable to come into the picture.

Q And it was a year later when you sold it. Now, did the Timber Controller in any way influence you in the method of sale, or in the sale price?

A No, no. We were not able to pay attention to the Timber Controller with regard to price. We had to justify our position, with regard to price.

Q Mr. Field, in your administration of the various companies for the Custodian, you were aware, were

you, of the legal powers of the Timber Controller?

A Yes.

Q And you were aware of the fact, were you, that the Timber Controller could direct anybody in British Columbia to open up timber?

A That is correct.

Q But you say that didn't influence your methods of sale. A: No, I think we carried out the Custodian's usual methods of selling by public tender.

MR. McPHERSON: Thank you, Mr. Field. Your witness.

THE COMMISSIONER: Do counsel wish to go on until 4:30 today? If so, we will recess.

MR. McPHERSON: I would prefer to, my lord, because I have Mr. Eustace Smith tomorrow and Mr. Wray and Mr. Skelding, presumably.

THE COMMISSIONER: Yes. I thinkkwe had better carry on awhile longer today. We will recess for a few minutes.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

FREDERICK FIELD, resumed stand and testified further as follows:

MR. McPHERSON: My lord, I have requested my learned friend to permit me to ask one more question of Mr. Field.

Q Mr. Field, Mr. Pretty, in his evidence yesterday, in discussing the MacMillan-Dollarton cutting contract made the statement that he figured that MacMillan had paid a premium of $1.00 a thousand

on stumpage. Could you give his lordship any comparison between that and the results of the logging of the Deep Bay property as indicated in Exhibit 22? A: Yes, your lordship. At the end of 1941, the Deep Bay Logging Company were crediting to Mr. Kagetsu on the stumpage $1.50 a thousand for fir, and $1.00 a thousand for other varieties.

Q Mr. Field, you get those figures from the ledger, do you? A: Yes, they are taken from the ledger of the DeepBay Logging Company, Limited.

MR. NORRIS: These are the figures that Mr. Wray gave.

MR. McPHERSON: No. Your lordship will recall I had Mr. Kagetsu admit the figures on cross-examination. I think that is right.

MR. BALDWIN: I do recall something about it. I think those were the figures Mr. Wray introduced this morning.

MR. McPHERSON: In any event, the witness says they were in the ledger, and Mr. Wray says he did introduce them. I thought they were through my friend's witness.

THE COMMISSIONER: We have it through Mr. Wray, in any case.

THE WITNESS: I have before me Exhibit 22, which I understand is a record of the Forest Department of the cutting from this area under the new owner.

This schedule shows that the percentage of fir is 49.71%, or practically 50%, which would

mean the other varieties would be 50%. On this basis, that would mean that the figure taken for stumpage at the end of 1941 of $1.50 for fir and $1.00 for other varieties would naturally reduce it to $1.25 average. If a premium of $1.00 was added to this $1.25, we would get a figure of $2.25.

I would like to point out that the valuation given by Mr. Smith of the timber was $2.00 a thousand, over-all.

MR. McPHERSON: Q: And is that the valuation, Mr. Field, on stumpage basis or on a cash basis?

A If an allowance is made on a cash basis of 25%, the figure would then be $1.70 per thousand, over-all.

MR. McPHERSON: Your witness, Mr. Norris.

CROSS-EXAMINATION BY MR. NORRIS:

Q Mr. Commissioner, my friend Mr. Baldwin is checking this, and subject to a check on these figures I would like to ask this question: You said, Mr. Field, that the Timber Controller didn't influence the methods of sale. You took your instructions from the Custodian, I take it.

A In the case of Block 195, it was under the control of our office, but not under my personal control. The recommendation of the Timber Controller had some weight, but I would like to point out that we were acting in some cases as controller with the powers of a liquidator, and we did from time

to time, as P. S. Ross & Sons, make recommendations to the Custodian.

Q Did you take your instructions from the Custodian with respect to the methods of sale --- price and so on? A: The policy of sale was laid down by the Custodian; that is, the method of advertising and so on, and the method of valuation and so forth was the policy of theCustodian's office in all cases of sale.

Q And the price? A: The price was based on our recommendation to the Custodian.

Q I know on your recommendation,but the instructions you got, they were from the Custodian, weren't they? A: I am sorry, but I don't quite follow you.

Q You were the servant of the Custodian, isn't that the position? A: We were appointed by the Custodian, yes.

Q And you took your instructions from the Custodian, didn't you? A: Yes.

Q Now, you spoke of a firm offer by the MacMillan Company with respect to the sale en bloc. You spoke of a firm offer which was withdrawn. Can you give me the date of that?

A I can't give you the definite date, but it was some time between the 31st August and the end of 1943.

Q Now, you also referred to debts of the Deep Bay Logging Company, Limited. Was anybody threatening foreclosure? A:We have corres-

pondence on the file demanding payment, both by the Workmen's Compensation and the Forest Department, and I can't remember all the creditors, but I know we have a number of letters on file demanding payment.

Q And that is the extent of the pressure for payment that there was, is that right?

A I think the pressure didn't develop beyond that, because of representations I made to these people.

Q But it didn't develop beyond that?

A That is right.

Q I will produce to you this contract of March 13, 1944, made between the Secretary of State, the Deep Bay Logging Company and the H. R. MacMillan Company, Limited, Is that the contract made in reference to the Deep Bay operation?

A Yes.

Q Was that contract drawn on your instructions to the solicitors? A: Yes, acting for the Custodian's office.

Q Acting for the Custodian's office. Now, Clause 7, you know that clause?

THE COMMISSIONER: What is Clause 7?

MR. NORRIS: Clause 7 was the one requiring immediate sale.

Q The advertisement has this provision, "The timber . . . . . a reasonable time." That was the provision in the advertisement?

A Yes.

Q Though in the contract you had a provision that

the "purchaser shall immediately upon . . . . . negligence of the company", and so on. That clause was inserted on your instructions?

A Yes.

MR. NORRIS: Have you the other contract, Mr. McPherson? I will put this in.

(CONTRACT MARKED EXHIBIT NO. 1388-51)

MR. NORRIS: The other contract is contained in Exhibit 31-- 37, and it is dated the 28th June, 1943.

Q I take it that contract was also drawn on your instructions? A: I don't think so.

Q Together with the Custodian.

A My office, yes.

Q Your office, and it contained as clause 6 a similar clause to the one I read in part just now?

A Yes.

Q The answer is yes.

MR. BALDWIN: If your lordship would permit, I just have one question to ask the witness with regard to Exhibit 22, to which he made reference when my friend examined him.

CROSS-EXAMINATION BY MR. BALDWIN:

Q You read to the Commissioner, Mr. Field, a percentage of species, saying that fir was about 50%.

A According to that, yes.

Q And the other species would, logically enough, be about 50%. A: That is right.

Q What are the relative values? Do you know anything of stumpage values, as between species?

A I am not a timber expert, no.

Q Well, in a general way you would know something of it, wouldn't you?

A I have some idea, yes.

Q You know that cedar is just as valuable, or more so, than fir, don't you?

A Well, I would have to be an expert to answer that, but I wouldn't agree with it.

Q What? A: I couldn't agree with it at all times. Cedar is one of those woods that is occasionally in great demand and at other times is not. It fluctuates very strenuously.

MR. McPHERSON: I wonder if my friend would give a definite date, or say what year he is talking about.

MR. BADLWIN: As of the date of sale, 1943. I wasn't aware of any violent fluctuation.

Q What is the percentage of cedar indicated on this Exhibit 22? Do you have that before you?

A No, I haven't.

Q Well, there it is (producing).

A 24%.

Q Yes. A: Most of it is low grade.

Q The combined percentages of cedar and fir on that Exhibit 22 are roughly 75%, is that right?

A That is right. I think it would only be fair, if you bring in cedar, to state the grade of the cedar.

Q I am quite willing to state the grade. I merely wish to correct any impression you might have

given, Mr. Field, as to the value of this stand. Will you read to the Commissioner the percentages of fir and of cedar by grades.

A Fir No. 1, 9.74, No. 2, 63.65, No. 3, 2.69; cedar, 5.76 --

Q That is No. 1? A: -- No. 1, 49.54, No. 2, and 44.70 No. 3.

MR. BALDWIN: Thank you, Mr. Field.

RE-DIRECT EXAMINATION BY MR. McPHERSON:

Q Mr. Field, my learned friend Mr. Norris raised some question which wasn't quite clear to me, something about did the Custodian give you instructions on the sale price, and I don't think you finished answering it. I am not just sure what Mr. Norris was after, but he referred to the sale price and instructions from the Custodian. Did the Custodian give you any instructions as to what you should sell timber for?

A No. Our usual procedure was to make a recommendation to the Custodian and if he thought fit, he would approve it and authorize us to go ahead and make the sale.

Q Did the Custodian hire experts to advise him?

A We hired experts to advise us.

Q To advise you? A: Yes.

Q In order to clear any mistaken impression that might be gained by my learned friend's examination, he asked whether or not you instructed the solicitors with respect to the two clauses in the

two agreements he read. Now, did you draft those clauses and give them to the solicitors, or were those clauses drafted by the solicitors?

MR. NORRIS: Being a solicitor myself, Mr. Commissioner, I would assume the solicitors drafted the clauses and not Mr. Field.

MR. McPHERSON: Q: What instructions would you give which would result in those clauses being drafted?

A We would advise —

THE COMMISSIONER: Instead of "would you give", would you put your question "did you give"? What instructions did you give.

MR. McPHERSON: Q: What instructions did you give that resulted in these clauses being drafted?

A We would advise the solicitor that it was a condition of sale that immediate operations should commence in the case of 195, which did not actually happen.

Q Yet the clause, as Mr. Norris read it, provided an escape. A: Yes.

Q That is the point his lordship is interested in. If it was advertised for immediate removal, why did you provide an escape clause?

MR. NORRIS: Isn't it a usual escape clause? I gather it is an "act of God" clause.

MR. McPHERSON: I judge it goes a little further than being an act of God clause, taking into account the unsettled condition of the British market.

MR. NORRIS: I might say, as far as I have had to do with timber contracts, that is a normal clause.

MR. McPHERSON: It isn't an act of God, the failure of markets.

THE COMMISSIONER: I suspect the clause was framed by the solicitor and no doubt was approved by Mr. Field, and no doubt the suggestion for the incorporation of that clause came from the purchaser.

Q Is that right? A: Yes.

MR. NORRIS: That is, as to the suggestion of the escape clause?

THE COMMISSIONER: Yes, thank you, Mr. Field.

(Witness aside).

THE COMMISSIONER: I do not suppose you want to go on with another witness this afternoon?

MR. McPHERSON: No. I have no further witnesses.

THE COMMISSIONER: I would prefer you should complete your re-examination of Mr. Wray in the morning before Mr. Smith is called.

MR. NORRIS: I would like to do it myself, but if I might, I would like to have the ledger and any other necessary exhibits.

THE COMMISSIONER: Mr. Secretary, will you make the documents available to Mr. Norris? The actual ledger has not been put in, but I suppose it will be made available to you, Mr. Norris.

MR. McPHERSON: Yes. Mr. Kagetsu has had them before. I was wondering about my friend. If he was anticipating he wouldn't be through with Mr. Wray tomorrow, if that was the case I might have to object, because I think it shows in the evidence that Mr. Wray's evidence is based on the ledger,

which has been in the possession of both parties in order to extract certain figures.

THE COMMISSIONER: You are assuming Mr. Norris is going to be lengthy on his cross-examination?

MR. McPHERSON: It isn't a question of how long he will be, it is a question of when he will start.

MR. NORRIS: I understood his lordship to say he wished me to start in the morning. I would like the exhibits in connection with the statements.

THE COMMISSIONER: Mr. Secretary, will you see Mr. Norris has the exhibits he wishes.

MR. McPHERSON: Then following Mr. Wray, I would call Mr. Eustace Smith and Mr. Skelding.

MR. NORRIS: It may not be necessary to call Mr. Skelding, but we can discuss that.

THE COMMISSIONER: I suppose there may be some difficulty in getting these men, like Mr. Skelding. Perhaps counsel could settle it before you leave this evening.

MR. McPHERSON: I have arranged to have Mr. Skelding available at my office. I think I will call him, in any event.

THE COMMISSIONER: We will adjourn then, to resume at 10 o'clock in the morning.

(PROCEEDINGS ADJOURNED UNTIL NOVEMBER 25, 1948, AT 10:00 A.M.)

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

J. P. Hanrahan

Deputy Official Stenographer

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