JAPANESE PROPERTY CLAIMS COMMISSION

MINUTES OF CONFERENCE HELD IN THE CHAMBERS OF THE HONOURABLE MR. JUSTICE H. I. BIRD, AT VANCOUVER, B.C., FRIDAY, APRIL 22nd, 1949, at 11:00 A.M.

PRESENT:

THE HONOURABLE MR. JUSTICE H. I. BIRD, Commissioner,

D. BRAIDWOOD, Esq., and J. A. MACDONALD, Esq., representing the Dominion Government.

R. J. McMASTER, Esq., and A. E. COBUS, Esq., representing the Claimants.

A. W. WATSON, Esq., Secretary,

T. P. HORROBIN, Esq., Official Reporter.

THE COMMISSIONER: First of all, Mr. McMaster, have you any information for me in regard to the decision of your Committee on the recommendations?

MR. McMASTER: My lord, I have submitted to the Committee the proposed settlement, and also I have submitted it to Mr. Virtue. I have had word from Mr. Virtue that he is consulting with his Committee, and he hopes to have some kind of an

answer from his clients by the end of the month.

With regard to our own Committee, they have referred the matter to the claimants with certain recommendations concerning it. Our claimants are spread out much more widely than Mr. Virtue's, and I have urged them to try and have an answer by the end of the month, but I am not too optimistic that it will be physically possible.

The Committee, I understand, have recommended the proposed settlement, subject to trying to persuade my friend, or the Government, to do something on the question of city property. However, that will be a matter, I take it, of negotiations between ourselves and the Government.

THE COMMISSIONER: Yes. As I told you at, I think, our last meeting on the subject, which was the sixth of this month, I do not feel that I would be justified in making any change in view of the evidence that has been brought out before me.

I am concerned about the delay. You see, we have had rather more than two weeks now, and the end of the month would make it practically three. If the recommendations are not to be accepted, we ought to be getting on with the hearing of such further evidence as you wish to adduce. Now, while I have no desire to press you unduly -- I certainly have not, up to date -- I think it might be desirable if we set a date for the re-opening of hearings, contingent upon no settlement being arrived at, or no acceptance of the recommendations,

rather.

MR. McMASTER: My lord, I do feel this, that if there is to be any kind of a settlement there is still a tremendous amount of work to be done. I think we have discovered that in the last week and a half, and we have made some progress, and I think progress from this point on will be much faster. The work that is being done is in terms of particularly the chattels,and they will be the biggest headache, as they have been all the way through.

MR. BRAIDWOOD: Perhaps your lordship would like to know what has happened as to the form that Mr. McMaster and I have been dealing with.

THE COMMISSIONER: Well, let us go into that later. I would rather clarify the situation in regard to the acceptance or rejection of the recommendations, first of all.

MR. McMASTER: My lord, as I say, progress has been slowed to this point in getting the actual figures out on the cases, and my friend assures me it will be a matter that he will be ahead of me very shortly on it.

THE COMMISSIONER: That simply relates to the working out of the recommendations which have already been made.

MR. McMASTER: My lord, it relates to a more basic problem, which has to be solved, irrespective of whether there is a settlement, that is the working out of the chattels in the claims and the amounts

sold in relation to each claim, divided into the various categories of chattels.

It seems to me, whether there is a settlement or not, the settlement of the claim will ultimately have to be worked out either by agreement between the Crown and ourselves, or by your lordship, and I think it is useful work in any event. Now, if we get mixed in with that trying to get worked out some preparation to proceed with hearings of claims, then I think we are going to slow that proeedure up, bedause it means a lot of time will have to/spent on preparation, instead of getting be the basic material prepared.

I would say this, my lord, that I feel from my discussions with the Committee, and with Mr. Tanaka, who has been out here again since my report to the Committee, that the likelihood is that the settlement will be recommended, or accepted. I do hope we will be able to come to some agreement with the Crown with respect to city property.

THE COMMISSIONER: Well, that is a matter of settlement. I would like to clarify the picture, so far as my recommendations are concerned. While this procedure you have been working on may have started out in the form of discussions between yourself and Government counsel as to possible settlement, nevertheless when it comes down to the recommendations which I have made, that is not a settlement. Those are findings of mine.

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: So, rather than have any misunderstanding as to whether these recommendations are a settlement or not, I would like to clear that up. If the recommendations are accepted, it will be taken as final and not a settlement at all. They are recommendations, based on the evidence.

Now, what disturbs me about it is this, that I have other judicial problems. The Court is in session in Victoria now, as you are aware, and unfortunately is now reduced to three members, due to the fact that my brother Sidney Smith is engaged on some fairly heavy Admiralty work. So, that aggravates the situation. Consequently, I am most anxious to know what the situation is going to be, so far as the Commission is concerned. Either I am committed to the Commission for a number of months longer, or I can inform the Chief Justice that I will be available, say for the June session. It is really that situation that causes me to press you to give me an answer on the recommendations.

May I take it from what you have said, or, do I correctly understand from what you have said that your Committee is prepared to recommend acceptance of all the recommendations, with the exception of that relating to Vancouver city property?

MR. McMASTER: If I understand the recommendations of the Committee, my lord, it is that they accept the whole proposal, with instructions to the Committee to endeavour to negotiate some deal with the Government concerning city property.

THE COMMISSIONER: I see.

MR. BRAIDWOOD: My lord, may I understand that correctly, particularly your lordship's prior remarks? Does my friend mean that he would take your lordship's findings as such, based upon these settlement proposals, and then come along to the Government and attempt to have the Government make an additional award, over and above?

THE COMMISSIONER: That is what he would have to do, in view of my comment to him before.

So far as the Vancouver city property sales are concerned, I think I have declared myself quite clearly to counsel before that I do not consider the evidence warrants a finding that these sales were not made at fair market value.

However, I have made a recommendation of 5%, based solely on the fact that the claimants did not receive the fair market value, due to a charge for agents' commissions on sales.

Now, if there is to be any change in that, it will have to be made by virtue of some arrangements between Governmentx counsel and claimants' counsel.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: Well, can we leave it in this way, that counsel understand my difficulty, and I would like every assistance that they can give me to bring this question to a head, one way or another, at as early a date as possible.

MR. McMASTER: Yes, my lord.

MR. BRAIDWOOD: My lord, should that not be communicated

to Mr. Virtue, too?

THE COMMISSIONER: I am dealing with Mr. McMaster, as representing Mr. Virtue, as well as the Committee.

MR. McMASTER: Yes. I think, frankly, that Mr. Virtue's answer will be ahead of ours.

THE COMMISSIONER: Yes, I see.

MR. McMASTER: He has all his claimants right in Lethbridge, or in the vicinity of Lethbridge.

MR. BRAIDWOOD: That poses, too, an additional problem, my lord, of which there has been no mention as yet, and that is as to notification to and discussion with any and all other counsel concerned.

My understanding from Mr. Hunter was that the present matter would be settled between Mr. McMaster and Mr. Virtue, and we would then take a direction from your lordship as to how we might communicate with other couhsel concerned.

THE COMMISSIONER: There are some other counsel concerned. There is Mr. Pratt, who had five or six claims, and there were some claimants represented by Hamilton counsel, but I am rather inclined to think Mr. Best represented all of them.

MR. BRAIDWOOD: There is a man called Hornsberger, my lord, and we can't find him. My friend and I came across the file the other day.

THE COMMISSIONER: I recall Mr. Hornsberger's name. He was in Toronto.

MR. McMASTER: Yes, and there are two or three more in British Columbia.

MR. BRAIDWOOD: Mr. Thomson, I think, is one.

MR. McMASTER: He hasn't any other than corporation claims.

MR. BRAIDWOOD: But they may fall within this category, to some extent.

MR. McMASTER: And Jack Streight had one at Kamloops, and it seems to me that local counsel had one at Kamloops, Dave Verchere.

MR. BRAIDWOOD: Yes, that is right.

MR. McMASTER: And then there is our Japanese friend at Vernon who Mr. Morrow's firm represented, and there are two that Mr. McQuarrie, of New Westminster, is solicitor for on the Record. I think I presented the claims at the last minute, but I have had no further instructions from him to date, and there are one or two in Moosejaw that I think are represented by counsel who acted for them.

THE COMMISSIONER: Would it be asking too much of you, Mr. McMaster, if you would communicate with those other counsel, indicating to them the recommendations that have been made, and the attitude that you anticipate from your own Committee?

MR. McMASTER: Well, my lord, I wonder whether my friend can give me a list of the counsel. I know a good number of the B.C. ones.

THE COMMISSIONER: Well, between Mr. Watson and Mr. Braidwood, you can get that group. These other men in Toronto did not show any particular anxiety to get on with the presntation of claims while I was there. Each of them were given an opportunity to present a certain number of their claims, and none of them did so. Is that not right, Mr. Watson?

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: Then, I will leave that with you.

MR. BRAIDWOOD: My lord, in that regard Mr. Watson provided me with a list this week of claims still to be heard at Vancouver, which includes a number of Mr. McMaster's cases, and five or six cases, of which three are corporate claims from Russel & DuMoulin, and then there is Mr. Johnson in New Westminster, who has a number, most of which are corporation, and Mr. W. C. Thomson, with one corporation claim of the Union Trading Company, Limited.

THE COMMISSIONER: Mr. Thomson has been before me once or twice, and my thought was he was likely to abandon his claim.

MR. BRAIDWOOD: I believe the secretary has writtento all these firms.

THE SECRETARY: Yes. I notified all those counsel.

MR. BRAIDWOOD: And I, also, my lord, have written to each counsel, asking them if they can notify me if they intend to continue with their claim to take the proper steps.

THE COMMISSIONER: To bring that matter to a head, Mr. Secretary, will you notify all the people on this list that these claims are to be spoken to? Are we to have much more for Monday thanawe have set down?

MR. BRAIDWOOD: No, not unless something arises here today.

THE COMMISSIONER: You had better notify these people to speak to their claims on Tuesday next, failing which

the claims will be treated as abandoned.

THE SECRETARY: I did notify them that they would come up for hearing on May 2nd. They have already been notified. My understanding was the hearings were to be resumed on May 2nd, at the conclusion of the argument, and I have so notified Mr. Johnson and Mr. Gilbert Hogg, to be ready to proceed, and to advise us if they intend to proceed with the presentation of their claims.

THE COMMISSIONER: Perhaps, if you have fixed May 2nd already, we had better adhere to that same date. So, if you will notify all those people that these claims must be spoken to on May 2nd, failing which they will be treated as abandoned, that will take care of the situation.

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: You have heard nothing from any of them since you wrote them?

THE SECRETARY: No, and I asked them to favour us with a reply to our letter.

THE COMMISSIONER: Your letter must be all of two weeks old?

THE SECRETARY: One week, my lord.

MR. BRAIDWOOD: It was this week, my lord. I received Mr. Watson's letter on Wednesday.

THE COMMISSIONER: All right, we can deal with them that way. We have to bring these things to a head, and know where we stand on them.

MR. McMaster: I might say there are two claims, one for the Haney Fruit Ranch Association, in which

Mr. Shears and I have been discussing a possible settlement of the matter, outside of the Terms of Reference, and the M. Ebisuzaki Company claim, where we are still waiting, I believe, for further information from Mr. Field's office, to determine whether the claims shall be proceeded with.

THE COMMISSIONER: May 2nd is a full week away, so that ought to give everyone enough time to determine whether they want to go on or not. You might let me see the letter you send them, before it goes off, Mr. Watson.

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: Now, is there anything further, Mr. McMaster?

MR. McMASTER: I don't think so, my lord. I think my friend has something.

MR. BRAIDWOOD: Yes, my lord.

Following the last discussions, my lord, a form has been prepared, and we are now providing Mr. McMaster, I think, fairly regularly with large numbers of these cases. We have already provided him, my instructions are, with the first 29. Is that correct, Mr. McMaster?

MR. McMASTER: Approximately, yes.

MR. BRAIDWOOD: And by noon of today Mr. McMaster's office will have up to Case No. 43. Those are in numerical order, Cases 1 to 43. Approximately ten more are in the course of preparation and will probably be completed by late afternoon, but I think it is fair to say that by today Mr. McMaster

will have the first 50 cases on the forms.

THE COMMISSIONER: What is this form designed to accomplish?

MR. BRAIDWOOD: It is a form of settlement, my lord, drawn by Mr. Hunter, prior to his departure, after discussion with Mr. Shears, and Mr. McMaster has seen the form, and he went over it before it was printed.

THE COMMISSIONER: I see. It is simply designed to determine the actual amount that will be paid to each claimant?

MR. BRAIDWOOD: That is correct, my lord.

THE COMMISSIONER: Based on the recommendations?

MR. BRAIDWOOD: Yes, my lord.

The theory is we provide Mr. McMaster with, say, Case No. 1 on this form, completed insofar as we can complete it -- certain ones he had to complete for us, and Mr. McMaster then reviews the form, and after a certain number of things have been reviewed which have not been agreed on yet, Mr. McMaster and I will meet together and see which ones we can agree on, and argue the ones we cannot agree on, and out of the final argument will arise such cases as will have to be spoken to before your lordship.

THE COMMISSIONER: Most of your difficulty will arise in connection with chattels and nets, will it not?

MR. BRAIDWOOD: Yes, chattels and nets, my lord.

THE COMMISSIONER: Yes, I follow the form. That is going to take some little time.

MR. McMASTER: Actually, my lord, with the exception of chattels-- there is a heading here, "Miscellaneous

Chattels". It isn't too difficult to go through and prepare and check it, but when it comes to the subject matter of chattels, there are probably 150 to 200 cases that I can think of where there are anywhere from two to five pages of chattels on claims analysis, which are going to be headaches when we hit them.

MR. BRAIDWOOD: My lord, perhaps my learned friend would like to discuss at this time -- I might leave the copy of a blank form with your lordship -- perhaps my friend would like to discuss the third item of chattels, on the 22% matter. Would you care to discuss it?

MR. McMASTER: Yes. I raised the question with my friend the other day, when we got the first of these forms, my lord, as to exactly what the recommendation was. We apparently have different ideas with regard to the 22% rebates on goods sold by auction.

My friend's understanding, apparently, was that the rebates were to be a flat 22% in each case. My understanding of your lordship's recommendation had been that it would be a rebate of the actual charges that were made, which Mr. Hunter represented in the material which he filed, as being on the average 22%.

THE COMMISSIONER: Well now, certainly I do not carry anything in my mind about that. I will have a look through my notes and see if I can find it. Perhaps you had better re-state to me what your view on it is.

MR. McMASTER: My lord, my recollection was that your lordship found that the goods sold by acution in your opinion were sold at the fair market value, and your recommendation with respect to these goods was that the charges be rebated to the claimants.

Mr. Hunter had, in the material he filed, indicated that the average charge was 22%.

THE COMMISSIONER: Yes. The only difference between you is as to whether the 22% is to be taken over all, or whether they are actual charges?

MR. McMASTER: Yes.

THE COMMISSIONER: Have you any idea of what that is going to mean?

MR. McMASTER: It is going to mean more work, I haven't the slightest doubt of that.

MR. BRAIDWOOD: I would like to speak to that, my lord.

THE COMMISSIONER: I think Ihad better hear Mr. McMaster first.

MR. McMASTER: I do recall some cases where thos echarges would run as high as 35 and 40%, particularly in cases where personal property and chattels were sold in the outlying areas. It is a question of whether in equity that should be paid back, or whether they should receive the actual charges, rather than a flat rebate or refund.

THE COMMISSIONER: What is your position on that, Mr. Braidwood?

MR. BRAIDWOOD: My position is, my lord, in the first instance, that this material was all before your

lordship when your lordship made your recommendations, and your lordship has taken into consideration the variable amounts of the charges, which I am quite free to admit, and the 22% was set as an average to accomplish what was essentially rough justice to give as close an approximation to proper justice as could be achieved.

The thing is simply a matter of mechanics, and Ihave taken it up with Mr. Shaars and Mr. Good at some length, and it falls into this category, that there were several different charges on the same items, and apportioned to various persons as they arose.

Now, those charges could be probably found, with some considerable amouht of work, but they could be found with respect to each individual. However, the actual apportionment of these charges on all these different charges to each individual is a virtual impossibility. For example, we have a man whose goods were sold for, say, $500.00, with certain charges placed on them. Now, he is making a claim, probably, for only $200.00 for those goods and is agreeing that the Custodian sold at a proper price the balance. Now, I think your lordship can see the apportionment problem is almost an impossible one there, coupled with the fact you get into the situation where there were joint advertisements and that sort of thing, and how much to apportion to which piece of property, or each lot of goods.

I am assured by Mr. Shears and Mr. Good that if my friend insists on this form being taken, and your lordship so orders, that it be followed in that manner, that it will take around, in Mr. Good's estimation, about eight months to a year's work on the part of his staff, and even then at the end of that time he tells me he wouldn't be prepared to subscribe his name to the fact it is an accurate representation of the true charges.

I think it will prolong the thing for many, many months, My lord. As your lordship knows from the analysis in the files, there are many, many items to go through, and to go through every claim, item by item, and find out how much shall be charged against that would be a staggering problem.

THE COMMISSIONER: It is quite a problem.

MR. McMASTER: It is, my lord, but in view of my friend's remarks in regard to the 22%, the thing I have in mind, and I think your lordship knows from the hearings we had, that in many instances, particularly where there were long claims, the claimants on the advice of their counsel, with a view to shortening the proceedings, dropped claims with respect to goods which the Custodian had sold, mainly small articles and saying, as for example in Mr. Suzuki's statement this morning, where he said he is just dealing with the matters that appear to him to be away off the fair market value, and that in view of your lordship's finding that all the goods sold at the fair market value, and the fact

that the claimants at the time had no idea, or, rather, the indication had been they wouldn't be entitled to recover the charges, why should they then recover the charges on those goods, as well as the goods which actually form the subject matter of their claim, and as I understood from my discussion with Mr. Braidwood and Mr. Good, the other day, it was plainly a matter of giving back the charges on goods that were sold by auction belonging to these claimants, as distinct from the ones they specifically claimed for --

MR. BRAIDWOOD: I think my friend is being manifestly unjust, because many of the Japanese whose goods were sold have felt satisfied with the Custodian's sale and did not make a claim, and they also had charges made against their goods. I think it would create a very grave pattern of ~~x~~ unjustice, my lord.

THE COMMISSIONER: The thing strikes me that we should not treat these chattel claims in any different way than we would treat other claims. For instance, I gathered from you, Mr. McMaster, that you proposed to apportion the various claims on real property claims on the total amount that was recommended in respect of all those real property claims. In other words, supposing we arrived at a figure of $100,000.00 ~~x~~on rural property claims; ~~d~~ you proposed to give some men 10% and some men 5%, and that you were going to to come into me with a recommendation as to the

distribution. Is that not the case?

MR. McMASTER: My lord, I think that related to the V.L.A. properties only. With regard to the city property, your lordship's finding was the property was sold at its fair market value, and again this question arises there, but not with anything like the same degree of seriousness as with chattels, of the charges to be rebated. Those charges averaged 5%, and as I recall Mr. Hunter's figures, I think there were only seven cases where the charge was more than 5% and two cases where it was less than 2%, in the case of city property.

THE COMMISSIONER: I see Mr. Hunter refers to an average of 3%.

MR. McMASTER: That is on the rural, I think. My understanding on the rural property is they received 10%, plus the charges that were actually made.

THE COMMISSIONER: That is so.

MR. McMASTER: On the V.L.A., it is a different picture, because in that case there was an actual award in connection with the sale below fair market value, and in that case it is proposed that it be distributed, having some relation to the relative values of the property of the claimants.

THE COMMISSIONER: If you are so concerned about the overall 22%, why could we not deal with it in the same way as we proposed to deal with certain of the real property, namely, make the recommendation of an overall 22%? If you want to make any adjustments as between your various claimants,

you can come to me with your suggestion of the adjustment and I can accept your recommendation, being concerned only with the overall.

MR. McMASTER: My lord, I don't want to make any recommendations as to distribution of the 22%. If it is going to be a flat 22%, I want it clarified first of all on the original recommendation in that respect.

THE COMMISSIONER: I do not recall any differentiation having been made in relation to the chattels. I thought it was on the same basis we had been discussing in regard to the real property distribution, that you would be handed a lump sum of money and if you felt that there was inequity as between individuals, that you would come to me with suggestions in regard to it, and if I approved, then those could be adopted.

MR. McMASTER: My lord, I am afraid that wasn't my understanding on chattels at all. The two instances that I recall of any method of distribution are that we proposed, as I recall it, that what was to be taken into account was the V.L.A., and secondly, where it related to distribution on a claim because of the loss on goods. I would like an opportunity to discuss this matter further with my learned friend. I didn't appreciate he would raise the point this morning.

THE COMMISSIONER: There is no reason why you shouldn't discuss it further, but in view of your friend's statement of what this would involve, it does

not seem to me to make sense to spend months of time at probably very considerable expense in order to work out some small inequality. All of us acknowledge there are bound to be inequalities all through.

MR. BRAIDWOOD: I might point out, my lord, that the 22% only represents just under $20,000.00, so the amount isn't much or large enough to involve that amount of work, as your lordship says, for many months.

I might say with respect to my friend's comment on the 22%, my understanding of the matter from Mr. Hunter was that the 22% figure was an attempt to do justice to the Japanese for the charges that had been made against them. Mr. Hunter, at no time, to my knowledge, had any idea of apportioning these charges individually, particularly on chattels. In some instances, the charges are fairly apparent, such as on real property, but in cases of chattels where we have so many pages of items, I am assured by Mr. Shears and Mr. Good that it would require at least eight months of work.

THE COMMISSIONER: Did this thing not start out on the principle that you suggested you would accept 22% when Mr. Hunter offered 15%?

MR. McMASTER: Yes, my lord, but Mr. Brewin's proposal was changed on the basis of the figures which Mr. Hunter produced as to the actual charges of 25%, and also on the basis that we considered the goods to be sold at less than their fair market value.

I think if I had an opportunity to discuss this

matter with counsel, we might come to some agreement and then speak to your lordship about it.

THE COMMISSIONER: That is perfectly satisfactory to me. I would like to have the thing worked out on a basis that is going to be reasonably acceptable to both of you; but, as I say, we are faced with a problem here that makes it inevitable that we arrive at a result by a hit or miss approach. If we could attempt to treat this whole proposition as a number of individual law suits, and go minutely into all the details, you would be appearing before me in a long grey beard, if I was still here.

I will leave it with counsel, in the hope you can arrive at something, but on the face of it, it does appear there is not any other approach that can be made to it.

MR. BRAIDWOOD: May we have your lordship's direction, I suggest, to speak to this matter on Monday, and finalize it?

THE COMMISSIONER: Would you prefer to leave it a little longer?

MR. BRAIDWOOD: It holds off the preparation of these forms, that is the only thing.

THE COMMISSIONER: Then you had better get at it at once.

MR. BRAIDWOOD: That is one of the essential ingredients of the forms, my lord.

THE COMMISSIONER: You better get at it at once, and if you wish, I will be available tomorrow morning.

MR. McMASTER: I would suggest that my friend and I have a discussion on it this afternoon.

THE COMMISSIONER: All right, and you can let Mr. Watson know if you wish me tomorrow.

MR. BRAIDWOOD: Now, my lord, I have one other matter to speak to your lordship about, and that is the matter of the corporate claims, and so called quasi corporation claims.

I would like to report to your lordship that my learned friend and I had a prolonged discussion two days ago over the cases which remain on the list to be heard or argued, and I think we have come to some considerable degree of success on it, and we are each reviewing certain files with the intention of trying to arrange settlement in one or two instances, and to arrange for argument in other instances.

The Haney Box Company, Limited, I think we have fixed will go on for argument, and your lordship had required some additional evidence on the price of glass in that case. Mr. Campbell has obtained that, and it will be filed.

THE COMMISSIONER: Mr. Watson, had I not fixed a time for argument of the corporation claims?

THE SECRETARY: You had, my lord.

THE COMMISSIONER: That was the 2nd of May?

THE SECRETARY: The 2nd of May. The argument comes up first and at the conclusion of the argument, then the hearing of the other claims takes place. Those are my instructions.

THE COMMISSIONER: What is the situation, so far as Mr. McLennan is concerned? You told me some days ago, or some weeks ago, that Mr. McLennan was not happy about going on on the 2nd of May.

THE SECRETARY: No, he had so much other work to do. The arrangement was he was to have a confernce with you, but he hasn't done so. We may be assured he is ready to proceed with his argument. The Royston Lumber Company comes first, and then the Deep Bay after that, and my understanding is that after that the hearing of the other claims will be proceeded with.

MR. BRAIDWOOD: I might speak to those two cases, my lord, the Royston Company and the Deep Bay. As your lordship is aware, they are very extensive cases that Mr. MacPherson conducted on the part of the Crown.

I might say that prior to his departure, Mr. Hunter was trying to make an arrangement for Mr. MacPherson to handle the argument in those cases, the preparation of which, I think, to myself or any other counsel at the moment would undoubtedly involve weeks of work, because of the terrific volume of material, and the background material that would have to be obtained. Mr. MacPherson, I am told, spent four or five months preparing those two cases alone. I am faced with the difficulty that neither Mr. Hunter or myself have been able to pin Mr. MacPherson down. As a matter of fact, we can't even reach him. He is

in and out of town constantly, a will-of-the-wisp, and he has indicated his willingness to handle the cases, if he can make his own arrangements, but we can't get a firm committment from him as yet, and I have done everything I can to contact him, including several telephone calls and letters to him, to get a firm committment so I can inform your lordship and we can fix a date.

THE COMMISSIONER: It might be well if I have Mr. Watson get in touch with him.

MR. McMASTER: Yes. It would take me considerable time, in any event.

THE COMMISSIONER: I think we took about two weeks on the hearing of the Deep Bay claim alone. Mr. Watson, would you endeavour to get in touch with Mr. MacPherson, and ask him if he could see me at any time convenient to him next week. I will be in my Chambers any time he caresto see me, between 9 and 10 in the morning.

MR. BRAIDWOOD: Any time next week?

THE COMMISSIONER: Yes, the sooner the better. You can get him, Mr. Watson, at the Great West Life Investment office.

That rather creates difficulties. Perhaps we had better plan to go on with your other corporate claims on the 2nd. That is what you were working on?

MR. BRAIDWOOD: Yes. That is what Mr. McMaster and I had discussions on.

There is one other problem arises there, that

is there are two or three of the corporation cases in wich other counsel than Mr. McMaster are interested. There is the Makawa Limited claim, in which this Mr. Hornsberger is interested; the Nichiguchi Company, Limited, which Mr. Johnson is interested in, the Royston Lumber and the Deep Bay cases, Mr. McLennan and Mr. Norris, and I think Mr.McMaster and I have agreed that the Steveston Nuson Gaisa case would go in the settlement as the other cases are -- is that correct, Mr. McMaster?

MR.McMASTER: That is right.

MR. BRAIDWOOD: That won't be heard then, in that event.

THE COMMISSIONER: I am wondering whether I ought not to get a memorandum at once of all the outstanding matters, both corporate and otherwise, and notify counsel to appear on the particular day to speak to them.

MR. BRAIDWOOD: I think so. That would be a very excellent idea. There is one other case, the Vancouver Nippon Kyoritsu Go-Gakko, and Mr. McMaster and I have agreed this go in the ordinary course of settlement before your lordship; also the No. 1 District Fishermen's Association. That is three, my lord, that would be taken off the hearing list.

THE COMMISSIONER: Mr. Watson, would you be good enough to get in touch with Mr. Braidwood and have made up, following your discussion with him, a complete list of matters that are out-

standing and required to be dealt with in any way. Let me have that on Monday, if possible.

Then, what I would plan to do is, if you notify the various counsel concerned to appear here on the 2nd and speak to each one of these cases, because, we must reach some finality in regard to them, otherwise it will be impossible from your point of view as well as everyone else concerned -- have you any suggestion, Mr. McMaster? Do you think it would solve your difficulties? At least, we could have determined what is outstanding, and whenwe are going to get to it.

MR. McMASTER: Yes, I think we should do that, my lord.

MR. BRAIDWOOD: My lord, of the 14 corporations or quasi corporation claims made, three fall into the category of the ordinary settlement and will be removed.

Then there is still the Deep Bay and Roystan Lumber Company, Limited to be argued, and Mr. McMaster and I are discussing certain other cases, some of which may go in the ordinary course of settlement, and there is the other case of the United Marine Products, which Mr.McMaster and I are considering the possibilities of a settlement. That would leave some six or seven in view at the moment, my lord.

THE COMMISSIONER: Do you think you have listed there all the matters that are outstanding, and need to be spoken to?

MR. BRAIDWOOD: The corporation matters, my lord, were

extracted from our file, and I believe them to be accurate.

THE COMMISSIONER: What about the personal claims? Mr. Watson gave you some?

MR. BRAIDWOOD: Mr. Watson gave me some to be heard at Vancouver. I am not sure whether there are any others beyond them.

THE COMMISSIONER: Do you know of any other personal claim, Mr. Watson, other than those which are shown on the list which you furnished to Mr. Braidwood? I do not want you to go into all the detail now. Did you list on the memorandum that you furnished to Mr. Braidwood allof the outstanding personal claims, of which you are aware?

THE SECRETARY: Yes. There are just those three that I know of, my lord. I brought them up with me.

THE COMMISSIONER: Those are additional, are they?

THE SECRETARY: Those are additional, yes.

MR. BRAIDWOOD: The Vancouver Nippon case was the one we have just spoken to, my lord.

THE COMMISSIONER: Mr. Watson, I will ask you to sit in with Mr. Braidwood today, if possible, and try to complete a list which you can bring to me, if possible this afternoon, so that I will have some record before me as to what remains to be dealt with, and then I will determine at that time how we are going to have them spoken to.

MR. BRAIDWOOD: Thank you, my lord.

THE COMMISSIONER: Have you any problems on your mind, apart from these things, Mr. McMaster?

MR. McMASTER: No, I don't think so, my lord.

THE COMMISSIONER: Then we have a set a hearing for Monday, at 10 o'clock, have we not?

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: Then we will meet at that time.

(Concluded).

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

J. P. Hamilton

Deputy Official Stenographer

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA, 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

THE HONOURABLE MR. JUSTICE H.I. BIRD - COMMISSIONER.

Vancouver, B.C.,

April 25th, 1949.

PROCEEDINGS AT HEARING

APPEARANCES:

D.T.B. BRAIDWOOD, Esq. and J.A. MACDONALD, Esq., appearing for the Dominion Government.

R.J. McMASTER, Esq., appearing for the Claimants.

A.W. Watson, Esq., Secretary,

T.P. Horrobin, Esq., Official Reporter.

THE COMMISSIONER: Gentlemen, I have asked the Secretary to send out notices to all counsel concerned, regarding a number of claims that have yet to be disposed of, and which I thought it might be wise to have spoken to, either today or tomorrow, or on the 2nd of May, so

that we may know what the situation is. Perhaps either counsel may be able to help me with regard to some of them, now.

There are three listed as "arranged between counsel" to fall within the terms of the general recommendations; first, the District Fishermen's Association, is that correct? I think that is one of Mr. McMaster's.

MR. BRAIDWOOD: Yes, my lord. I think it is more correctly described as No. 1 District Fishermen's Association.

THE COMMISSIONER: No. 1 District Fishermen's Association. That has been heard by one of the sub-commissioners, has it, is that correct?

MR. McMASTER: That is correct, yes.

THE COMMISSIONER: So that there will be no need to speak to that further, if the recommendations are accepted; and the same will apply to Steveston Nosen Kaisha?

MR. McMASTER: That is right, my lord.

THE COMMISSIONER: That, too, has been heard by a sub-commissioner?

MR. MCMASTER: By yourself, my lord.

THE COMMISSIONER: By myself, was it?

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: And then the Vancouver Nippon Kyoritsu Go-Gakko, is that in the same status?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSION: It has already been heard, by either myself or a sub-commissioner?

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: That disposes of those three, then.

Now, the Haney Box Company Limited; that is a matter for argument, later, I believe?

MR. McMASTER: That is correct.

THE COMMISSIONER: And that will be put along with the other corporate claims, is that the arrangement?

MR. BRAIDWOOD: That is the arrangement. There was no date fixed for it, although I had a letter from the Secretary of the Commission, this morning, asking that this matter be spoken to on May 2nd, next.

THE COMMISSIONER: Can we dispos of it now, since we have both counsel present? Perhaps, as we are going to make arrangements on the 2nd for all the corporate claims to be spoken to it had better stand that way. It will go on, May 2nd.

MR. BRAIDWOOD: Yes. My friend and I are both preparing the argument on it now, so we will know by then.

THE COMMISSIONER: Then the Royston case, as well as the Deep Bay Logging; I understand counsel will not be ready on May 2nd, as originally comtemplated. That is the case?

MR. BRAIDWOOD: My lord, I am in the same position as I was last week. I still haven't heard from Mr. Macpherson, and I can't contact him.

THE COMMISSIONER: In the meantime the Secretary did communicate with him, and my information is that Mr. Macpherson is now waiting for his head office to authorize him to present these arguments. He is, as I understand it, with one of the life insurance companies, and he felt he ought not to make any committment until he felt free to do so.

MR. BRAIDWOOD: That has been so, for some time. We have been waiting for it.

THE COMMISSIONER: Suppose we put the two claims down, to be spoken to on May 2nd.

MR. BRAIDWOOD: I do know, my lord, that Mr. McLennan is very anxious not to go on at that time.

THE COMMISSIONER: All I was thinking of was that they should be spoken to, so we can lay down some program. I do not like these things being allowed to float in the air indefinitely, and these matters of argument have been.

Then, in addition to that, there are six claims that I believe were under discussion between yourself, Mr. Braidwood, and Mr. McMaster. Those are Ocean Fisheries Ltd., River Fish Company Limited, South Port Mann Berr y Growers Co-Operative Association, the Taiyo Printing Company and the Togo Cleaners -- that was partly heard somewhere, wasn't it -- ?

THE SECRETARY: In Toronto, my lord.

THE COMMISSIONER: --- and the United Marine Products Limited. Am I right in assuming that those claims are under discussion between counsel, with the possibility that there may be settlements?

MR. BRAIDWOOD: Yes. There is a sound possibility they might go under the first heading your lordship gave this morning. My friend and I are both reviewing the individual cases. We have had one meeting already, and we will meet again as soon as we can get through the material.

THE COMMISSIONER: Would it be too soon to put them down

for May 2nd, to be spoken to then?

MR. McMASTER: They could be spoken to then, yes.

THE COMMISSIONER: There would be no harm, in any case, and in that way we keep track of them. Those six claims will stand on the list, to be spoken to on the 2nd of May.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: I have given notice to Mr. Johnston of New Westminster that the M. Nishiguchi Company Limited claim will be spoken to on May 2nd, not with any intention of proceeding with argument then, but just so we might keep track of it.

MR. BRAIDWOOD: I might say, my lord, I have discussed the matter with Mr. Johnston and Mr. Johnston informs me he has been searching for some additional material to be arranged to be filed, and I am searching for it to provide him with it if I can come across it, but there is a possibility those cases may be settled, but it isn't definite, as yet.

THE COMMISSIONER: In any event, we will put the Nishiguchi case on the list to be spoken to on the 2nd of May.

THE SECRETARY: My lord, you had instructed me to write him to appear tomorrow, to speak to those.

THE COMMISSIONER: That is all right, tomorrow being April 26th. Then the Secretary has written to Mr. Hornsberger, at Hamilton, I think, regarding Maikawa Limited, and I think my direction to you was that it should be spoken to on the 2nd of May, Mr. Secretary, is that correct?

THE SECRETARY: That is correct.

THE COMMISSIONER: Now, perhaps we might deal with the Union Trading Company Limited. I understand Mr. Thomson has made up his mind to go on with it.

MR.BRAIDWOOD: I am so informed, my lord. I have no word of the manner in which he proposes to go on but there was a letter filed in which he says he would be prepared to go on on the 2nd of May in that particular case.

THE COMMISSIONER: What disposition did we make of it on Saturday, Mr. Secretary? the Union Trading Company?

THE SECRETARY: I wrote him to appear tomorrow, to speak to that claim.

THE COMMISSIONER: All right, to be spoken to on April 26th.

Then there are a number of corporate claims represented by Tiffin, Russell,Company. That firm had been directed to speak to the claims on April 26th.

THE SECRETARY: That is right.

THE COMMISSIONER: Was not Mr. Johnston also asked to speak to the Cowichan Saltery and the Suzumoto claims?

THE SECRETARY: Yes, he was.

THE COMMISSIONER: I would like something formal on it. I understand they are to be withdrawn .

MR. BRAIDWOOD: Yes. I have spoken to Mr. Johnston on that matter , too, and perhaps if they were put to the 2nd of May when Mr. Johnston has to appear in any event on three other claims, then they could be spoken to.

THE COMMISSIONER: Yes. There is no need to bring him

over here tomorrow and again on the 2nd of May.

MR. BRAIDWOOD: No. The Nishiguchi claim comes on the 2nd of May, so it might be formally spoken to then.

THE COMMISSIONER: No, we have asked him to speak to the Nishiguchi claim tomorrow, is that not right?

THE SECRETARY: That is right.

MR. BRAIDWOOD: I think he has been asked to speak to the Nishiguchi claim tomorrow morning.

THE COMMISSIONER: They might as well all be spoken to at one time and we will know where we are going.

Now, there are a number of claims of Mr. McMaster's Murakami, which is No. 1281. What is the situation there, Mr. McMaster?

MR. McMASTER: My lord, I applied on Friday to file the affidavit that had been forwarded to the Secretary, as Exhibit No. 1, and the claimant's analysis as Exhibit 2. My friend wanted an opportunity to look at the documents.

THE COMMISSIONER: Well, then, so far as you are concerned, it is complete.

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: Are you able to state your position, Mr. Braidwood?

MR. BRAIDWOOD: My lord, this matter has already been heard, as your lordship is aware, and there was merely the matter of a camera involved -- a filing as to a camera, and after having looked into the matter I had no objection to the filing of that affidavit, as presented to the Commission.

THE COMMISSIONER: So that all the evidence is in?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: That, then, disposes of Murakami, in the meantime, except it has to be passed for the purposes of recommendation.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: How about the Haney Fruit Ranchers Association?

MR. McMASTER: My lord, I am endeavoring to arrange some settlement with the Custodian's office concerning that matter, which would be outside of the terms of reference. I would ask that it stand over, possibly to May 2nd, to be spoken to then.

THE COMMISSIONER: Let us put it on for May 2nd.

MR. McMASTER: Mr. Shears and myself have been trying to get out to Haney together, but there has been some difficulty about it.

THE COMMISSIONER: How about the three Suzuki claims that were heard on Friday?

MR. BRAIDWOOD: My lord, the Crown reserved its right to cross-examine any of the claimants involved herein, and after having reviewed the material on the three cases concerned, I am of the opinion, on behalf of the Crown, that cross-examination will not be necessary.

THE COMMISSIONER: So that, then, will dispose of those three claims.

MR. BRAIDWOOD: Not quite. Case 1390, that is the claim of Goro Suzuki , the Crown had reserved its right to enter a defence, which wasn't done at the time of the hearing. I would, in that case, enter

the defence that the chattels which were sold, if they were sold by the Crown, were sold at their fair market value, and those chattels not sold by the Crown, the claim in respect of those is exorbitant.

On the other hand, there is a question of the title to those floats. There were floats in this particular case, and I would also enter the defence to that that the floats may not have belonged to the claimant.

THE COMMISSIONER: You question the proof of title?

MR. BRAIDWOOD: Yes, but I think my friend and I, perhaps, can examine our files on that matter and discuss it further.

THE COMMISSIONER: In any case, I can treat those as disposed of, except from the point of view of a recommendation.

MR. BRAIDWOOD: One other matter; case 1392, you will remember you will recall my friend was to provide the Commission with the proof of the a ppointment of Tatsuro Suzuki, to act on behalf of the claimant in case No. 1392.

THE COMMISSIONER: All right. The direction has been given to file the Power of Attorney, or some other authority.

MR . McMASTER: Yes, my lord.

THE COMMISSIONER: And that can come in later. Now, what about Ebisuzaki?

MR. McMASTER: Mr. Cobus has been looking after that, my lord. I believe he is still awaiting information

from Mr. Fields office and I suggest it be spoken to on May 2nd.

THE COMMISSIONER: Let us put it down for May 2nd. Now, Mizuguchi.

MR. McMASTER: That is the other one I spoke to on Friday, where we asked to file the affidavit and a statement, and we were going to look into the matter.

THE COMMISSIONER: And that has been done?

MR. BRAIDWOOD: Yes, my lord, that has been done, and again in this case, my lord, after having examined the material I am of the opinion the affidavit can properly be filed.

THE COMMISSIONER: That, Mr. Reporter, is case No. 1514. Then there are a number of corporate claims that are apparently -- is this a repetition? The next following claims, Mr. Secretary, are all repeated, in one to six. Murakami, that has already been spoken to. Yes, all of them have been spoken to.

Now, counsel were going to reopen the discussion on the subject of the 22% recommendation on chattel claims.

MR. McMASTER: My lord, I would like to reserve that for a few days longer. My friend and I had a session on Saturday with regard to it.

THE COMMISSIONER: All right, put it down for May 2nd, as well, or would you prefer to have it sooner?

MR. McMASTER: I prefer to have it , and we might speak to it, when we are ready.

THE COMMISSIONER: When you are ready?

Mr. McMASTER: Yes.

THE COMMISSIONER: The point is, I do not want these things hanging over too long. As you will observe, there are quite a lot of fag ends, and I think we have them all pulled together. What do you anticipate, as far as a 22% is concerned -- something next week, or this week?

MR. McMASTER: I think possibly this week, my lord.

MR. BRAIDWOOD: In that matter, my lord, I am trying to contact Mr. Hunter and get certain additional information from him with regard to the actual terms involved, and I think we should be ready by the end of this week.

THE COMMISSIONER: Monday of this week -- next week.

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: We might as well stand it until May 2nd, then, instead of bringing you up here for just the one matter. Is there anything else that counsel wish to speak to in the way of outstanding claims?

MR. McMASTER: My lord, there are three files that I think I spoke to my learned friend about on Saturday, From the material I have on file, I am not sure whether they have been heard, or haven't been heard, and he was going to check on a couple of them, and I am writing to one of the claimants on one of them.

We willtry and get the matter straightened out, if there is anything to be filed on them. I think for some reason, they have not been heard, and I

want to make sure.

THE COMMISSIONER: Perhaps we had better have a record of them, then . What are they?

MR. McMASTER: K. Horita, Hideichi Minamimaye and Shigeru Morimoto.

THE COMMISSIONER: You are doubtful whether those have been heard, is that the situation?

MR. McMASTER: There is one of them, the first one, that may have been heard some place and it isn't indicated in my file, but the other two, I don't think they have been heard, but there may be some reason why not, my lord.

THE COMMISSIONER: We can have those spoken to on May 2nd. Now, is there anything else that counsel have in mind. Have you anything else on your mind, Mr. McMaster?

MR. McMASTER: No, I don't think so ,my lord. I think there are one or two matters arising out of discussions on Saturday that shortly we will probably bring to your lordship in Chambers.

THE COMMISSIONER: Well, I am available. What is the program for the rest of the week?

MR. BRAIDWOOD: My lord, may I ask, in the first instance, whether your lordship is going to continue to attempt to see Mr. McPherson?

THE COMMISSIONER: Yes, I will follow that up, or have the Secretary do it.

MR. BRAIDWOOD: Then it is quite definite in your lordship's mind that this argument on the Royston and the other case will not take place on the

2nd.

THE COMMISSIONER: Oh yes, if counsel have not had any work done on it as yet, it will take some time to get ready for those two.

MR. BRAIDWOOD: My position, as I put it to your lordship the other day, is it would take several weeks for me to acquaint myself thoroughly with those files.

THE COMMISSIONER: I am quite appreciative of that, and I am hopeful both on your own account and mine that we can persuade Mr. McPherson to handle it. It is most unfair for another counsel to be brought in at this stage. What program do you suggest?

MR. BRAIDWOOD: Well, I think, my lord, we will meet tomorrow morning again on the matter of speaking to a number of these cases and deciding whether or not they will be proceeded with. Mr. Johnston and Mr. Hogg, I presume will be here to tell us. We know nothing of Mr. Hogg's cases, and subject to that my learned friend and I would both appreciate the period until the 2nd of May to continue the compilation of our material for any need which may arise, but I can suggest no reason, on behalf of the Crown, to meet again this week.

THE COMMISSIONER: What about you, Mr. McMaster?

MR. McMASTER: I feel the same way, my lord. I assume your lordship will be available?

THE COMMISSIONER: I will be available. Can you do anything to expedite your associates in the east?

MR. McMASTER: I have written again, air mail. I know they are doing everything as rapidly as they can,

and urged them to communicate with me. That is about all I can do at the moment.

THE COMMISSIONER: Perhaps we had better leave it until Monday next, and if we have to do anything to spark them, we can do it then. Very well then, we will adjourn now until Monday morning next at ten o'clock.

MR. BRAIDWOOD: No, my lord, tomorrow morning.

THE COMMISSIONER: Tomorrow morning, of course.

MR. McMASTER: I take it there is no necessity for me being here tomorrow morning? All the claims are other counsels.

THE COMMISSIONER: Yes, all of yours are accounted for now. Incidentally, Mr. Braidwood, in the letter that was sent by the Secretary to Mr. Hogg and other counsel concerned, the information has been conveyed to them that if there is no appearance tomorrow I propose to strike out these claims. The claims of Mr. Hogg have been suspended in mid-air for about four months, as I recall it.

MR. BRAIDWOOD: I have been trying to reach Mr. Hogg, my lord. He has been out of town, I believe at the Court of Appeal in Victoria, but he is back this morning, and he was temporarily out of his office when I called him this morning, but I will call him when I go back to the office.

THE COMMISSIONER: It might be worthwhile to call both Mr. Hogg and Mr. Johnston.

MR. BRAIDWOOD: I spoke to Mr. Johnston on Friday afternoon, and he is perfectly aware of the situation,

and he intends to proceed with three cases, and the others have been withdrawn.

THE COMMISSIONER: He will be here tomorrow, will he?

MR. BRAIDWOOD: I didn't know at that time that he had been asked to come tomorrow. I advised him by letter of the 2nd of May , but I see by the Secretary's letter, a copy of which I received this morning, that your lordship has asked him to be here tomorrow morning.

THE COMMISSIONER: I would be obliged if you would call him. If tomorrow is less convenient than the 2nd of May you can tell him he can have his claims spoken to on the 2nd of May, rather than tomorrow, if that suits his purposes better.

MR. BRAIDWOOD: Yes, I will call him, and then speak to you in the morning.

THE COMMISSIONER: All right, Mr. Secretary. We will adjourn now until ten o'clock tomorrow morning.

(PROCEEDINGS ADJOURNED UNTIL APRIL 26th, 10. A.M.)

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

J. P. Hornibrook

Deputy Official Stenographer

original

Discussion.

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA, 1927, CHAPTER 99

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

THE HONOURABLE MR. JUSTICE H. I. BIRD - COMMISSIONER

Vancouver, B.C.,

April 26th 1949.

PROCEEDINGS AT HEARING

APPEARANCES:

D.T.B. BRAIDWOOD, Esq., and J.A. MACDONALD, Esq., appearing for the Dominion Government.

R. E. OSTLUND Esq., appearing for the Claimants.

A.W. Watson Esq., Secretary,

T.P. Horrobin, Esq., Official Reporter.

MR.BRAIDWOOD: My Lord, we were to have several matters spoken to this morning, a number of cases from Mr. Hogg's firm, and my friend Mr. Ostlund is here to speak to those matters before your lordship this morning. There

are about four or five cases there.

THE COMMISSIONER: Yes, Mr. Ostlund.

MR.OSTLUND: You have a list of them there, my lord?

THE COMMISSIONER: Yes, but you had better speak to them, so we have them recorded on the notes.

MR.OSTLUND: Mr. Hogg wishes me to inform your lordship that during the week of May 2nd he will be engaged in the Assize Court on the narcotic case, and that is likely to take the whole of the week. Would it be possible to fix a date sometime during the week of May 9th, or later?

THE COMMISSIONER: I understood these claims were to be withdrawn.

MR.OSTLUND: Mr. Hogg informs me the three company claims are likely to be withdrawn, but he hasn't received final instructions from his clients, as yet, as to the others. I believe they are to go on.

THE COMMISSIONER: Well, I propose to stand them down until May 2nd, and I expect a final statement from yourself or Mr. Hogg at that time as to what disposition is going to be made of them.

T I should like you to inform Mr. Hogg that these claims have been on the list for a matter of eighteen months, and I have always had the same statement in regard to what disposition is to be made of them, namely, that Mr. Hogg does not know whether his clients are going to proceed or not. I will expect he will be ready to go on May 2nd, when they are to be spoken to. If the claims have to be heard, they will not proceed on that date, but I will

expect a final statement on May 2nd, that is day week, as to what ~~th~~ disposition either your firm or your clients desire to make of the claims.

MR.OSTLUND: I will convey that to Mr. Hogg, my lord.

MR.BRAIDWOOD: My lord, May 2nd is next Monday, not a week today.

THE COMMISSIONER: It is yesterday week.

MR.BRAIDWOOD: Yes. Now my lord, there is only one other matter before us this morning, and that is the matter of the Union Trading Company Limited, which is Mr. Thomson's case. I am informed by the secretary that he was in communication with Mr. Thomson's office yesterday, and he is in hospital, having undergone an operation.

THE COMMISSIONER: I understood that. I believe he has asked to have it stood over until the 2nd.

MR.BRAIDWOOD: Under the circumstances, I would presume I would be reasonably safe in expecting this case would not go on on the 2nd.

THE COMMISSIONER: That is right. Mr. Thomson has been toying with this claim, just as the Tiffin Russell firm have with theirs, for a matter of eighteen months, and the sole purpose in putting them on the list is to get something final. It cannot proceed on Monday next.

MR.BRAIDWOOD: Then it won't be necessary for the Crown to prepare for that?

THE COMMISSIONER: But we must know what counsel wish to do with them. There is nothing else, then?

MR.BRAIDWOOD: There is nothing else before your Lordship this morning.

THE COMMISSIONER: Is there anything further, Mr. Braidwood, in regard to the 22% matter? Does that have to wait until you can hear from Mr. Hunter?

MR.BRAIDWOOD: I have written Mr. Hunter to find out what his views were on the matter, and I haven't had a reply yet. I expect one tomorrow morning. Mr. McMaster and I are still at issue on the point.

THE COMMISSIONER: Very well then. We willhave to adjourn now until Monday next at 10 o'clock.

MR.BRAIDWOOD: That was the understanding my lord.

THE COMMISSIONER: Yes, very well then.

(RROCEEDINGS ADJOURNED TO
MAY 2nd 1949 AT 10 A.M.)

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

J. P. Honolulu

Deputy Official Stenographer

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA, 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E FO R E

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

Vancouver, B. C.,

May 2nd, 1949.

10:00 A.M.

PROCEEDINGS AT HEARING.

Original

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA, 1927, CHAPTER 99

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B. C.,

May 2nd, 1949.

10:00 A.M.

PROCEEDINGS AT HEARING.

APPEARANCES:

D.T.B. BRAIDWOOD, Esq., and
J.A. MACDONALD, Esq., appearing for the Dominion Government.

G.F. McMASTER, Esq., and
A.E. COBUS, Esq., and
GILBERT HOGG, Esq., appearing for the Claimants.

A. W. WATSON, Esq., Secretary.

MRS. E. BLYGH, Official Reporter.

THE COURT: Are any of these cases to be spoken to in the first instance? The Haney Box Company, the Royston Lumber and Deep Bay Logging are settled, are they not?

MR. McMASTER: Yes, they are settled.

THE COMMISSIONER: Mr. Hogg, you have had a number of claims that have been up for some time?

MR. HOGG: Yes, my lord.

THE COMMISSIONER: What is the situation in regard to them?

MR. HOGG: On behalf of Burrard Fish Company and Canadian Saltery Company -- I am asking leave to withdraw those claims. There are two personal claims remaining. One is the claim of Sugiyama, and I think the other is Fukuyama, and I would like to proceed with those later, and I wouldlike to have a date set to meet your Lordship's convenience, but unfortunately not this week.

MR. BRAIDWOOD: My lord, there are two Sugiyama cases.

MR. HOGG: Sugiyama, and Mrs. Chiye, and Fukuyama. There are three in all.

THE COMMISSIONER: Well, those will have to go over until some time in June. If counsel would like to fix a date now, I think itwould be more satisfactory if we do so. Are these likely to take long?

MR. HOGG: I don't think they would take more than a day. I would suggest the first week in June, if that is satisfactory.

THE COMMISSIONER: Would that suit you, Mr. Braidwood?

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: Suppose we set them for the 1st of June. Those three claims go now until the 1st of June. You know the procedure, do you, Mr. Hogg, that we have adopted with regard to these personal claims?

MR. HOGG: I think I have had it explained to me, my lord.

THE COMMISSIONER: Very good.

MR. HOGG: May I be excused now?

THE COMMISSIONER: Yes.

Now, what is the situation with regard to Mr. Johnston's claims?

MR. BRAIDWOOD: My lord, I have a communication from Mr. Johnston, and perhaps I might read it to you. It was written on the 2nd of May, (reading same). Now, the other claims, as you will recall, were either settled or abandoned on behalf of Mr. Johnston, but on these claims Mr. Johnston is proceeding.

THE COMMISSIONER: Have we anything formal in the nature of an abandonment?

MR. BRAIDWOOD: He tells me he has written the Secretary to that effect, and I have only had a communication with him over the telephone.

THE COMMISSIONER: Have you, Mr. Watson, had any communication from Mr. Johnston?

THE SECRETARY: No, we wrote him asking if they were to be withdrawn and we have not had any communication from him yet.

THE COMMISSIONER: Well I am not going to wait for Mr. Johnston any longer, and the following two cases will be struck out, and rejected; Cowichan Saltery Company, Limited, and Tanaka Company, Limited, and the Cowichan Saltery Company, Limited. Mr. Secretary, I would like you to write both the claimants, as well as Mr. Johnston, and tell him in consequence of his failure to attend this morning, as he had been required to do, these two claims have been struck out.

MR. BRAIDWOOD: My lord, I may be somewhat at fault in that. I told Mr. Johnston I would speak to the subject for him and I would not like him to be penalized and if I have given the wrong impression it is my fault there.

THE COMMISSIONER: No, these cases have been on the list, Mr. Braidwood, for nearly 18months and I have had the same experience with him every time. It is never convenient for Mr. Johnston to appear here to speak to them.

MR. BRAIDWOOD: I believe they were the subject matter of a settlement -- those three matters, and that should be borne in mind.

THE COMMISSIONER: I have never had any word of that.

MR. BRAIDWOOD: The Secretary wrote on the 23rd--

THE COMMISSIONER: I am not worrying about that at the moment. I am only dealing with Cowichan Saltery Company and Tanaka Company Limited, and

I would like you to inform Mr. Johnston that those cases have been struck out as I told you before, and if he wishes to have them restored to the list he can come and speak to them, otherwise they will stand as rejected claims.

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: Now, what is the situation with regard to Suzumoto?

THE SECRETARY: He has two claims, and the understanding wasthat they were to be withdrawn as well as the two Saltery claims.

THE COMMISSIONER: We will make the same disposition of the two Suzumoto claims.. They will be struck out and Mr. Johnston will be advised. Now, so far as the three Nishiguchi personal claims are concerned and the Nishiguchi Company, Limited, we might set them down for June 2nd.

MR. BRAIDWOOD: That will be quite satisfactory.

THE COMMISSIONER: And I take it you will write Mr. Johnston and give him that information?

MR. BRAIDWOOD: Yes, I will write him, my lord. You are not asking me to advise him on the first matters--just on theNishiguchi claims.

THE COMMISSIONER: No, Mr. Watson can advise him. Now, what about the Union Trading Company, Limited? Have you heard any more from Mr. Thomson?

MR. BRAIDWOOD: Mr. Thomson's office was in communicatio

with me late last week and I was given to understand from his secretary someone would be here to speak to it. Mr. Thomson, I understand, is in the hospital, and I don't know just as to his illness - -

THE COMMISSIONER: We have had some communication from Mr. Thomson that he wishes to proceed.

MR. BRAIDWOOD: Yes, I would suggest the 4th of June, my lord, because I am not sure how long the Nishiguchi cases will take.

THE COMMISSIONER: The 4th is a Saturday. Supposing we put it down along with these Nishiguchi claims for the 2nd, because Mr. Thomson is here in town and if he cannot get on, it is not going to cause him any great inconvenience, and we will put the Union Trading Company Limited down for June 2nd.

Now, Mr. Secretary, have you had any word from Raymond & Honsberger with regard to Maikawa claim?

THE SECRETARY: No, my lord.

THE COMMISSIONER: When was that firm written?

THE SECRETARY: Over a week ago.

THE COMMISSIONER: Have you got the letter here?

THE SECRETARY: No, my lord, it is downstairs in the file.

THE COMMISSIONER: We will stand that down in the meantime.

And the Haney Fruit Ranchers Association.

Has that been settled?

MR. McMASTER: No, I am sorry, my lord, no success has been had. We have not been able to do anything with it.

THE COMMISSIONER: Perhaps it would be well to put that down for Monday, the 6th of June, or would you prefer to hold it over until these other corporate claims that you are concerned with come up -- say until September?

MR. McMASTER: I think it would be well to speak to it in June.

THE COMMISSIONER: Very well, the Haney Fruit Ranchers will go down for the 6th of June, and I take it if it is going ahead, you will proceed with it?

MR. McMASTER: Yes, my lord.

MR. BRAIDWOOD: I take it my friend will notify me in plenty of time if he is going ahead with that matter.

THE COMMISSIONER: I presume he will.

MR. BRAIDWOOD: Because I haven't even seen the file yet.

THE COMMISSIONER: Now, there are two claims on the list this morning, 1390 and 1391, of Suzuki.

MR. McMASTER: Those are disposed of, my lord.

THE COMMISSIONER: The note I have here is, "Defence entered by Crown on question of title to floats".

MR. BRAIDWOOD: Yes, my friend and I were to speak to that. I am trying to get some information, and there is just one point -- whether the floats did belong to the claimant or to one of the companies, and I think my friend and I can iron that out between us.

THE COMMISSIONER: Well you can speak to me later about it, and in the other Suzuki claimthe note I have is, "Require proof of appoimtment to act on behalf of claimant".

MR. McMASTER: Yes, I will have to file that.

THE COMMISSIONER: Mr. Cobus, what about the Ebisuzaki Company?

MR. COBUS: I have been in touch with P.S. Ross & Sons for some time with regard to this claim, my lord. P.S. Ross acted for the liquidator in the assets of that partnership, and up to date despite my many efforts I have not been ablex to get hold of a statement of the disposition of the variousassets disposed of. The situation there isthe partnership ended up insolvent to something near $5000.00. Nevertheless, we have submitted a claim and we feel that while recovery could be made, even on the basis of the other claims, we are not entirely certain of our position there: that is to say, unless we can recover more than $5000.00, we are little concerned about going ahead with the claim.

THE COMMISSIONER: Supposing we put that down for June 6th and that should give you ample time to look into it. June 6th, is that satisfactory to you, Mr. Braidwood?

MR. BRAIDWOOD: Yes, my lord. And again, on the understanding that my friend will inform me ahead of time what he intends to do.

THE COMMISSIONER: There is another claim here of yours, Mr. McMaster, and the note I have on it is, "No claim filed but spoken to at Grand Forks, June 9th".

MR. McMASTER: Yes, that is a peculiar sort of thing. Crown counsel referred to the claim having been heard by reason of it being filed and given a number, and I cannot get any information as to its having been heard.

MR. BRAIDWOOD: I am sorry to report I gave to the staff of the Custodian's office a memorandum of that, and it hasn't been returned to me, and I failed to follow it up through inadvertence but I will follow it up and let my learned friend know about it.

THE COMMISSIONER: If need be it can be spoken to on June 6th.

Now, claim No. 6 -- Minamimaye, Hideichi.

MR. McMASTER: Yes, the Secretary advises me that was a case we missed, but it has been heard under No. 6 at Kamloops.

THE COMMISSIONER: It has been heard?

MR. McMASTER: Yes.

THE COMMISSIONER: All right, that has been disposed of. Now, with regard to the next claim, Morimoto.

MR. McMASTER: Well with regard to that one, I am afraid the Morimoto claim never got to the Commission nor to the Custodian. I wrote some time ago at the address we had, and I have written again by prepaid registered post to see he receives it.

THE COMMISSIONER: Well then at present it is not on the Commission's list.

MR. McMASTER: No.

THE COMMISSIONER: Well, we will leave it in that shape and if you want it brought on you can speak to it.

Now, I have next Ocean Fisheries Limited, and River Fish Company Limited, and South Port Mann Berry Growers Co-Operative.

MR. McMASTER: Yes, those were cases we hoped we might come to some agreement on, either in terms of a general settlement, or in terms of those particular cases. We have been working on the first hundred cases of the other claims and we haven't come to this yet.

THE COMMISSIONER: We will put this down to June 6th as well, and does that also relate to the Taiyo Printing Company and the Togo Cleaners?

MR. McMASTER: Yes.

THECOMMISSIONER: Well then we will stand all five of those down to June 6th, and the United Marine

to September 12th. Is that correct? Well, that appears to be all, unless counsel has something else they wish to speak to.

MR. BRAIDWOOD: Well then, we might adjourn to your Chambers, my lord, to discuss certain matters which have been pending since the last meeting.

THE COMMISSIONER: Is there anything of a formal nature?

MR. BRAIDWOOD: No, but I would like to have your Lordship's ruling as to the next formal sitting in matters that are to come up on the 1st of June, and I would like to know what your position is.

THE COMMISSIONER: I do not think I am going to be available, and I am just wondering what the situation of counsel is going to be. Perhaps that is a matter we can discuss when we get into my Chambers.

MR. BRAIDWOOD: Well then, we can take it then that the formal sittings are adjourned until the 1st of June, is that correct.

THE COMMISSIONER: Yes, subject to any change that may be found necessary after we have had our discussions this morning.

MR. BRAIDWOOD: Well I take it your instructions to Mr. Hogg this morning were that you should go on with those cases.

THE COMMISSIONER: Yes.

(PROCEEDINGS ADJOURNED UNTIL JUNE 1st, 1949)

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

JAPANESE PROPERTY CLAIMS COMMISSION

MINUTES OF CONFERENCE HELD IN THE CHAMBERS OF THE HONOURABLE MR. JUSTICE H.I. BIRD, AT VANCOUVER, B.C., MONDAY, MAY 2nd, 1949, AT 11:00 A.M.

PROCEEDINGS.

Original.

JAPANESE PROPERTY CLAIMS COMMISSION

MINUTES OF CONFERENCE HELD IN THE CHAMBERS OF THE HONOURABLE MR. JUSTICE H.I. BIRD, at VANCOUVER, B. C., MONDAY, MAY 2nd, 1949, AT 11:00 A.M.

PRESENT:

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

D.T.B. BRAIDWOOD, Esq., and J.A. MACDONALD, Esq., representing the Dominion Government.

G.F. McMASTER, Esq., and A.E. COBUS, Esq., representing the Claimants.

A. W. WATSON, Esq., Secretary.

MRS. E. BLYGH, Official Reporter.

THE COMMISSIONER: Yes, now what have you for consideration now, Mr. McMaster?

MR. McMASTER: Well, my lord, Mr. Braidwood reminded me during the week that he had had conversations on the question of the rebate on chattels that were sold by auction, and those that were sold by tender, and Mr. Braidwood spoke to me later saying that the proposal was the chattels sold by auction would be raised to 30% and the payment with respect to chattels which had been abandoned

would be dropped, and the rebate on the chattels sold by tender would be increased from 10% to 12% by reason of the figures that appear from the Custodian's record as to the charges the understanding would be instead of distributing the rebate on chattels sold by auction on the basis of actual charges made, it would be distributed on a flat ratio basis across the Board in each case. That is, it would be 30% of the amount of goods sold by auction in each case rather than dealing with the actual charges.

THE COMMISSIONER: Well we are not dealing with the actual charges at all. After our last private conference, I asked Mr. Shears to furnish me with further information in regard to expenses of sale in handling and charged to claimants, and as a result of that I came to the conclusion that the figure of 22%, was it --?

MR. McMASTER: 23%.

MR. BRAIDWOOD: 23.8.

THE COMMISSIONER: Yes, 23.8 was hardly fair to the claimant, and for that reason I intimated that to Mr. Braidwood and asked him to communicate with you the suggestion that I propose to increase it to 30%, and I felt that that would take care of any value there might be in goods that might be abandoned. So as it stands now, my recommendation will be in respect to those goods 30% of the selling price of each claimant's goods. That is

clear to you, is it, Mr. Braidwood?

MR. BRAIDWOOD: Yes, my lord, that is clear to me.

MR. McMASTER: You mean on the question of tender goods?

THE COMMISSIONER: Tender goods will be the same thing, because I found, from information given me by Mr. Shears, that the actual charges were equivalent to 12%, so there will be an increase accordingly.

MR. BRAIDWOOD: Then, my lord, the award on abandoned goods will be struck out.

THE COMMISSIONER: Yes, there will be no award on abandoned goods. Those claims will be treated as rejected, and my thought was this increase of over 6% should be quite adequate to cover the additional charges made in regard to the claims as well as abandoned goods. I never did like the abandonment feature very much.

Now you have something else?

MR. McMASTER: Yes, I spoke to my learned friend with regard to charges on automobiles. As far as I can see, the terms of general settlement that we have been discussing, the charges on all other kinds of chattels have been with respect to the sales, and so on,) have been rebated and it does seem to me both logical and reasonable that those charges should go back to the claimants. If I recall correctly there was a freight charge of $25.00 to $27.00 made on each automobile, and in some cases I have an automobile here that

sold for $25.00 and the claimant was debited with $2.54, if I recall rightly, and the total amount that would be involved in rebating these charges would be $3750.00; and I do think in view of the rebate of the other charges it would be proper that those charges should be rebated.

THE COMMISSIONER: The charges were taken into account in arriving at the figure of 25%, and I do not propose to make any change.

MR. McMASTER: There is one other thing that Mr. Braidwood communicated to me, I understood that you had suggested, or in view of our discussions, had suggestedthat the charges in relation to real property other than D.V.L.A. for appraisal, advertising and appraisement of the title, should be rebated.

THE COMMISSIONER: That is correct. After our previous discussions I learned from Mr. Shears that there had been a charge of $12.50 on each of the real estate transactions other than the D.V.L.A. and it was my conclusion that those should be rebated.

MR. BRAIDWOOD: My lord, I have here amemorandum prepared by Mr. Shears on the special charges for advertising.

THECOMMISSIONER: Yes, I had forgotten about that.

MR. BRAIDWOOD: Those are charges other than the ordinary charges we just mentioned, but for some peculiar reason extra charges were necessary, and I have prepared a copy of that and

I have a copy for my friend, and I am proposing to suggest to your Lordship, subject to my friend's right of cross-examination, that this may be filed as an exhibit and so marked in order that it may form part of the information before your Lordship, and I can, of course, call Mr. Shears to prove it.

THE COMMISSIONER: Well the explanation I got from Mr. Shears in regard to these additional charges in some instances wasthis: The propeeties listed on the document Mr. Braidwood has handed me now were subsequently advertised, and in consequence of the re-advertising additional expense was incurred, which was charged to the claimant.

You will observe on the list there is in some instances as much as $51.92 charged to the claimant. That is in Case 1031. Now, those are charges additional to anything that I have been told previously had been made, and it is my conclusion that in these agreements that are listed here the actual charges should be rebated. If it is satisfactory to you, Mr.McMaster, the document can go in as an exhibit. What is your next exhibit, Mr. Watson?

THE SECRETARY: Exhibit No.129.

THE COMMISSIONER: You can put it in as Exhibit 129, and if as a result of your deliberations with Mr. Braidwood you find it necessary to examine Mr. Shears in regard to this information contained

here, it will be open to you if you wish.

MR. McMASTER: I think the information is technically within the knowledge of Mr. Shears, and I would not get very far with it anyway, my lord.

MR. BRAIDWOOD: Well, my lord, that would appear then to my mind to dispose of all the formal rulings which your Lordship indicated to me you might consider.

I would like to report, on behalf of my friend and myself, that we have now gone through some 90 of the cases involved, and my record shows a substantial agreement in all but a mere handful of them.

I might say, my lord, we have followed the usual settlement pattern and I believe we had some give and take on each side and we have tried on behalf of the Crown at least to hold to the terms of the settlement and not to maintain any categorization -- when we cannot support it with actual evidence.

My friend and I have had one or two instances where there has been some doubt and by common consent we have arrived at a figure which will be put in and will be presented to your Lordship when the final forms are presented, but I would think of the first ninety cases there were three marked as a special case by my friend and possibly one more to come, and those are special cases which we had already anticipated such as green-

houses, and this special china case.

One matter has been withdrawn. Six cases are those of Mr. Pratt.

Now, my lord, I would like to speak to those in a moment, if I may, and two or three of the cases belong to Mr. McMaster personally rather than in his capacity on behalf of the Committee, and he and I are to discuss those later after he has had a chance to peruse them, but other than those I would say possibly 75 to 80 cases we have reached an agreement on.

THE COMMISSIONER: What is the indication?-roughly 10 to 15% that may fall into the category of special cases?

MR. BRAIDWOOD: Not that high -- under special cases: That is to say cases that would have to be heard to some extent in full-- I would say 5%.

MR. McMASTER: Yes, there are a few of those and if he can deal with the problems involved in them, it would be an indication of how we will deal with some of the future cases and it would cut down the number.

THE COMMISSIONER: You might discuss them now.

MR. BRAIDWOOD: Yes, but there are some matters that Mr. McMaster is not sure of and that we cannot agree on and we would not require a formal hearing on, but just to speak to your Lordship.

THE COMMISSIONER: Well, if 5% is a reasonable estimate of those that are going to have to be specially

heard, that would mean that we won't have much more than 70 or 100 claims to deal with freshly.

MR. BRAIDWOOD: That is on the basis of the first 100. We have been surprised, both on the Crown side and on Mr. McMaster's side, as to what we have been able to deal with. We had anticipated much more difficulty but my learned friend and I have got along very well.

Now, before your Lordship goes to the other matters, I would like to discuss the six cases of Mr. Pratt.

THE COMMISSIONER: Before you go on with that, I was trying to figure, if it were not too optimistic, to think we could clean all these things up in June -- if there are no more than a hundred, I should think we ought to be able to finish them in June. Have you any differences ideads, Mr. Cobus?

MR. COBUS: Well I doubt very much whether the 12 to 14 cases can be reviewed in time, but if it is assumed that there are going to be 60 or 70 special cases, it still means that the 1400 cases have to be reviewed.

MR. BRAIDWOOD: I might say the first 100 has taken us about a week, but it will be faster from now on.

MR. McMASTER: Yes, I might say I am very pleased with the way we have progressed, in sitting down together, but it has been hard to get the material

out and you must remember in the first few cases we had transcrips with no forms in, and I think further the pttern gets established the Custodian will be able to get the forms put up more quickly and we will have two or three people going over them, and I would be hopeful that we would be able to finish reviewing the material before the end of June, and it is possible we might be able to speak to the other cases before that time.

MR. BRAIDWOOD: Well then there is the question of other counsel that will come into the matter-- after dealing with Mr.McMaster I shall have to speak to Mr. Virtue.

There is one other matter that would add to your Lordship's work. I think from time to time we should present to your Lordship the list of cases we have settled, so that your Lordship may review them yourself, because I am not sure that your Lordship is going to accept our settlement as the final say on the matter.

Mr. McMaster and I have come to certain conclusions and are willing to abide by them, but if your Lordship wishes us to present them to you for review.

THE COMMISSIONER: Well, I am rather inclined to this view: It is better that I should accept your joint determination of those that you can agree upon.

MR. McMASTER: Yes, I think particularly on the subject

of analysis it would be difficult to follow the basis of the settlement.

THE COMMISSIONER: I think you can proceed on that assumption where you have agreed on these detailed matters, I will accept your agreement. Otherwise, it is going to be almost the same thing ashearing them.

MR. BRAIDWOOD: Would your Lordship like a list of those that have been settled?

THE COMMISSIONER: No, I do not feel inclined to dig into any of these things that I do not have to. If you two are satisfied with the result, I am prepared to take it at that. I gather what you are doing is determining whether goods fall into particular categories or whether they do not.

MR. BRAIDWOOD: Yes, and in some instances where Mr. McMaster's or my claim is a little weak, then we compromise and make a figure that we think is fair. Then I check on the others and Mr. McMaster and I will meet with a view to going ahead with special cases so as to go on on the 6th of June.

THE COMMISSIONER: I would like you to go on with the special cases on June 7th and let us then sit right straight through on the specialcases until those that you have reached have been exhausted.

MR. BRAIDWOOD: Well now, my lord, that brings me, on behalf of the Crown, to this other position -- as to

what I am going to do with other counsel other than Mr. McMaster. It is quite clear as far as Mr. McMaster's cases are concerned, and as long as I am working on his cases it is all right, but then I have Mr. Virtue to deal with from whom we have heard nothing yet.

MR.McMASTER: Other than what I reported on Saturday. While there has been no formal approval yet of either of the Committees, it appears very likely that they will be approved.

THE COMMISSIONER: Well, relying on what you told me on Saturday, I had made plans to go East so that I can discuss a number of matters, which I have discussed, whether they fall within the terms of the reference or not with the Deputy Minister, and if I can see the Minister I will do so.

MR. BRAIDWOOD: Well then there is another matter -- these people who have not yet been made aware of the settlement -- these six cases -- I have not had your Lordship's consent to approach Mr. Pratt and I do not know whether Mr. McMaster has approached these other counsel. And, in fact, I do not know what approach I should make to Mr. Pratt.

THE COMMISSIONER: You have written all these independent counsel have you not, Mr. Watson?

THE SECRETARY: Yes.

THE COMMISSIONER: Have you a copy of your letter, and when was this letter sent?

THE SECRETARY: Last week. There was a letter sent to Raymond & Honsberger.

THE COMMISSIONER: For the record, and while we are waiting for these letters, I have had the Secretary write to all the solicitors who have acted independently for some few individual claimants, and I propose to file a copy of one of these letters with a list of the persons to whom the letter was sent as an exhibit on the inquiry.

Shortly, I have called upon them to advise the Secretary on or before May 14th as to whether they wish to present argument, and if so I will fix the date for the argument to be heard here. But up to date you have not had any replies from any of these people.

THE SECRETARY: Just from one.

THE COMMISSIONER: From whom? Well, it makes no difference in any case.

THE SECRETARY: Just from Hancox & Gowan.

THE COMMISSIONER: Did they wish to be heard?

THE SECRETARY: No, they said their instructions were just of a limited nature.

THE COMMISSIONER: These individually represented claimants are going to be a problem.

MR. BRAIDWOOD: Yes, they are. Does the letter indicate that there is a settlement pending?

THE COMMISSIONER: No, I have said nothing about that at all. Well we cannot do anything with those, I

take it, until the expiry date of May 14th arrives. Was the same letter sent to everyone of these people?

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: That will be marked as the next exhibit on the inquiry, and attached to it will be a list of the solicitors to whom the letter was sent.

THE SECRETARY: This is a copy of the list.

MR. BRAIDWOOD: Your Lordship has given a direction to Mr. McMaster to write some of these people, and I do not know whether he has or not as to the terms of the settlement in addition to what was set out in the letter.

THE COMMISSIONER: I do not know that we ought to impose that burden upon Mr. McMaster.

MR. BRAIDWOOD: No. I was just wondering whether it had been done, because I furnished Mr. McMaster with as many counsel's names as I could find.

MR. McMASTER: I haven't had a complete list, and I have been quite hesitant, but if Crown counsel wishes to discuss any matter with me, that will be satisfactory.

THE COMMISSIONER: That might be the best approach to it. I would ask you to write these people, and I wouldn't do anything about it until we get answers to the letters the Secretary has sent, and if they say they want to present argument there is no reason to write them; and if,

on the other hand, they are prepared to stand on the material that is before the Commission now, then I would like you to write to them and indicate to them the recommendations that I have informed you I propose to make --

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: -- on the basis on which we are dealing with these things.

MR.BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: Have you anything else?

MR. BRAIDWOOD: No, my lord.

MR. McMASTER: I think perhaps I had better speak to the Secretary later about this. There seems to be some confusion in regard to some of them.

First of all, dealing with the subject matter of charter money on certain vessels which was expropriated. I think your Lordship indicated at the time of the hearing that you did not consider the question of charter money to be within the terms of reference, but that probably you might make some reference to the terms in your recommendation, and I thought possibly this week you might discuss the matter with the Minister of Justice if you are going to discuss certain matters with him.

THE COMMISSIONER: Just one moment. That relates to vessels that were used by some Government department.

MR. McMASTER: It relates to vessels that were

requistioned by charter and subsequently were requisitioned for purchase. I think my friend will confirm the statement when the vessel was subsequently requisitioned for purchase, the price was fixed on a basis and appraisal made at the time that the vessel had been taken purportedly for charter, and the charter rate was not fixed as far as I am aware in any of those cases.

THE COMMISSIONER: I recall we had one of those cases very early on and I did indicate it seemed rather unjust that the claimant's vessel should be requistioned for charter and he informed at the time that the charter rate would be set later and then when the policy of requisition for purchase was adopted that the later requisition was made applicable to the date of the original acquisition. That, to my mind, is clearly not within the terms of reference, and yet it does indicate a rather unjust situation from the point of view of the Japanese. I will discuss that with the Minister.

MR. McMASTER: I have some of the facts with regard to all of those cases that will be helpful to you.

THE COMMISSIONER: Yes, will you give me a memorandum of it.

MR McMASTER: Yes, I am sorry I cannot give you all the cases involved offhand, and I would not think there would be more than half a dozen, but

I can give you the detailed facts from the file, as far as I can extract them and then give you a memorandum.

THE COMMISSIONER: Yes, I would like you to do that.

MR. BRAIDWOOD: I might say on behalf of the Crown, I take no issue on this matter because it is outside the terms of reference.

THE COMMISSIONER: Yes, as the reference stands now, I would have to reject the claim because it is not within the terms of reference.

MR. BRAIDWOOD: I have tried to provide my friend with all the information on the Custodian's files, but some of them are not complete and I have not been able to help my friend very much.

MR. McMASTER: I might say with respect to two of them, the situation was that the claimant did not specifically recall ever signing the bill of sale, and the Custodian's office has not been able to find the files, and the question on that is up in the air, and I would feel as far as those claims are concerned, if they got some reasonable billing with respect to their charter moneys you would not have to worry about the claims on the sale price.

THE COMMISSIONER: Well that is as much as we can do with thatsituation at the moment.

Just before going on with something else -- now, Mr. Watson, you understand what I wish done with regard to these letters to the independent

solicitors. I wanted one copy of this letter filed as an exhibit, and attached to it a list of the claimants who are represented by that solicitor.

THE COMMISSIONER: Yes./ And you might let counsel have a look at that after we are through here so they know the nature of the communication.

THE SECRETARY: Yes, Mr. McMaster?

MR. McMASTER: The second matter, my lord, is also probably a matter outside the terms of reference, but with which your Lordship expressed your sympathy during the course of the hearings. These sales that were made by the Fishing Vessels Disposal Committee--your Lordship will recall a series of letters which were used by the Fishing Vessels Disposal Committee to send to the claimants, the tenor being that the claimants' boat had been sold, and requiring him to sign a bill of sale in the usual assignment form -- that is an assignment of claim in regard to damage or lost equiment. There were three letters, as I recall, that weresent. Sometimes there was a response to the first, and sometimes there was a response to the others, and possibly none whatever in some cases. The first advise a boat had been sold, and the price at which it was sold and requesting the claimant to execute the bill of sale -- was what was contained in the letter, and then the second was

a letter saying that the boat had been sold and they regretted he had not executed the bill of sale yet, and if he did so the money would be paid to him immediately, and unless he did so, the money would be paid over to the Custodian and he would not get it for some time.

And the third letter was one sent out in the fall of '42 to some of the claimants giving them the last warning: "We are going to pay the money over to the Custodian."

Now, in those circumstances one of the claimants expressed a view he considered he had no alternative but to sign the bill of sale, as the boat had been sold. And I think your Lordship concurred in that, that that was his position.

I am not arguing that it is within the terms of reference, but I think it is a matter you might discuss with the Minister. I believe it was raised with him before, and he indicated some sympathy in the position, but I do not think any action was taken in regard to settlement.

THE COMMISSIONER: In that instance I would like a memorandum from you, and could you attach to it copies of the communications sent out by the Fishing Vessels Disposal Committee?

MR. McMASTER: Yes, my lord, I will try to do that. I shall have to figure out where I can find them. I am not sure that they were all filed as

general exhibits, but I think I can get some information on it.

THE COMMISSIONER: Well it would be more intelligible to the Minister or the Deputy if they had copies of the letters.

MR. McMASTER: Well I think it would be advisable for you to have with you Mr. Hunter's memorandum on that. I don't know whether it was filed.

THE COMMISSIONER: That was his memorandum on fishing vessels?

MR. McMASTER: Yes, it seems to me it was up country some place.

THE COMMISSIONER: Well then I will have it somewhere.

MR. BRAIDWOOD: On that matter, too, the Crown takes the position this matter is outside the terms of reference, and we are not offering any argument on it.

THE COMMISSIONER: Well I feel that is the situation. It is not a matter that I can deal with under the temms of reference as they stand now.

MR. McMASTER: The next matter that I want to refer your Lordship to is also outside the terms of reference, and is a matter in which your Lordship expressed sympathy in the course of the hearings, and then no further information was obtained, and your Lordship indicated nothing could be done, and this refers to Port Essington, and to one property in particular in Port Essington -- Mrs. Kamida, case No. 44.

Your Lordship will recall before the time of

the evacuation there were a large number of Japanese living at Port Essington and carrying on different types of business, mostly being primarily engaged in fishing, I think, but in a few cases, including Mrs. Kamida, her property was not sold, and it has probably been revested and your Lordship indicated that you had received some information from one of the fishing companies' men and you had some pictures which the Custodian's office had provided you with of Port Essington, both of which were not very encouraging as to the life or vitality of the community, in any event, and Mrs. Kamida's case, I have a photograph of her store there, which was not filed but was referred to at her hearing, and it indicates a decent looking premises.

There was filed, or referred to on the case, the fact that she had the building insured for $3000.00, and the policies were reduced at the time, and in looking through the transcript I find the evidence given was to the effect that prior to evacuation she carried a stock of $6000.00 in that place, which she disposed of herself.

That matter does not come within the terms of reference, but my point is this, if the business was carrying a stock of $6000.00, it would appear that it was a living and thriving business, and thepremises appear to be quite

decent looking premises, and appear to show some value, in any event, to the insurance placed upon it, and I haven't the slightest doubt that it is now practically worthless.

THE COMMISSIONER: It would all depend on how up to date the stock was, wasn't it? There might have been a $6000.00 stock that had been on hand for ten years.

MR. McMASTER: Well, I do not think that point was specifically covered in evidence, but your Lordship will recall that this woman had been engaged in business there for 37 years, and I think your Lordship was impressed by the fact that she was a capable business woman.

THECOMMISSIONER: My understanding of the Port Essington situation is at the time of the removal of the Japanese, the Port Essington community was virtually a ghost town due to the fact the canneries had all moved lower down the Skeena River, the last of them having moved some six years prior to the commencement of the war.

MR.McMASTER: Well, my lord, I would take it from the evidence in this case, although it was not clearly brought out, the likelihood was that the store was operated six months a year, and Mrs. Kamida had a house in Vancouver as well, that we dealt with, in another claim, and primarily the business catered to fishermen, who

might or might not reside in the place, but who would be in and out, and so on, at different times.

THE COMMISSIONER: Well, that is a matter that I can discuss with either the Minister or the Deputy.

MR. McMASTER: So far as I am aware, it is the only place in Port Essington that I would be inclined to press for any consideration. There were other places, but none that appeared to involve property as valuable as this property.

THE COMMISSIONER: I would like Mr. Watson, if you would withdraw the Kamida file for me, so that I can take it with me -- Case No. 44.

MR. McMASTER: I wonder if I could hand this photograph to the Secretary to include in the file, but not as an exhibit. I think it would be useful.

THE COMMISSIONER: Yes.

MR. McMASTER: My lord, one of the questions that has arisen in our discussions so far, and my friend and I had some discussion on it and decided it was a matter that should be referred to your Lordship -- that is with regard to the subject of stock-in-trade. It arose in one of the earlier cases where we tried to settle and we had some discussion and then decided it should be referred to your Lordship as to whether your Lordship might be prepared to give consideration to it or to recognize a difference between the sale or the fair market value of stock-in-trade as distinct

from equipment, or chattels, or otherwise, that a person might have around their house, or even possibly around their business, and which would be second-hand goods in the terms of household chattels; whereas when you are dealing with stock- in-trade you are dealing with a new article, which is the subject matter of ordinary trade, or merchandise, as it were, for which there is a price, namely the wholesale price in the market.

Now, I would submit there is a difference in this respect, normally judging from my experience in practising law in the sale of stock-in-trade there are two ways of sale that normally occur. One is when selling the business. There are three ways. There is the wholesale way dealing with it. Normally you sell a business and then you sell the stock-in-trade at inventory cost. You usually deal with it as an additional transaction. You make your deal on the basis of the business, and then make an inventory of the stock-in-trade.

Then there is also the question of liquidation, whether you can get the maximum value that they would give on a quick disposition of them.

And it does seem to me it would be reasonable to consider the fair market value of stock-in-trade in any event where itconsists of unbroken lots in terms of the price it would bring.

THE COMMISSIONER: What do you mean in terms of the price it would bring?

MR. McMASTER: The wholesale price. For instance, in the first case which arises, No. 16, it dealt with the question: that had a stock of shoes and as I understand the Canadian Credit Men's Association were put in charge by the Custodian in that situation, and made an inventory of the goods, and referred to the value of the goods in the terms of the wholesale prices.

Now, granted, when they decided to dispose of the matter they took 60 cents on the dollar for it.

THE COMMISSIONER: They sold at 60% of the wholesale price.

MR. McMASTER: Yes.

THE COMMISSIONER: And this was a live stock.

MR. McMASTER: Yes.

THE COMMISSIONER: Your contention now is in that instance the fair market value was not achieved.

MR. McMASTER: That is correct--it was less than fair market value from the standpoint of liquidation--but that would be the best thing they could do, but it did not represent fair market value.

THE COMMISSIONER: Would that be within the terms of reference?

MR. McMASTER: Yes, I am sorry -- this is within the terms of reference, and Mr. Braidwood and I had some discussion and we decided it should be

referred to your Lordship, and it should not be settled on the same basis as other chattels.

THE COMMISSIONER: Your contention being when these goods were sold, they should have been sold at the wholesale price?

MR. McMASTER: Yes, that would be the fair market value of them.

THE COMMISSIONER: Well that would depend entirely on h how long they had been in stock.

MR. McMASTER: Yes, assuming they were live stock, but if they were dead stock and had been sitting there for10 years I would have to agree with my friend.

THE COMMISSIONER: What were the facts in this case?

MR. McMASTER: I don't thinka full inventory has been filed, but I do notice in the transcript a report of the Canadian Credit Men's Association that it was valued at the wholesale price, and I wouldtake it from that they took it the stock was alive or they would have written it down.

THE COMMISSIONER: What do you say about that, Mr. Braidwood?

MR. BRAIDWOOD: Well, this question of dead and live stock is very difficult. At the time this case was heard, this point was not foreseen, and there does not seem to be adequate evidence on any of the files I have seen as to whether it was live or dead, but as Mr. McMaster said in case 16, the Canadian Credit Men's Trust did not

make the valuation in that fashion. Of course, my lord, it is very difficult to know just what my friendx wants here. I take it what my friend would desire would be the wholesale value of the goods should be determined, and the difference between the wholesale value and the amount that was actually obtained should be added back to the cost as a special type of award, and which would take it out of the percentage claims, and in those cases where there is supposed to be a certain percentage award for chattels -- not in this instance, but of some other nature where we determine a special award can be made or recommendation, then the percentage calculation is wiped out, and we recommend a blanket sum, which is the figure Mr. McMaster and I worked out.

THE COMMISSIONER: Yes, it should be worked out as a special case.

MR. BRAIDWOOD: The actual sale value and the wholesale value would represent the value in this particular case.

THE COMMISSIONER: Well, subject to determining whether or not the stock was a live stock, I am inclined to the view it ought to have been possible to sell that stuff for its wholesale price.

MR. BRAIDWOOD: Yes, my lord. That brings up, of course, the problem of segregating the live and

dead stock in a given business. There are not many cases of this kind.

MR. McMASTER: I wonder if we could compromise on that. Surely in a normal business a man does not carry more than 10% of dead stock. Would that be a solution of that? Take 10% off this dead stock.

THE COMMISSIONER: We haven't any evidence on it.

MR. McMASTER: Not on that.

THE COMMISSIONER: The stock was a shoe stock, was it?

MR. McMASTER: Yes, in this particular case.

THE COMMISSIONER: And they realized 60% of the listed wholesale price, and what you would ask for in that case would be 30% recommendation on the assumption it would be 10% dead stock.

MR. BRAIDWOOD: No, my friend would take 60%, representing so many dollars, and my friend would calculate 100% and deduct 10% from that for dead stock. Would that be correct?

MR. McMASTER: Yes, which would be 90% and then I would suggest that we should have a wholesale price on the 90% or at least that 10% less what was actually received.

MR. BRAIDWOOD: Yes, take 90% of the goods and establish a wholesale price, and then deduct 10% less -- what was actually received.

MR. McMASTER: Well, it seems to me my friend and I have progressed very well on the question of settlement, and if it could be established on

what would be a reasonable allowance in each individual case for dead stock --

THE COMMISSIONER: Yes, the dead stock would depend so much on the type of business.

MR. BRAIDWOOD: Well, in this instance, subject to your Lordship's ruling that the matter be handled in this way, I would be prepared to agree on behalf of the Crown that the90% figure would seem fair.

THE COMMISSIONER: Well that appeals to me on the face of it -- that a man could reasonably expect to have turned that stock over in a comparatively short time.

MR. BRAIDWOOD: And particularly so because many of these people have arrangements to return the stock to the wholesale that they do not sell.

THE COMMISSIONER: Well I would be quite willing to recommend 30% in that case.

MR. BRAIDWOOD: Well, as my friend said, we could discuss the cases on the basic principles which we are now discussing, and if we cannot arrive at a figure we can present them to your Lordship.

MR. McMASTER: That is satisfactory.

Now there is another special case which has arisen in the first group. I would refer it to your Lordship. I don't know whether it stands out in our previous discussions, but I am willing to leave it in your Lordship's hands. It has come to my attention -- a business property at Maple Ridge -- according to the evidence that

has been filed and which has been confirmed by our search, the building and land were bought by the claimant in August , 1941, for $2000.00.

THE COMMISSIONER: What is the number of this case?

MR. McMASTER: No.21. The Custodian sold the premises in June, 1944, for $1350.00.

THE COMMISSIONER: Let me have the figures again.

MR. McMASTER: The person purchasing from the Custodian re-sold in November, 1944 -- that is roughly five months later for $2000.00, and it does seem to me that there is every indication there that the fair market value was $2000.00, having been sold fairly close to the date in question at that price.

THE COMMISSIONER: What is the interval in time between the two sales?

MR. McMASTER: Between the Custodian sale and the re-sale -- June and November of the same year.

THE COMMISSIONER: What is your view on that, Mr. Braidwood?

MR. BRAIDWOOD: Well, my view on that is the general principle on the sales of real property under the terms of settlement went forward in this manner, and the fact that a single sale at a later date should not upset that. There may be many reasons why a purchaser would re-sell and many reasons why he would get more money on the re-sale, and if we are to come to the position where we must investigate every Custodian

sale and what he sold it for later, we might get into hot water.

THE COMMISSIONER: But you have a time interval of only a few months there.

MR. BRAIDWOOD: Yes, I appreciate that.

THE COMMISSIONER: Presumably there had been an appraisal.

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: By whom was it made?

MR. BRAIDWOOD: By Mr. Essel, I believe, my lord.

THE COMMISSIONER: Was this passed upon?

MR. McMASTER: By the Advisory Committee.

THE COMMISSIONER: They never referred it to that chap in Haney -- what is his name -- Menzies?

MR. BRAIDWOOD: We haven't inquired.

THE COMMISSIONER: No, you never made any subsequent inquiries.

MR. BRAIDWOOD: No, but I could do that, my lord, if you wish it.

THE COMMISSIONER: On the face of it, it seems to call for an explanation from the Government. I would like it if you would consult Mr. Menzies.

MR. BRAIDWOOD: And see if there is any known reason --?

THE COMMISSIONER: Better do so personally rather than by letter because it is difficult to explain the circumstances.

MR. BRAIDWOOD: I will 'phone him.

THE COMMISSIONER: I would be strongly inclined to accept Mr. Menzies' recommendation or opinion

on that subject, because it does appear to me a difference of $650.00 in five months is somewhat high.

MR. McMASTER: A Four months.

THE COMMISSIONER: After all, it is a difference of roughly one-third, is it not? I think it calls for some explanation out of the ordinary.

MR. BRAIDWOOD: Very well, my lord, I will provide your Lordship with that information--whatever I can get from Mr. Menzies on that.

THE COMMISSIONER: You are content if Mr. Braidwood discusses it with Mr. Menzies?

MR. McMASTER: Yes, I would like my friend to draw Mr. Menzies' attention to the purchase date.

THE COMMISSIONER: Why not sit down together when you are talking to Menzies, and that would avoid calling him. Undoubtedly he would know the premises. Where do you say they were, again?

MR. McMASTER: In Maple Ridge. He should know them because I think, as a matter of fact, the key was turned over to him by the claimant.

THE COMMISSIONER: Well if you want to speak to that again after you get the information -- well, perhaps it would be as well if you did, anyway. Possibly you could talk to him in the next day or two.

MR. BRAIDWOOD: Yes, I will try to reach him this afternoon.

MR. McMASTER: My lord, there are two other special

cases; one is this China case, but I think I should leave that and after a further discussion with my friend about it as to how we are going to go about in establishing value there, I could take it up again.

THE COMMISSIONER: There I think you had better put that down as a special case and call further evidence.

MR. BRAIDWOOD: That is No. 46.

THE COMMISSIONER: What is the man's name?

MR. McMASTER: It is Mrs. Nakai.

THE COMMISSIONER: In that connection if counsel could get evidence of thatnature -- say of someone who knew the cafe reasonably well, and the type of china and the equipment that she had there, it would be more satisfactory because all we have got up to date is the woman's own story, isn't it?

MR. McMASTER: Yes.

THE COMMISSIONER: And the Government, as I recall it, has the auctioneer's sheets, and perhaps it would be helpful if we had the auctioneer, if he were available. That is another one of Mr. Thomson's cases.

MR. McMASTER: He would not recognize the china. As I recall it, one of the interpreters volunteered the information at the hearing that the type of china was valuable china. I think I might discuss that with my friend and we can see

if we can get some further information.

THE COMMISSIONER: I have a clear recollection of that case, and I felt at the time there had been a slip-up at the time in allowing the goods of the character of the stuff she had there to be sold along with an ordinary class of stuff such as is sold at these auctions.

MR. BRAIDWOOD: Would your Lordship want my learned friend to produce a china expert?

MR. McMASTER: A Japanese china expert.

MR. BRAIDWOOD: Well say like Mr. Dixon down the street.

THE COMMISSIONER: Well if there is going to be any recommendation in this case, it might be quite beneficial.

MR. McMASTER: Well, if my friend and I can agree on it.

MR. BRAIDWOOD: I take it your Lordship wants proof of two things:-First, proof that the china existed.

THE COMMISSIONER: Yes, I would like some corroboration of the woman's story.

MR. BRAIDWOOD: And some evidence of the value of such china.

THE COMMISSIONER: Well as I recall it, it wasn't china alone. There were also a lot of cooking utensils, both serving and cooking utensils. Well, we will treat that as a special case and additional evidence will be led in respect of it.

MR. McMASTER: The only other thing I want to speak to

this morning -- I think early in the proceedings when I became aware of the fact that the Veterans Land Act has still some properties in their possession, we hadn't any information then, and since that time the V.L.A. have put in, through the Crown, a list of properties that they still have in their possession--with respect to veterans of the First War, and of this last war--where the V.L.A. still has the land, and I understand the way is now fairly clear to get that land returned, and it came across my mind as to whether it would be possible to ascertain from the D.V.A. the other parcels they had still unsold -- whether they were attempting to hold them or whether they would be glad to get rid of them, and in that case whether the claimants would not be more properly compensated by the return of their land rather than dollars and cents.

THE COMMISSIONER: That would be a solution.

MR. McMASTER: Perhaps my learned friend could get that information as to what their view is on that.

MR. BRAIDWOOD: Well we are not sure yet what claims are withdrawn and what are not.

MR. McMASTER: Other than veterans.

MR. BRAIDWOOD: Well your request is in regard to any claim we hold.

MR. McMASTER: Well what view would the D.V.L.A. take with reference to relinquishing their interest

in it? If we knew their attitude and whether they wanted them, we might be able to deal with the problem.

MR.BRAIDWOOD: Yes, for all claimants.

THE COMMISSIONER: Well then you might also be faced with the probability of compensation to these people who have been out of possession of their lands for a period of six or seven years, and the property will undoubtedly have deteriorated to some extent.

MR. BRAIDWOOD: That is an issue I have not contemplated for the moment, but it is, I would say, outside the terms of reference.

MR. McMASTER: Yes, it is outside the terms of reference without the slightest doubt.

MR. BRAIDWOOD: Would your Lordship make some special suggestion if your Lordship wishes to go ahead?

THE COMMISSIONER: That is a matter I would have to discuss with the Minister in any case before I could touch it.

MR. BRAIDWOOD: I don't know howsoon I could find this information out.

THE COMMISSIONER: Well that is something I will discuss with the Minister--the property of war veterans and others whose real property has been returned to them. Now, is that all that you have to go on with this morning?

MR. McMASTER: Yes, my lord.

MR. BRAIDWOOD: Yes, my lord.

(Concluded)

E. Blyth

JAPANESE PROPERTY CLAIMS COMMISSION

Vancouver, B. C.,

June 2nd, 1949.

IN THE MATTER OF THE CLAIMS OF

A. NISHIGUCHI, K. NISHIGUCHI,
M. NISHIGUCHI, NISHIGUCHI CO. LTD.,
R. SUZUMOTO; COWICHAN SALTERY CO. LTD.,
and TANAKA CO. LTD., and COWICHAN
SALTERY CO. LTD.

PROCEEDINGS AT HEARING.

Original.

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA, 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B. C.,

June 2nd, 1949.

IN THE MATTER OF THE CLAIMS OF

ASAJIRO NISHIGUCHI, KAHEI NISHIGUCHI, MAGOJIRO NISHIGUCHI, NISHIGUCHI COMPANY, LIMITED.
RENZO SUZUMOTO; COWICHAN SALTERY CO. LTD., and TANAKA CO. LTD., and COWICHAN SALTERY CO. LTD.

PROCEEDINGS AT HEARING.

APPEARANCES:

D.T.B. BRAIDWOOD, Esq.,	appearing for the Dominion Government.
J.D. McPHEE, Esq.,	appearing for the above Claimants.

A.W. WATSON, Esq.,	Secretary.
MRS. E. BLYGH,	Official Reporter.

MR. BRAIDWOOD: If I might break in on my friend for a moment, Mr. McPhee has just come in and he is here representing Mr. Johnson of New Westminster, and my friend Mr. Thomson will be some time -- and I presume the balance of the morning.

MR. McPHEE: Thank you very much. I just had a 'phone call from Mr. Eric Johnson of New Westminster, and I have no knowledge of these claims and he explained to me some of these witnesses had to come from up-country -- they are up there and have not come back, and as I understand it the matter has been adjourned for some time and I now come quite reluctantly before your Lordship with a request for a further adjournment of these cases in which Mr. Johnson is interested, but I do not know how your Lordship's time is fixed.

THE COMMISSIONER: You want it adjourned until what time?

MR. McPHEE: To have an adjournment so we will be sure definitely of going ahead -- say in two weeks time.

THE COMMISSIONER: What are our open dates, Mr. Braidwood?

MR. BRAIDWOOD: I unfortunately have not my material here on that.

THE COMMISSIONER: I would like you to convey to your principal that I do not propose to accept a continuance of the absent treatment that I have had from him for the last 18 months, so

if an adjournment is granted him now it will be on a peremptory basis to the date it is set, and no further adjournment will be considered.

MR. McPHEE: Very good, my lord. I shall certainly do that.

THE COMMISSIONER: And you might also communicate to him, Mr. McPhee, that there are a very large number of claims and I have to impress upon counsel the necessity to be ready at the dates fixed, and I do not think any counsel who has appeared before me has had more adjournments than Mr. Johnson has, and for that reason I want to make it very clear to him that this is the last one.

MR. McPHEE: Very well, my lord, I will do that by letter, and also by telephone, too.

THE COMMISSIONER: Incidentally Mr. Johnson has also appeared in the Cowichan Saltery Claim and I think for a man by the name of Suzumoto. Now I am told that some arrangement for a settlement, at least in part, has been made between Mr. Johnson and Government counsel.

MR. McPHEE: I see.

THE COMMISSIONER: Mr. Johnson has been asked to confirm the fact of the settlement to the Secretary on many occasions, but nothing has been heard from him.

MR. McPHEE: I see, my lord.

THE COMMISSIONER: Well that is all.

(Proceedings adjourned to June 16/49.)

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

E. Blyght

Deputy Official Stenographer

JAPANESE PROPERTY CLAIMS COMMISSION

Vancouver, B. C.,

June 3rd, 1949.

PROCEEDINGS AT HEARING.

Original.

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION.

B E F O R E

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

Vancouver, B. C.,

June 3rd, 1949.

PROCEEDINGS AT HEARING.

APPEARANCES:

D.T.B. BRAIDWOOD, Esq., appearing for the Dominion Government.

R.J. McMASTER, Esq, appearing for the Claimants.

A. W. WATSON, Esq, Secretary.

T.P. HORROBIN, Esq., Official Reporter.

MR. BRAIDWOOD: My lord, I would like to speak to several claims, one is of Shigeru Morimoto. This was a matter, my lord, in which my friend and I were seeking to find some information as to

a claim, and I am instructed by my learned friend he has written to the claimant and has had no reply. I have no record whatsoever.

MR. McMASTER My lord, in this case Mr. Braidwood hasn't any record of the claim.

I have the claim form, and I wrote some time ago to Morimoto, asking him what procedure he had taken, trying to see if something could be done, and I received no reply, and recently I wrote by return registered post. I have received the card back, but I still haven't received any reply.

THE COMMISSIONER: Would you like to put this down to the 22nd, as well?

MR. McMASTER: I think that might be advisable, my lord.

MR. BRAIDWOOD: Then, my lord, the next matter is one of Goro Susuki, and that isCase No. 1390. Your Lordship will recall in that matter with some qestion arose as to the title to floats, and my friend and I by agreement would like this matter to stand in the terms of our general discussiion. It will arise in the future.

THE COMMISSIONER: Very well. So we no longer are concerned with it, until counsel raises the question again.

MR. BRAIDWOOD: That is right, my lord. It will come in again in its natural order.

The next matter is Case 1391, which is Tatsuro Susuki, a brother or a father of the former claimant, and in this matter your Lordship had

ruled that my friend should file an authority to a act. The claim was filed by another person different from the claimant, and my friend tells me he has that now.

MR. McMASTER: I think my friend is mistaken in that. It is the claim of Gennosuke Susuki, No. 1392, where the son presented the claim and gave the evidence.

THE COMMISSIONER: Tatsuro is the son?

MR. McMASTER: Tatsuro is the son.

MR. BRAIDWOOD: That would be 1392.

MR. McMASTER: 1392. I would ask to file now an authority from the father confirming the fact that the son Tatsuro Susuki was empowered by him to submit the claim on his behalf in respect to certain real and personal property.

THE COMMISSIONER: That will be filed with the next number following in the exhibits in this case.

MR. BRAIDWOOD: Now, my lord, I am asking that the following cases be adjourned sine die, as they are in the process of discussion with my learned friend and myself, No. 1310, Ocean Fisheries Limited, 954-C River Fish Company, Limited; No. 110, South Port Mann Berry Growers Co-Operative; 1371 Taiyo Printing Co. Ltd.; and 1089 Togo Cleaners Limited.

I think probably by the first of next week we can advise your Lordship as to when those cases may be put back on the list, or at least some of them. We are in the process of ~~xxkriking~~

discussing them now.

THE COMMISSIONER: We can strike them out as temporarily disposed of, in any event.

MR. BRAIDWOOD: Yes, my lord.

My lord, that is the only matter I would like to have heard in Court this morning. On Tuesday morning we have case No. 46, Nakai.

THE COMMISSIONER: You would like to speak to that now?

MR. BRAIDWOOD: I would rather speak to your Lordship in your chambers, if I might?

THE COMMISSIONER: That is fine. Do you want any record made of the discussion in chambers?

MR. BRAIDWOOD: Perhaps so, my lord, just on that one matter.

THE COMMISSIONER: Since there is no public present, you might as well deal with it.

MR. BRAIDWOOD: Yes.

Case No. 16, Heitaro Nabata. My lord, this is merely a matter of being spoken to. This matter was before your Lordship before, and my friend and I have been discussing it in the terms of the settlement proposals, or negotiations, and it was a case where there was a sale of stock, my lord.

THE COMMISSIONER: That is, stock-in-trade?

MR. BRAIDWOOD: Stock-in-trade, and my friend and I were before your Lordship last time, if I am not incorrect, or possibly it was after we came to the conclusion that stock-in-trade should be credited

on the basis of the wholesale price, less 10%. On that matter, my friend and I have come to an agreement on the amount involved in this case. My friend agrees with that?

MR. McMASTER: Yes, that is right.

THE COMMISSIONER: In this instance there actually was a sale of the stock-in-trade, was there?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: Made by whom?

MR. McMASTER: The Canadian Credit Men's Trust, I think.

MR. BRAIDWOOD: I believe that is so, my lord. Yes, it was by the Canadian Credit Men's Trust Association, and it was merchandise, boots and shoes, mostly.

THE COMMISSIONER: And it was sold for 60% of the wholesale list, is that it?

MR. BRAIDWOOD: That is correct.

THE COMMISSIONER: Would you like to state for the record, Mr. Braidwood, the reason why you think that 60% was less than the fair market value, and that 90% should be substituted?

MR. BRAIDWOOD: Well, my lord, after having examined the evidence, particularly that filed on behalf of the claimant, and what has been indicated to me by claimant's counsel, I am of the opinion the stock-in-trade had a considerable value when sold as stock-in-trade, and if it had been sold in the normal procedure of sale which the claimant might have adopted, it might have realized the amount to which I am prepared to agree.

THE COMMISSIONER: Your conclusion is that as a result of a bulk sale, the fair market value was not realized.

MR. BRAIDWOOD: As a result of a bulk and a forced sale, too. I think, my lord, that should be added.

THE COMMISSIONER: In the circumstances I am prepared to adopt your view of the matter, and consequently will recommend payment of 30% of the wholesale list price, in addition to the sum already paid to the claimant. Counsel will later furnish me with the figures?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: That disposes of that claim.

MR. BRAIDWOOD: Yes, my lord.

By way of passing, as a mere matter of routine, these forms which we are working on, I wonder if your Lordship would like filed in each case which has been finalized, as far as counsel are concerned, a perfected or completed copy of the form.

THE COMMISSIONER: I think it would be very desirable, because I have been asked by the Deputy Minister of Justice recently to return all the records to the clerk of the Privy Council, when the Commission concludes, and I think it is desirable that the several files should be complete.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: So that in each case I would direct you to file the form which will show the basis

upon which you and counsel for the claimant have proceeded.

MR. BRAIDWOOD: Yes. Thank you, my lord.

(Concluded)

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

Deputy Official Stenographer

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A. Watson. Esq.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B.C.,

June 22, 1949.

IN THE MATTER OF THE CLAIMS OF

EBISUZAKI,
HORITA, and
MORIMOTO.

MR. McMASTER: My lord, with regard to three cases that I believe are on the list today -- Ebisuzaki, Horita and Morimoto -- I would ask to have those stand over. I haven't completed my instructions in the matter. I think possibly they might stand over, if my learned friend is agreeable and it meets your lordship's convenience, until the first session in September.

THE COMMISSIONER: Is that satisfactory to you, Mr. Braidwood?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: They will have to be heard, will they?

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

will be able to agree to file the evidence with regard to them.

THE COMMISSIONER: Very well. We will stand them down generally on the understanding they are not to be heard until September.

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

Deputy Official Stenographer

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IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B. C.,

September 12th, 1949.

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IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B. C.,

September 12th, 1949.

PROCEEDINGS AT HEARING.

APPEARANCES:

D.T.B. BRAIDWOOD, Esq., and J.A. MACDONALD, Esq., appearing for the Dominion Government.

R. J. McMASTER, Esq., appearing for the Claimants.

A. WATSON, Esq., Secretary.

D. F. SAUNDERS, Esq., Official Reporter.

THE COMMISSIONER: Yes, Mr. Braidwood.

MR. BRAIDWOOD: If your Lordship pleases, I should like to speak to the list which I believe is before your Lordship. I would like to put in the record that the Crown had tentatively arranged for Mr. MacPherson to handle the corporation claims which

were set to commence today, and,as I have advised your Lordship, about three weeks ago Mr. MacPherson unfortunately was obliged to withdraw, and since he could no longer continue in the corporation cases, it became necessary that I should do so, and as I have informed your Lordship the amount of work which I have had on hand and have been doing during the summer months forces me to come today to your Lordship with a request that these matters be adjourned until a later date. I am now requesting, my lord, that the following cases be set over until the 1st ofNovember. Those are the Royston Lumber Co. Ltd., United Marine Products Ltd., Deep Bay Logging Co. Ltd., the Haney Box Co. Ltd., and the Ebisuzaki Company. Would your Lordship see fit to set those cases for the 1st of November? I might say counsel for the Claimants in all cases have agreed to the adjournment. There is, possibly, some chance of coming to some mutual arrangement with counsel on at least one or more of those cases.

THE COMMISSIONER: Very well. I suppose we have no alternative. While we are on the subject of corporation claims, are these the only outstanding corporation claims?

MR. BRAIDWOOD: No, my lord, I am coming to those.

Now, there is a further list of some six claims, so far as I can see, which are under the corporate status or what we have been terming the quasi corporate status. Those are almost entirely Mr. McMaster's cases, and he and I have been dis-

cussing them. It is quite possible that some of them may not be heard in full, and, accordingly, mylord, I would ask that theybe set following the five cases I have just indicated to your Lordship.

THE COMMISSIONER: Which are those?

MR. BRAIDWOOD: Those cases, my lord, are the River Fish Company.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: Taigio Printing Company.

THE COMMISSIONER: That is argument, is it not?

MR. BRAIDWOOD: There will be argument on that. And the No. 1 District Fishermen's Association.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: Togo Cleaners Limited.

THE COMMISSIONER: That also is argument?

MR. BRAIDWOOD: I think so, my lord.

MR. McMASTER: There may be further evidence in this case.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: Ocean Fisheries Limited.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: And the Vancouver Nippon; Kyoritzu Go-Gako Association.

THE COMMISSIONER: Is that the lot?

MR. BRAIDWOOD: That is all I have been able to discover. My learned friend, Mr. McMaster, may --

MR. McMASTER: It crosses my mind is there not the Surrey Berry Growers' case?

MR. BRAIDWOOD: There may be, my lord. I am not familiar with that name, and I would like leave to put it on the list along with the latter claims, if there are any.

THE COMMISSIONER: Very well. They will follow the first-named corporation claims.

MR. BRAIDWOOD: Then, my lord, I have been in correspondence with Mr. Virtue, who intends to come to Vancouver on or about the 19th of the month for discussions with myself, and Mr. Virtue has requested that if your Lordship is able to deal with it, your Lordship might hear some of Mr. Virtue's cases which arise out of our discussion commencing on or aboutthe 3rd of October, if that is satisfactory to your Lordship.

THE COMMISSIONER: The 3rd is a Monday, is it?

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: Very well, we will fix that tentatively.

MR. BRAIDWOOD: Mr. Virtue faces thisdifficulty; hehas to be in the Supreme Courtof Canada towards the end of October, and that is the reason why he has made that request.

THE COMMISSIONER: Then he would propose to go on for such time as it would take to dispose of the cases that he has to argue?

MR. BRAIDWOOD: Yes, my lord, that is correct. In some cases there may only be argument. In a very few cases he may be calling some evidence, my lord. Then your Lordship will recall that Mr. Virtue has reserved the right to argue three -- two or three other points before Your Lordship at that time. There was a set of properties up the Coast, Port Essington property --

MR. MacMASTER: Tykota Bay.

MR. BRAIDWOOD: Yes. Perhaps that discussion might take place, then, my lord.

THE COMMISSIONER: Very well.

MR. BRAIDWOOD: My lord, I would like to speak to the rest of the list, but I should do so in conjunction with my learned friend, Mr. McMaster. I understand from my learned friend, Mr. McMaster, the Ebisuzaki claim, which has not been yet presented, will be presented along with the corporation claims.

MR. McMASTER: That is correct, my lord.

MR. BRAIDWOOD: There are two cases, Nos. 31 and 32, Hana and Hasegawa, which are on the list before me. My learned friend and I have discussed these cases, my lord, and would ask that they be taken off the hearing list. Is that correct?

MR. McMASTER: Yes, there will be further discussions on those.

THE COMMISSIONER: Just what is the situation? Further discussion between counsel?

MR. McMASTER: Yes. I think, my lord, they will be probably settled, or we will come to some agreement on them. These are the cases Mr. McQuarrie is on the record for, and I am now acting.

MR. BRAIDWOOD: No. 46, Kikuma Nakai.

THE COMMISSIONER: Is she the woman that ran the club?

MR. BRAIDWOOD: Yes, a club, the china case. Mr. McMaster has to provide some further information to submit to your Lordship on the question, and he is still searching for that information. Is that correct?

MR. McMASTER: I thought I had made a suggestion to my learned friend and he was going to consider it.

MR. BRAIDWOOD: Yes, I am sorry. I was thinking of another case. We are still discussing that case, and trying to come to an agreement. I think the evidence is in. We called Mr. Upton.

THE COMMISSIONER: Yes, that is right. What do you wish to do with that?

MR. BRAIDWOOD: We ask that stand down on the list.

THE COMMISSIONER: Just hold it on the list to be spoken to later?

MR. BRAIDWOOD: Yes, my lord. The next four cases are these Nos. 56 to 59 inclusive, in which Mr. Drewe Pratt is concerned. I had a telephone discussion with Mr. Pratt on these cases this morning, and the position here is he has had most of his clients in to Vancouver, and thoroughly discussed with them the arrangements which have been made to handle those cases. He got from them what he thought was a virtual agreement to allow the same arrangements to hold, but they reserved the right to go back and talk it over with the rest of the claimants and families, and advise Mr. Pratt whether such a course would be followed. The result is this morning he has not yet heard from these people and he requests your Lordship's indulgence in holding them on the list with the thought in mind they won't, in any event, be heard. He is fairly certain of that.

THE COMMISSIONER: He has had a long time to do that. I

think we had better put a time limit on. If further evidence is to be heard in any of those cases, the Secretary should be informed before the 15th of this month. Where are we now?

MR. BRAIDWOOD: The 12th.

THE COMMISSIONER: That is too short. Do you know where these people are?

MR. BRAIDWOOD: I believe they are in the Interior, my lord.

MR. McMASTER: I think they are all up around Kamloops.

THE COMMISSIONER: Say before the 26th of this month.

MR. BRAIDWOOD: Very well, my lord.

THE COMMISSIONER: That will give him two weeks.

MR. BRAIDWOOD: Will the Secretary communicate that to Mr. Pratt, or shall I?

THE COMMISSIONER: Will you note that, Mr. Secretary? Advise Mr. P ratt that his cases have been spoken to this morning, and if he desires to adduce any further evidence or argument, in either of them, you are to be notified before the 26th. Otherwise, I am going to proceed on the assumption that there is nothing further to be done with them.

MR. BRAIDWOOD: Cases 69 and 94 are separate as to facts, but the treatment of them will have to be the same. They arise out of this. Your Lordship required in both cases some information from Cortez Island. Both the Secretary and myself have written to various individuals, who appeared on the transcript or appraisals, at Cortez Island seeking such information, and in neither case have we had an

acknowledgment of our letters. I have written on two occasions and the Secretary has informed me he has written on three occasions.

THE COMMISSIONER: The net result is you believe you have exhausted the possibility of getting further information?

MR. BRAIDWOOD: I believe so.

THE COMMISSIONER: We will treat both cases on the basis of the evidence that has been introduced up to date.

MR. BRAIDWOOD: Your Lordship will recall in both those cases there were special matters brought to your attention by Mr. McMaster, and your Lordship issued a direction you required this further information which we have not now. I suggest that Mr. McMaster and myself might bring these cases again to you some time during the course of this week and your Lordship might then make an adjudication.

THE COMMISSIONER: Does that suit Mr. McMaster?

MR. McMASTER: Yes.

THE COMMISSIONER: Do you want to fix any particular day?

MR. BRAIDWOOD: My lord, we could take them tomorrow, if that is satisfactory. They will be very short. The argument has all been made.

THE COMMISSIONER: That is September 13th.

MR. BRAIDWOOD: Now, my lord, in Case 165, this was left for the Crown to file certain additional material, namely, a set of auction sheets, and your Lordship was pleased to direct those be filed. I have given them already to the Secretary, and I have also given Mr. MacLennan a copy of them. There will be some

argument I presume from Mr. MacLennan in that case. Your Lordship will also recall in that case appraisals were to be obtained by two independent valuators; one named by the Crown and one named by the claimant's counsel. These appraisals, I trust, will be available within a few days. I have instructed Mr. Reeve and I understand Mr. MacLennan has instructed a real estate appraiser and as soon as we get those, I will speak to the matter again and ask that Mr. MacLennan and I be given an opportunity to finalize the discussion.

THE COMMISSIONER: Very well. In order to fix a day supposing we stand this until Monday next to be spoken to then.

MR. BRAIDWOOD: Very well, my lord.

THE COMMISSIONER: September 19th.

MR. BRAIDWOOD: Case 167, Shigeo Ohashi, is one of Mr. McMaster's cases, and I think he has a request to make to your Lordship that it stand until a decision has been brought down in the Otsuki matter, because the facts are somewhat similar.

MR. McMASTER: Yes, my lord, I would appreciate that standing. I think it might be possible for Mr. Braidwood and myself to come to some agreement on that when we see how your Lordship deals with the Otsuki cases.

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MR. BRAIDWOOD: Case ~~168~~, Tainaka. It concerns certain information about a lease of certain properties to the Pacific Co-Operative Union. I have been endeavouring to get this information from the Cus-

todian's office during the summer months but unfortunately it has not yet come to my attention. I was quite anxious to get it over the weekend, and it has been promised to me in a day or two, and I ask that stand, and to perhaps be heard next Monday.

THE COMMISSIONER: Very well.

MR. BRAIDWOOD: Cases 213 and 214, my lord, concern more evidence which is required on a noodle manufacturing machine and rice mill. Mr. McMaster has something to say about that.

MR. McMASTER: I have not been able to get any information. I am hopeful to be able to, and I ask that the matter stand over to be spoken to.

THE COMMISSIONER: What hope do you think there is if you have not been able to get it in two months?

MR. McMASTER: One reason I have not been able to is I have been busy with Mr. MacDonald and I have not pursued it as hard as I might have. Mr. Skelding has been out of town part of the time. I will try the next two weeks.

THE COMMISSIONER: If I give you two weeks, will that be enough?

MR. McMASTER: Yes, I think so.

THE COMMISSIONER: That will be the 26th.

MR. BRAIDWOOD: My lord, Case 373, K. Mori. My learned friend has some argument to advance on that. I don't know if he is prepared to advance that now. It is on the business of-- it is on the sale of a business as a going concern.

MR. McMASTER: I think I stated my argument previously in

this case. Your Lordship asked if I could endeavour to get confirmation of the statement by the claimant he had had an offer from Campbell Brothers for this business in the sum of $2200.00, I believe, before evacuation.

THE COMMISSIONER: When was it heard?

MR. BRAIDWOOD: On June 22nd, my lord. I have a copy of the transcript.

THE COMMISSIONER: Is this Tainaka?

MR. BRAIDWOOD: No, Mori.

MR. McMASTER: It would be early in June, I think.

THE COMMISSIONER: Have you that file, Mr. Watson? There is not a transcript in here except of the proceedings at Nelson.

MR. BRAIDWOOD: This was one of the matters which were brought up as a special case in chambers. I think there would be only your Lordship's notes which would be available.

THE COMMISSIONER: Yes, my note, "held over for further evidence".

MR. McMASTER: My lord, the situation in this case is the claimant ran a business known as Denman Cleaners down on Denman Street, and at the time of the evacuation he rented his equipment to Campbell Brothers. The claimant states that Campbell Brothers made him an offer of a thousand dollars, which he refused, because the claimant had paid $2200.00 for the equipment. At page 8 of the transcript of the original hearing, your Lordship raised the point this might be a case where the fair market value might

not be obtained by piecemeal sale, whereas had the business been sold as a going concern a greater price might have beenobtained, and your Lordship pointed out at the foot of page 9 there had been many sales of going businesses that were operated on leased premises and the purchaser undertakes to make his own lease arrangements. Your Lordship directed further evidence with regard to the allegation of the plaintiff that Campbell Brothers had made an offer of $1000.00 prior to evacuation. We have been in touch with Campbell Brothers and they have no recollection of having made such an offer.

THE COMMISSIONER: That is as far as you can get, Mr. McMaster?

MR. McMASTER: It is, my lord. My submission is really an adoption of your Lordship's comments at the time. They were only made as comments, but it is a reasonable proposition that this was a piece meal sale and if sold as a unit it would have brought a much better price.

THE COMMISSIONER: I have no evidence that it would have been so or otherwise.

MR. McMASTER: My lord, other than the general knowledge of business deals which your Lordship is entitled to take judicial notice of.

THE COMMISSIONER: I noticed that Mori says he bought the business for $2000.00, and that covered the equipment and the right to carry on the business in that place. Is there any evidence as to when he bought the business?

MR. MdMASTER: It should be on his form, I think, my lord. It is not there.

THE COMMISSIONER: I notice on the form under the description "storage of goods"-- it looks as if they were leased.

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: Leased to Campbell Brothers.

MR. McMASTER: And later sold to the Custodian.

THE COMMISSIONER: The fact there was a lease to Campbell Brothers appears to negative the possibility of their having made a firm offer. Do you not think so?

MR. McMASTER: No, my lord, because his statement is that he did not accept their offer of a thousand dollars because he thought it was too little and it would be consistent for him to lease it.

THE COMMISSIONER: Is there anything to show what rental Campbell Brothers paid?

MR. McMASTER: I think it was $10.00 a month, my notes indicate.

MR. BRAIDWOOD: It is on page 7 of the transcript. He said, "The rent is so small that I am not satisfied. I want $35.00 a month for the rent, but I make it very cheap for Mr. Campbell, just the $10.00."

THE COMMISSIONER: Have you anything further to say, Mr. Braidwood?

MR. BRAIDWOOD: I have already made my argument, my lord, that this matter,"sold as a going concern", is definitely outside the terms of the reference, but, further, there were appraisals in this instance; appraisals as against which the goods were sold.

I think my lord, also that should be seen that Campbell Bros. did not buy these chattels, and I would infer from that they might not have wanted them. I would point out at page 2 of the transcript Mr. Fisher refers to this as being a chattel claim-- in the first paragraph.

THE COMMISSIONER: I am not satisfied with the evidence that has been led before me as to the value of the going concern so, without deciding the terms of the reference would permit of a recommendation based on a going concern value, I would hold that there is no sufficient evidence in this case to justify an award on a"going concern basis" even assuming that I have jurisdiction to deal with it on that basis.

MR. McMASTER: My lord, does that dispose of the difference between a piece-meal sale and the sale of the machinery as a unit.

THE COMMISSIONER: It is either one thing or the other.

MR. McMASTER: My submission is, if it is sold as a unit it should bring a better price than if sold piece-meal, as distinct from any question of good will or otherwise.

THE COMMISSIONER: I would be against you on that. I think that must necessarily tie into any question of sale as a going concern because the assumption must be that you are selling to a man who is going to carry on the same business, either in the same premises or on other premises. I think we will have to deal with it on the chattel basis. That disposes of the special features, does it not?

MR. BRAIDWOOD: Yes.

Case number 382, K. Abe. This matter was again a special case heard by your lordship and referred back to me to obtain some further information. You will recall there was an appraisal of Pemberton Realty of $3500.00 on this property; no sale. Subsequent appraisal was made by F. A. Cleland of $2500.00.

THE COMMISSIONER: Approximately a year later.

MR. BRAIDWOOD: Yes, and at that time a sale of $3,000.00 was arrived at.

MR. McMASTER: A year later?

THE COMMISSIONER: In 1946.

MR. BRAIDWOOD: Your lordship asks that the Crown might try and offer some explanation as to why that took place. I have discussed the matter with Mr. Shears, and I beg to offer the following explanation, my lord. The assessment on this property at the time that Pemberton appraised was $3,065.00 . They appraised to a value of $3500.00. This property was advertised in the usual fashion.

THE COMMISSIONER: Let me follow you. The assessment was $3,060.00.

MR. BRAIDWOOD: Yes, my lord.

MR. McMASTER: The assessment was how much?

MR. BRAIDWOOD: $3,060.00.

MR. McMASTER: Which year?

MR. BRAIDWOOD: 1944. Mr. Moore of Pembertons appraised at $3500.00. This property was advertised in the usual manner through the catalogue. I would have to admit on behalf of the Crown, my lord, that no special type of advertising was undertaken.

Discussion.

My learned friend wishes to make some point on advertising here. No special type of advertising was taken. I can refer to your lordship to the general evidence, the manner in which the catalogue was distributed and publicized and ask you to take that as evidence in this matter. As a result of the advertising carried on by the Custodian, we received an offer from Mr. G. Conkis to purchase the property for $2500.00. This was prior to October of 1944. I will try and find the date of that offer but prior to October, 1944.

THE COMMISSIONER: The offer was $2500.00.

MR. BRAIDWOOD: Yes. In any event that offer was not accepted by the committee, and this property lay dormant insofar as no further offers were received upon it. It became apparent to the Custodian's officer that if this property were to be moved, it would have to be re-appraised and a new valuation considered. We must take notice of the fact not all those Japanese properties could be sold or moved, and this, I respectfully suggest, was one which fell in that category of a property which could not be readily disposed of and had to be treated or dealt with again by the Custodian's office.

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THE COURT: Just a moment. The first Custodian advertising of Vancouver properties, took place at what time; 1943 or early 1944?

MR. BRAIDWOOD: Early 1944.

MR. McMASTER: My belief is it was 1943.

THE COMMISSIONER: That is rather my impression; that the

first advertising was done in 1943.

MR. McMASTER: Yes, in or about July '43.

THE COMMISSIONER: So, is there any explanation as to why this property was not appraised until 1944?

MR. BRAIDWOOD: No, I have no explanation of that, my lord; no history on the file at all.

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THE COMMISSIONER: Would that be due to the fact the Custodian as a rule did not get appraisals until after an offer had been received. I am right, am I not?

MR. BRAIDWOOD: My recollection is at first they only had Mr. Reeve and one or two others -- first Mr. Reeve and they got so far behind that often the appraisals did not occur until after the offer.

MR. McMASTER: I do not think there is any direct relation between the appraisal and offer. The Government appraisal was in March, 1944. There was such a backlog, I imagine.

THE COMMISSIONER: But there is this feature that may be significant; that the property was advertised in June of 1944 and no offer was received until this $2500.00 offer which apparently was about a year later.

MR. BRAIDWOOD: That is probably true unless this property went into the second category of which I cannot find any record of whether it did or not, the appraisal being in March of 1944.

THE COMMISSIONER: I think all Vancouver properties were advertised in the first instance.

MR. BRAIDWOOD: I think they were, but I may be putting

forward a suggestion which I cannot back. In any event I submit from the correspondence which I have examined, in the Custodian's file, this was a property which did not move and was treated with a few other unsold properties. This was the reason for the new appraisal. This appraisal was made later by Cleland, and at that time a figure of $2500.00 was obtained. Both these appraisals are in evidence. I would point out the letter of instructions to Messrs. Cleland in May 1945, merely stated as coming from Mr. Shears, "We shall be glad if you will kindly let us have a report and valuation on the above property at your early convenience". So there were no instructions to Cleland, and I don't think there can be any suggestion that Mr. Cleland had the other appraisal in mind when he made this appraisal here. Nor were there any instructions to make any lower appraisal than existed at that time, simply instructions to make an appraisal and report. As a result, my lord, an appraised price of $2500.00 was submitted by Mr. Cleland and on May 16th, 1945, approximately two weeks after Mr. Cleland had been instructed, Mr. Durkey, who was at that time handling the matter, advised Mr. Shears that the catalogue price had been changed to $3,000.00, now that being the actual price which was obtained in the sale --

MR. McMASTER: And the date of that?

MR. BRAIDWOOD: That was the 16th of May, 1945; Durkey on behalf of the committee advised Mr. Shears of the change. I have a note in my file in pen that the

$2500.00 was at the end of September, 1944, September 29th, 1944. Yes. This was an offer which was rejected, by the way, and I might say the property was eventually sold to Filess -- Mr. and Mrs. Filess who had apparently no connection with the former tenderer.

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THE COMMISSIONER: The sale was made in March, 1946, was it not?

MR.BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: I notice the Cleland appraisal report of May 10th, 1945, says the lots are about seven feet below the street level, on the property is a very old two-storey frame building; ground floor formerly occupied by stores but could not be occupied as such now without applying to the Zoning Board as this was a residential district. Have you anything further to say on the matter?

MR.BRAIDWOOD: No. I think one other factor we pointed out in regard to the other $2500.00 offer which backs up what I said. It backs up my suggestion that this was not an attrative property and could not be readily moved. It came in considerably after the catalogue and considerably after the appraisal by P emberton, and my submission simply is that the Pemberton Realty Corporation saw at such a figure that the property could not be moved by the committee, and I submit that the advertising was adequate and usual and one offer only was obtained from it and consequently there was a re-appraisal by Cleland and the subsequent acceptance of the $3,000.00 sale.

MR. McMASTER: With regard to your comment, my lord, I consider the Pemberton Realty Corporation appraisal took into account the fact of it being commercial premises situated in a residential zone. They refer to it in their appraisal, and I take it they took that into consideration in arriving at their value. I would also ask your lordship to refer to the London & Western Trust Company report which was filed.

THE COMMISSIONER: I notice that.

MR. McMASTER: And it gives a very favourable description of the property at that time, and I believe there is a picture of the property filed, my lord. With regard to the advertising I draw attention to the fact it was apparently advertised once with a large number of other properties in '43 and the experience the Custodian had, as given in evidence, was at that time only a small group of the total group of properties sold, and I think my learned friend admits there was no further attempt to advertise this property either through the catalogue or otherwise. Furthermore, the agents who had these catalogues in their possession were not advised when the properties were sold, so they would have no information of which properties were still on the records and which were off. That would reasonably account for the fact that there was no great public reaction to the offer of this property.

THE COMMISSIONER: Did this man have a claim with respect to another piece of real property?

MR. BRAIDWOOD: Yes, there is another part of it, my lord; this parcel on Victoria Drive; the other is on East

22nd Avenue.

THE COMMISSIONER: And it was sold for $3,046.00?

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: The evidence doee not satisfy me that this claim warrants any special treatment. I do not attach great significance to the fact that the Permberton appraisal was made at $3500.00 in 1944. It is fairly obvious that there was not much demand for the property at that price since no offer of any kind was received for fourteen months after the initial advertising.

MR. BRAIDWOOD: Case No. 1013, Utsuke. Your lordship reserved judgment on that matter. P erhaps your lordship is now ready to deliver judgment.

THE COMMISSIONER: I am not. If you leave over Utsuke, I will deal with that in the course of the next week.

MR.BRAIDWOOD: Case No. 1054, Maikawa. There was to be filed an abstract of title which has now been done and left with the Secretary. I think we have already discussed that with Mr. McMaster.

MR. McMASTER: Am I interested in that case -- no, Honsberger.

MR. BRAIDWOOD: That is right.

THE COMMISSIONER: Have you got that file, 1054?

MR. BRAIDWOOD: The only matter left there was to file the abstract of title which has been done, my lord.

THE COMMISSIONER: That we will have to treat as reserved still.

MR. BRAIDWOOD: Mr. Honsberger was willing that it should

go on the general terms, I believe.

THE COMMISSIONER: Let me have a look at the file on that. I do not see any abstract of title here, Mr. Watson. What was the purpose of filing the abstract, do you recall, Mr. Braidwood?

MR. BRAIDWOOD: Did not Mr. Honsberger file a statement from Fraser, Paine & Edmonds, as to the title, and your lordship asked me to have the same verified at the Land Registry office .

THE COMMISSIONER: I see. There are three properties mentioned in Fraser, Paine & Edmonds letter. Which is the one we are concerned with here, 333. No, that is right, a claim is made with respect to all three properties, two on Powell Street and one on Alexander. The principal question related to 350 Alexander Street which had been sold by the Custodian in July 1944, for $1800.00 and was resold by that purchaser from the Custodian at $3,775.00, two months later.

MR. BRAIDWOOD: Yes, your lordship wanted that subsequent sale verified.

THE COMMISSIONER: And you have verified it?

MR. BRAIDWOOD: By the abstract presented to your lordship, and now it becomes a matter for your lordship to peruse and decide whether or not the subsequent sale makes any difference.

THE COMMISSIONER: What have you to say on the subject.

MR. BRAIDWOOD: I thought I had submitted my argument to your lordship on that. I do not have my file with me this morning.

THE COMMISSIONER: I have no note of it.

MR. BRAIDWOOD: I ask your lordship to stand it down until I can get my file and perhaps put it over to tomorrow afternoon or sometime when your lordship is free. There is no one appearing on the other side. We can leave it for a short while until we dispose of Mr. McMaster. We want to get ahead with him as fast as possible.

THE COMMISSIONER: I think you will have some trouble explaining an increase of 100% in two months.

MR. BRAIDWOOD: I am glad it did not fall into my learned friend's hands.

THE COMMISSIONER: You don't want to deal with it until after Mr. McMaster is through.

MR. BRAIDWOOD: I am perfectly ready, but I do not wish to interfere with Mr. McMaster.

THE COMMISSIONER: Speak to it in the next day or two. This may establish a precedent and your learned friend might be glad of it.

MR. McMASTER: I would be very interested to get my learned friend's argument on it.

MR. BRAIDWOOD: The next we have are two old friends; Horita and Morimoto.

MR. McMASTER: With regard to Horita, I think I am getting down to the bottom of that. There has been a claim filed and I have located the man and I trust to get some information on it at an early date.

THE COMMISSIONER: You would like to have it stood.

MR. McMASTER: Stand it down until the 26th when I am speaking to those others. With regard to Morimoto I have also located him and have received a letter

from him in which he explains he sent a copy of his claim to the Greenwood Committee of the J.C.C.A., but for some reason the original did not come on to the Commissioner, nor the copy to the Custodian. He advises me he now sends a copy of the list to the Custodian, although Mr. Braidwood was not able to find it.

MR. BRAIDWOOD: I am still looking for it. It is not a sworn copy in any event.

MR. McMASTER: I understand that my learned friend is not objecting to the claim being filed, and I see that the only copy of the Claim form I have is not signed and I think I should have that attended to.

THE COMMISSIONER: That can be dealt with on the 26th.

MR. BRAIDWOOD: I think so, my lord.

There is only one other matter on the list and that is the Komori application which is being made by Watts and P erkins. That is set for Thursday, the 15th. This is an application to file a late claim.

THE COMMISSIONER: September 15th.

MR. BRAIDWOOD: I think the secretary has notified Mr. Watts.

MR. WATSON: Yes , he will be here on Thursday to make application and to file it then.

MR. McMASTER: With regard to case No. 72, your lordship reserved expressing any opinion on that at the hearing. I wondered when we might hope to have it.

THE COMMISSIONER: Better let me have a week on that and I will dispose of those various matters I held over. One thing, however, I wish to speak to counsel about --

Government counsel. We were discussing Nakamura on Friday.

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: I said I would write the Deputy Minister of Justice. On further consideration I feel this is a matter in my discretion, and I am disposed to exercise it favourably to the applicant so that I would suggest that you write to the solicitor concerned, and tell him that he can make his formal application at some date that is convenient to yourself and to him, and to be ready at the same time to proceed with the proof of his claim, in view of the fact that he is in Salmon Arm, and I think the claimant is up there as well.

MR. BRAIDWOOD: The claimant is in Vancouver every week, my lord.

THE COMMISSIONER: Is he.

MR. BRAIDWOOD: Yes, I think he is in Toronto now. This is a matter in which I suggest your lordship, I would rather have Mr. MacDonald handle it on the part of the Crown, because I had some prior connection with Mr. Nakamura in a professional capacity. I do know the claimant is quite able to come to town very often and is in town very often.

THE COMMISSIONER: It is a matter of suiting the convenience of this counsel, and I do not wish to bring him once to deal with the application, in view of the earlier discussion, and then back to present the claim. I think the two should be dealt

with at the same time.

MR. BRAIDWOOD: We will write that the proof of claim will be going in at a fixed date.

THE COMMISSIONER: I would not say anything to him about the views I have expressed to you, because he may read between the lines. It does strike me as a case that would not justify any other treatment in view of the fact we are allowing some other claims or I am purporting to make recommendations in other claims that were filed notwithstanding that they are outside the terms of the reference.

MR. BRAIDWOOD: Very well, my lord.

THE COMMISSIONER: That disposes of our list today, with the exception of those Mr. Macdonald is going to deal with.

MR. BRAIDWOOD: Yes. I think I might put on the record what our procedure should be from here on. I am suggesting, my lord, that Mr. MacDonald should continue his suggestions with Mr. McMaster, and we should adjourn now into Chambers where Mr. MacDonald and Mr. McMaster have some cases to go into with your lordship. I would like your lordship to know I intend to continue the preparation of the Corporation claims in conjunction with Mr. Campbell, to carry on discussions with Mr. Virtue upon his arrival here and attempt to be ready to go on on the 3rd of October. I think my lord, there will be some seventy odd cases to be decided by Mr. MacDonald and Mr. McMaster to date; that is an approximate figure and we hope to bring those before

you in the next week or so, so your lordship may make a decision upon them. Some of them will fall into line with prior decisions your lordship has made, but Mr. MacDonald is here today and ready and Mr. McM aster; and I ask that we adjourn now and go into Chambers, and the only matter in question is when we might resume as a Commission again. From what your lordship has indicated the next date for the formal hearing will be the 15th when Watts and Perkins will be with us to have our discussion.

THE COMMISSIONER: That is Thursday of this week. I will endeavor to have those reserve matters ready to be disposed of at that time too. V ery well, we will adjourn now.

This is case No. 94, Nakatsui. The Secretary hands me this letter which has been received from D. J. Thomas and the date, September 1949:

"Your letter re above reached me after many forwardings. I left Cortes Island in 1942 so cannot give you a value as to September 1944. We sold our adjoining 47 acres and reasonable house, only two-thirds of an acre cleared, in 1942 for $750.00 sale price. The Jap place had about ten acres cleared and a fair number of fruit trees but yield was very small and the buildings on the place very poor. I would think $1500 about its value in 1942. There is a Mr. Manson on Cortes Island resident many years, a farmer on adjoining property to the Japanese who could give you real value and all information. Trust this will help;

Yours truly, D. J. Thomas."

We did write Manson.

MR. BRAIDWOOD: Yes.

THE COMMISSIONER: And did not get satisfaction from him.

MR. BRAIDWOOD: No, we did not get any reply at all.

THE COMMISSIONER: I will direct that this be filed. Do counsel wish to add anything further in view of this letter?

MR. McMASTER: I wonder if the Secretary would have a copy sent to me.

THE COMMISSIONER: Is it necessary? $750.00 was the sale of his place with two-thirds of an acre cleared. Your man had ten acres cleared and the suggestion is $1500.00. The Secretary will have a copy for you.

MR. McMASTER: I think that is satisfactory.

THE COMMISSIONER: You can file this, Mr. Watson. Have you that file here. I would like you to leave it with me and I will consider it with the other and dispose of it on Thursday. That is everything we have today.

(PROCEEDINGS ADJOURNED TO SEPTEMBER 15th, 1949)

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

D. J. Saunders

Deputy Official Stenographer

C.....

The Commissioner

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

general

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

THE HONOURABLE MR. JUSTICE H. I. BIRD - COMMISSIONER.

Vancouver, B. C.

September 19th, 1949.

PROCEEDINGS AT HEARING

APPEARANCES:

D. T. B. BRAIDWOOD, Esq., and
J. CAMPBELL, Esq., — appearing for the Dominion Government.

E. J. McMASTER? Esq., — appearing for the Claimants.

A. W. Watson, Esq., — Secretary

T. P. Horrobin, Esq., — Official Reporter.

THE COMMISSIONER: On the list is a claim of Tagashira, in which Mr. MacLennan is counsel. Can you tell me what the situation is there?

MR. BRAIDWOOD: My lord, the situation there is, if your lordship will recall, a direction given by your lordship to get certain appraisals by two independent appraisors, working on the material which had already been filed before the Commissioner.

Mr. MacLennan 'phoned me on Thursday of last week and said he wouldn't be able to have his appraisal in in time, and I informed him that Mr.Reeve had not as yet delivered his appraisal to myself.

THE COMMISSIONER: What was to be appraised -- the real property?

MR.BRAIDWOOD: The real property, yes, your lordship. You will remember there was some property with a substantial rental value, and we had some information from two leading real estate operators in the City of Vancouver, as to what they thought the property was worth at that particular time, and your lordship directed Mr. MacLennan should appoint one gentleman and the Crown should ask Mr. Reeve to take the material already provided by these real estate agents, after striking off the amounts of the values and other material of that nature, and submit it to Mr. Reeve and whoever Mr. MacLennan would direct, and the two independent valuators would supply their valuations to be brought in for your lordship.

THE COMMISSIONER: That direction was given in June.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: What is the explanation of them not being ready in September?

MR.BRAIDWOOD: We have had some difficulty coming to a proper decision as to exactly what should be given to the two appraisors, and what should be left on the forms that we have as exhibits and what should be struck off. Then, unfortunately, Mr. MacLennan and I chose to go away at different times in the summer.

THE COMMISSIONER: Have you that settled now?

MR. BRAIDWOOD: We have that settled now, and there is one other feature we have both agreed on, and that is there is not sufficient information as to rentals on any of those forms to give a true picture, and Mr. MacLennan has written to his own client to see if there is any back information such as receipts, which can be provided, and I am assured that the katter can come very shortly before your lordship.

THE COMMISSIONER: Can you fix a date for it now? After all, two months is a long time.

MR.BRAIDWOOD: Yes. Your lordship is sitting again on the 26th.

THE COMMISSIONER: Yes, can you be ready on the 26th?

MR. BRAIDWOOD: I can't answer for Mr. MacLennan, of course, but I can put it up to him, if your lordship wishes, to be ready on the 26th, and we will do everything in our power to be ready.

THE COMMISSIONER: We will stand it then until the 26th. That is only a week.

MR. BRAIDWOOD: Yes. Reeve has our information, and I

I expect to hear from him momentarily. I will contact him this morning when I go back to the office.

THE COMMISSIONER: Now, Ohashi, what further discussion is to take place on that, Mr. McMaster?

MR. McMASTER: That is to be left, as I recall it, until the decision in the Usuki case, and possibly to be discussed between counsel. I don't think it should appear on the list, my lord, until then.

THE COMMISSIONER: Tainaka, claim number 181.

MR. BRAIDWOOD: My lord, I now have all the material. Your lordship asked that the Crown should prepare further information concerning the leases to the Pacific Co-Operative Union and the payments thereunder. I have a somewhat lengthy memorandum which I received from Mr. Shears. I would be prepared to read it into the record, but apart from that it is an inter-office memorandum and might not be strictly admissible, but I can read in the relevant features for the record, my lord.

THE COMMISSIONER: That perhaps would be as well.

MR. McMASTER: I would like to see it. If my friend says it is an inter-office memorandum and is not for the information of the Commissioner.

THE COMMISSIONER: Would you prefer to leave it until the 26th. In the meantime you can let your friend have the information, Mr. Braidwood.

MR. BRAIDWOOD: I can give my friend an extract of all the relevant information. I think it is all admissible, my lord.

THE COMMISSIONER: We can stand it until the 26th and your

friend will know about it then.

MR. BRAIDWOOD: Yes, I will give it tohim today, my lord.

Claim 1013, Otsuki, that matter is pending decision by your lordship , but certain information came in on Saturday morning which leads me to think that perhaps everything that might be before the Commission is not in. I had a discussion on another matter with the people at New Westminster, connected with the Veterans Land Act and these people were asking me about two or three points, and we discussed this matter with Otsuki, and they informed me at that time, my lord, they might be able to provide me with some more information which would be helpful to the Commissioner in coming to a decision.

THE COMMISSIONER: I have intimated to both yourself and Mr. McMaster, that I did not feel that all the material that the Crown could produce has been produced. I am prepared to go on and deal with it on the basis of the evidence that has been submitted, but if you want another week to see if you can get further information, that would be all right.

MR. BRAIDWOOD: I think certainly a week will tell whether this information is forthcoming, or not, my lord.

One thing your lordship will recall was there was a property of a somewhat similar nature mentioned by Dean Clement.

THE COMMISSIONER: The Parker property.

MR. BRAIDWOOD: Yes, my lord . We have taken off a record of all the transactions in relation to that particular property. My friend may already have done that, but

I unfortunately haven't, and certain other information was communicated to me on Saturday morning and my people are out there looking for it and will communicate with me this morning.

I will request, on behalf of the Crown, that the matter stand until the 26th.

THE COMMISSIONER: I have already indicated to Mr. McMaster that I do not feel very happy about the material that is before me. The case has been very fully dealt with by the claimants' side, but I have nothing from the Crown except the V.L.A. appraisal.

Under the circumstances, have you any objection, Mr. McMaster, to standing it a week to give the Crown an opportunity?

MR. McMASTER: The only objection is the matter has been let stand so long, but in the circumstances if your lordship feels that way about it, I can't very well object.

THE COMMISSIONER: There was a substantial amount of money involved here, and I would prefer not to found my judgment on the evidence that there is now, if there is any possibility of getting anything further.

MR. McMASTER: My lord, I would ask that a definite time be set in which this evidence must be adduced.

THE COMMISSIONER: Yes. I will adjourn it now preemptorily until the 26th, and we will go on then, regardless.

MR. BRAIDWOOD: I was thinking if this information I have comes to hand in a documentary form, since your lordship is already well aware of the case, if I were to discuss the matter of the document with my

friend and, subject to his consent, filed those documents with your lordship, your lordship might be prepared to deal with the matter.

THE COMMISSIONER: That would be preferable, if you can get your material in before the middle of this week.

MR. BRAIDWOOD: That is always provided it is material upon which my friend doesn't wish to cross-examine. That is, subject to his consent.

THE COURT: It will stand in the meantime until the 26th. If you want to speak to me about it in the meantime, I will be available.

MR. BRAIDWOOD: All right, my lord. My lord, may I ask if the Secretary has received any communications from Mr. Drew Pratt?

THE SECRETARY: No, none at all. I wrote to Mr. Pratt, and he stated if we did not hear from him on or before the 26th of this month, it could then be assumed he was consenting to the general terms of settlement-- if we don't hear.

THE COMMISSIONER: Put Mr. Pratt's cases down for the 26th, and we will proceed then. No. 167 Ohashi, stands until the 26th.

MR. McMASTER: My lord, I would suggest that case 167 should stand pending being brought before the Commission.

THE COMMISSIONER: Very well, adjourned sine die.

Now, in the Nagai case, I held that over until the 26th, as well, and that is simply for delivery of the decision. Have you anything further on that?

MR. BRAIDWOOD: No, my lord, except my friend Mr. Virtue is here this morning and we have commenced our discussions and I haven't had a chance to speak to him

prior to this time, but I should like to inform him in front of your lordship that your lordship has indicated after we have had our discussions if we can get on before your lordship before the set date of the hearing that your lordship would be pleased to hear us.

THE COMMISSIONER: I will be a vailable at any time you are ready.

MR. BRAIDWOOD: Thank you very much.

THE COMMISSIONER: Have you anything further this morning, Mr. McMAster?

MR. McMASTER: No, my lord.

THE COMMISSIONER: Then we will adjourn until September 26th.

(PROCEEDINGS ADJOURNED UNTIL SEPTEMBER 26th, 1949)

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

J. C. Hamolin

Deputy Official Stenographer

The Commissioner.

GENERAL EVIDENCE

IN THE MATTER OF THE "INQUIRIES ACT"
PART 1, REVISED STATUTES OF CANADA , 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B.C.,
September 26th, 1949.

PROCEEDINGS AT HEARING

Evidently incorrectly numbered 1208

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B.C.,

September 26th, 1949.

GENERAL EVIDENCE

PROCEEDINGS AT HEARING

APPEARANCES:

D. T. BRAIDWOOD, Esq., appearing for theDominion Government.

R. J. McMASTER, Esq. VIRTUE, Esq. appearing for the Claimants.

A. WATSON, Esq., Secretary,

MRS. E. BLYGH, Official Reporter.

THE COMMISSIONER: 56 to 59 inclusive is -- that is stood over to Wednesday, the 28th at ten o'clock.

MR. BRAIDWOOD: My lord, if I might ask at this moment, do I understand it is probable that Mr. Pratt won't be going ahead with evidence in those cases.

THE COMMISSIONER: I do not think there is any further evidence. He proposes to meet you between now and Wednesday with a view to discussing some special features that have to do with one or more of the claimants, according to his instructions, and it may not come on on Wednesday at all.

MR. BRAIDWOOD: Well, the point is, it has not been indicated to your lordship yet and Mr. Virtue and I intend to bring quite a number of cases on on that day and we don't want it to be crowded.

THE COMMISSIONER: I doubt if Mr. Pratt will make any appearance at all.

The next is Case 72, Nagai, which I had reserved to give my decision today. I have prepared a written memorandum which will be filed. The decision I have reached is that a recommendation should be made for payment of $3800.00 for the reasons outlined in the memorandum which I have filed this morning, and there is a copy there for counsel.

MR. BRAIDWOOD: Well, for the record, my friend, Mr. McMaster is appearing on that case, my lord.

THE COMMISSIONER: The next is 165, Tagashiro.

MR. BRAIDWOOD: My friend Mr. MacLennan is here with me this morning on this matter and your lordship directed that this matter should come up, with evidence,

on the 23rd September, on the two properties -- and have the evidence of Mr. Reeve and Mr. Dalton. They were together. The difficulty here is ascertaining the proper rents payable by the tenants and which were being collected by Tagashiro at the time for which the claim was made.

Mr. Tagashiro was in town last week, on Thursday and Friday, and had a number of meetings with Mr. MacLennan, and at my suggestion Mr. Reeve also attended with Mr. Tagashiro.

Mr. Reeve spent a good deal of time on Friday with me and acquainted me with his exact operations in the matter, and feels that subject to checking with the Wartime Prices & Trades Board as to basic rentals chargeable and things of that nature -- and after making all inquiries, he is of the opinion he requires some further time and he has made a request tome for a few days more if that is satisfactory to your lordship.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: As I was saying, Mr. Reeve has requested the indulgence of a few days more to let the matter simmer and then come to a proper decision, and he has also suggested he would rather be personally heard by your lordship than file a written report.

THE COMMISSIONER: I would prefer that.

MR. BRAIDWOOD: And I think Mr. Dalton is in the same situation.

MR. MACLENNAN: I think that is so. I have not been fully informed.

MR. BRAIDWOOD: Now, this week is pretty well taken up and Mr. Virtue willspeak to you. Mr. MacLennan says the most suitable day is October 12th.

MR. MACLENNAN: Yes, because Mr. Tagashiro will be down on the 10th. He has purchased a house here and it would be more convenient for him to come on the 12th.

THE COMMISSIONER: Well, the 10th is Thanksgiving Day, isn't it?

MR. BRAIDWOOD: I think so.

THE COMMISSIONER: Well you had better make it the 13th.

MR. MACLENNAN: That is satisfactory.

THE COMMISSIONER: Well, October 13th will be put down for Tagashiro.

MR. MACLENNAN: May I be excused now?

THE COMMISSIONER: Yes. Ohashi -- 167, what is the situation there, Mr. McMaster?

MR. McMASTER: I thought we had taken that off the list and it was adjourned sine die.

THE COMMISSIONER: That is for further discussion between counsel, is it?

MR. McMASTER: Yes. I believe there is one case now pending.

THE COMMISSIONER: And Tanaka, 181.

Mr. BRAIDWOOD: My lord, the situation here is this: My friend Mr. McMaster wished to have Dean Clement recalled on certain features before your lordship and the Dean was only available this afternoon, and subject entirely to your lordship's pleasure we would arrange the witnesses in several of these cases to be heard this afternoon at 2 o'clock, and I

shall be calling Mr. Alstead, of the Westminster Trust Company, and Mr. Bowden, who is also an official of that company, and I have given my friend a copy of the Crehan,Meredith report and I have told my learned friend I am intending to file that in evidence at 2 o'clock this afternoon.

THE COMMISSIONER: And the next is 213, Matsuharo.

MR. McMASTER: In regard to those cases, I spoke to Mr. Skelding in regard to getting an appraisal on the machinery there. As you will recall, it is new machinery in a rice mill and I shall have to get further information on it and will ask that that stand down until I get that information and then bring it back on the list.

THE COMMISSIONER: Very well, it will be adjourned until spoken to.

And then there is the Otsuki matter.

MR. BRAIDWOOD: In this matter I would ask that this also stand until 2 o'clock this afternoon, when I propose to call Mr. Day of North Vancouver. Mr. Day is a chicken farmer with long experience in the chicken business and I intend to call him for such evidence as he can give on the sale of chicken farms generally, and I will also be calling Mr. Andrew, who was an official of the Timber Controller's office, who I expect will give evidence on timber prices -- that is lumber --in the sense of building lumber. This was a replacement cost proposition, as your lordship will recall, and the value of the buildings was of considerable importance, and the value of the lumber

was given by a gentelman on Sea Island.

THE COMMISSIONER: Very well, that will stand over.

MR. BRAIDWOOD: And I also wish to refer to the Bentley property, which was referred to by Dean Clement, and the Dean was unable to provide us at the time with the legal description of the property and using the name method for searching the title I have been unable to find the sale, and I am going to ask the Dean this afternoon to inform me of the legal description and I intend to get an abstract from the Land Registry files and will file that for your lordship's information.

THE COMMISSIONER: The next is 498, Moromoto.

MR. McMASTER: I am in the next one--Horomoto, and I regret to say I was delayed in sending out the claim forms to these people, and I have had them now sworn, and according to the instructions of Mr. Macdonald they will be sent out and then we will deal with them.

THE COMMISSIONER: Without any formal hearing?

MR. McMASTER: Yes.

THE COMMISSIONER: 1398, Harito -- and Moromoto was -- that will stand to be spoken to, and the next is 1054, Nakowa.

MR. McMASTER: In this matter it is one of Mr. Honsberger's cases and your lordship asked information to be provided with respect to a subsequentsale at double the price that the Custodian obtained. Your lordship suggested some solicitor or real estate agent might be called, and I have had my friend, Mr. Campbell, working on this matter and we did find a

solicitor, J. Pike, was involved, but we were unable to locate Mr. Pike by any normal manner of search ~~ER~~ for a time, but we did find him on Saturday of last week and he merely had a vague recollection of the sale and he thought it conceivable that there might be some furniture included in the secondary sale, as he said these people, who he was dealing with sometimes did have, although it was incorrectly expressed in the deal and he has volunteered to search his files and bring in any information available, but he said it would take two or three days for him to get into his files, which are still in storage, and I will ask that that stand over for at least a week until Mr. Pike can get at his files.

THE COMMISSIONER: It will stand to be spoken to.

Now the next I have is 1399 and 1400, Nishiguchi.

MR. BRAIDWOOD: You have 94 on your list, haven't you?

THE COMMISSIONER: No, not on my list.

MR. BRAIDWOOD: I will add it at the end of the list.

THE COMMISSIONER: I do not recall whether I have indicated my proposed recommendation in the Nishiguchi cases or not.

MR. BRAIDWOOD: That is my friend Mr. Johnson's case, of New Westminster.

THE COMMISSIONER: I think someone else from New Westminster handled it.

MR. BRAIDWOOD: Mr. McQuarrie.

THE SECRETARY: There are two files.

MR. BRAIDWOOD: I think some of the claims were taken in the general form but some were continued--

THE COMMISSIONER: Well, in 1399 -- that was a claim related

to a number of motor cars and trucks, and I will file a written memorandum of my conclusions, the effect of which is that the claim is rejected, as I considered that the fair market value was realized. There is a copy of it here for yourself, Mr. Braidwood, and the secretary.

MR. BRAIDWOOD: Very well, my lord, I will forward this to Mr. Johnson.

THE COMMISSIONER: And in regard to 1400, which was a claim related to a business block on Columbia Street in - New Westminster, I have also a written memorandum, the effect of which is to recommend payment to the Claimant of $2234.00 in addition to the sum already paid to him, for the reasons outlined in the memorandum. Here is a copy of it.

MR. BRAIDWOOD: Thank you, my lord.

Now, I would like to add back 94 to the list, Nakatsui.

THE COMMISSIONER: Yes.

MR. BRAIDWOOD: This case, my lord, simply had been adjourned. The argument had all been heard and a discussion on it had been had and it was adjourned to get information from Cortez Island. Your lordship will recall the difficulties we had therein, and Exhibit No. 9 is the only answer we have been able to get from a man named Thomas, who used to be at Cortez and sold out later than the sale here, and he refers to a man by the name of Manson. And the secretary will agree that we have not been able to get anything out of Manson at all.

THE SECRETARY: That is correct, we wrote three times--

MR. McMASTER: I think I spoke to the matter. Mr. Braidwood was not here -- and I was trying to find him, and he may be able to appear here and I have not yet been able to make up my mind as to what will be done with the matter.

THE COMMISSIONER: There is no material before me now on which I could make any recommendation. I will tell you that.

MR. BRAIDWOOD: I do not think there are any other steps that we can take to get this information from Cortez Island. We have written there and we have not received any information.

THE SECRETARY: That is right.

THE COMMISSIONER: Yes, I agree with the secretary and Government counsel. Now, that concludes our list, does it?

MR. BRAIDWOOD: Yes, until this afternoon.

THE COMMISSIONER: There are two matters here that arise in consequence of some correspondence. I notice that Mr. McTavish, who acts for Nakamura, asks that he might be heard on the 13th October and that would mean also going on with such evidence as he wishes to lead. Would that be satisfactory?

MR. BRAIDWOOD: Well, your lordship has set down the Tagashiro for that time.

THE COMMISSIONER: Is there much evidence?

MR. BRAIDWOOD: There are only two appraisers -- Reeve and Dalton, to be called, and I do not think they will be very long.

THE COMMISSIONER: Very well, we will set down Nakamura's case for the 13th October.

Well, will you let Mr. McTavish know and find out if that date is satisfactory?

Then there is a letter fromBrown & Harvey concerning a claim of Mrs. Tanaka in relation to a Port Essington property which has not been sold by the Custodian. The letter from her solicitors would indicate that the basis of her complaint is that the property has deteriorated appreciably during the period vested in the Custodian.

I have been directed by the Deputy-Minister to make a report generally on the Port Essington properties, and therefore I would suggest to counsel that he communicate with the solicitors ~~kkkk~~ and ask for a sworn statement in support of the claim now presented indicating to them that I propose to make a report to the Governor-in-Council, notwithstanding the claim is outside the present Terms of Reference, and I will turn this later over to you, Mr. Braidwood, to deal with.

MR. BRAIDWOOD: Yes, my lord.

THE COMMISSIONER: And then you wanted to go on with Mr. Virtue's list.

(FURTHER DISCUSSION OFF RECORD.)

(PROCEEDINGS ADJOUNRED UNTIL 2:00 P.M.)

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

E. Bleyh

Deputy Official Stenographer