JAPANESE PROPERTY CLAIMS COMMISSION.

MINUTES OF CONFERENCE.

Vancouver, B. C.,

December 17th, 1947.

Original.

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PRESENT:

THE HONOURABLE MR. JUSTICE H.I. BIRD, COMMISSIONER.
F.G. SHEARS, Esq., CUSTODIAN.
J.A. MacLENNAN, Esq., and R.J. McMASTER, Esq., (REPRESENTING CLAIMANTS.

THE COMMISSIONER: Can we take it, gentlemen, that this typewritten memorandum, a copy of which each of you has before you, substantially expresses your views as well as my own?

MR. MacLENNAN: Yes, my lord, very definitely we can say that it does.

MR. McMASTER: Yes, my lord, it is only the working out of the the technical difficulties which rest with us.

THE COMMISSIONER: I can quite appreciate, Mr. McMaster, it will present you with some difficulty, but all I seek to get from you now is that in substance you accede to the comments and suggestions that I have made there. Is that your view, too, Mr. Shears?

MR. SHEARS: Yes, I agree with that, sir.

THE COMMISSIONER: Well now, are there any matters mentioned in the statement on which you wish to comment?

MR. McMASTER: My lord, there is only one thing I have to comment on. On page 2 of the memorandum there is a provision for "The place of deposit of chattels upon evacuation to be shown, and a declaration made as to the custodian, if any, of the goods". In a lot of cases they can be set forth in a statement, but in a number of cases I think that is a very nice question that perhaps it would be wise to have evidence led on. Now I think that could be understood, perhaps, but I wouldn't want to be committed, in other words, to have to give all the details of it on the statement if there are special circumstances.

THE COMMISSIONER: I quite agree with you on that. After all, the suggestions I have made here are put forward solely in the hope that we can work out some means of abridging the time factor. I think we were all disturbed at the time which was taken in Kamloops to elicit the information that finally was brought out, and my thought is to adopt some means of curtailing that time. I take it that you are in accord with the proposal if it can be accomplished.

MR. McMASTER: Yes, my lord.

THE COMMISSIONER: But certainly it would not be my

thought that you were to be tied tight to any of these suggestions. If in certain circumstances you find it necessary to examine the witnesses, why, of course, it will be open to you to do it.

In relation to personal property it is proposed that Mr. Hunter will file a report prepared by the Custodian om the disposition of chattels claimed by the claimant. Further, that Mr. Hunter will file the appraisal report of personal property in each case in which such a report was furnished to the Custodian. Again, that Mr. Hunter will file the J.P. form. Now, will the Custodian's report and the appraisal report show the manner in which the sale was conducted? That is to say, whether it was conducted at auction after due advertising, or by tender.

MR. SHEARS: Yes. We could say that these goods were disposed of at public auction, or by tender.

THE COMMISSIONER: I think in each instance it might be desirable that you indicate the nature of the advertising.

MR. SHEARS: That, of course, is consistent. Would there be any need in being specific? Every auction sale was previously advertised.

THE COMMISSIONER: I do not want any question to arise, Mr. Shears, as to whether it was sufficiently advertised, or advertised in sufficient time, because that criticism might be made by counsel for the Japanese. Perhaps Mr. Hunter could make a statement at the opening in Lytton if we sit

there.

MR. McMASTER: Of course, to my mind that is a matter of general evidence. I would imagine that the Custodian followed the general policy and he would be adducing evidence that this policy was followed in cases of auction.

THE COMMISSIONER: Undoubtedly that will come out later.

MR. McMASTER: Yes.

THE COMMISSIONER: Well, could we have a statement from Mr. Hunter at the next session as to what procedure was adopted im relation to the conduct of auction sales, and sales by tender?

MR. MacLENNAN: I think that would be very useful, my lord.

THE COMMISSIONER: Just so you have it on record.

MR. McMASTER: I took it the suggestion was rather than file necessarily the J.P. forms and all these other documents that are in the Custodian's file, that he was going to provide a composite form which would contain the information of goods which came into his hands, or I will put it this way; goods which were either declared on the J.P. form or in some other manner were found on an inventory being taken, and then to show the disposition of those goods.

MR. SHEARS: No, you are getting away from what we discussed previously. The basis is the analysis of his claim.

MR. McMASTER: Oh yes, in relation to what he has

claimed. I meant that, yes.

MR. SHEARS: Yes, that is all right.

MR. McMASTER: A composite report.

MR. SHEARS: In relation to his claim.

MR. McMASTER: Rather than the documents.

THE COMMISSIONER: No harm is done by the filing of the J.P. form.

MR. McMASTER: No.

THE COMMISSIONER: And I think it is as well to have it in early.

MR. McMASTER: Yes.

THE COMMISSIONER: Then it is also understood that the Custodian's report will show if the claimant's chattels have been lost, stolen or destroyed, and also the circumstances under which that occurred, if there is an explanation for it. That can be done.

MR. SHEARS: Yes.

THE COMMISSIONER: That, I think, covers the conclusions we have reached as to means to curtail the time taken in relation to claimants' evidence.

Counsel for the Japanese prefer that no arrangement be now made in relation to the manner in which evidence of value of land and buildings should be adduced on behalf of claimants; that is to say evidence by valuators. That is a matter that can be spoken to later.

Then counsel for the Japanese concedes that every claimant's statement as to value of lands, buildings and chattels is to be taken as

the claimant's estimate only of value, except in cases where the claimant in his testimony asserts some special knowledge of value. This concession is made with a view to curtailing cross-examination.

Then Mr. Shears, for the Government, proposes that when the defence testimony is being adduced, the Government valuator will be called as a witness, counsel will file a memorandum of the valuation made by the valuator, which memorandum, when verified by the witness, will be taken as proof of the contents. The witness will then be submitted to cross-examination, with a right of re-examination by Government counsel.

The foregoing covers all suggestions made with a view to curtailing the time taken in introduction of evidence by or on behalf of claimants as well as by the Government. The proposals are to be taken as tentative only, but counsel before the opening of the next session will express their concurrence or rejection of these proposals; thereafter proposals accepted by both sides will be adopted at all future sessions of the Commission. That gives you an opportunity to consult with your people in the east, Mr. McMaster, and by the 12th of January to reach a firm view as to whether these suggestions can be adopted or not.

Then the Commissioner has asked counsel to be prepared to submit argument at a session

to be held in Vancouver prior to January 12th on the following questions:

(1) Whether fair market value of chattel property, other than goods lost, destroyed or stolen, is to be determined as at the date of sale or as of the date of evacuation of the owner; there being involved in this question the matter of change of condition of the chattel property which has occurred between the time of evacuation and the time of sale, resulting in diminution of the fair market value of the article?

(2) Whether fair market value of real property is to be determined as at the date of sale, or as at the date of evacuation of the owner?

(3) Has chattel property an additional value when it is related to a business in the form of good-will; whether this element of value may be taken into account under the terms of reference?

(4) Is the Government under any obligation to collect accounts receivable owing by debtors to a claimant who has been evacuated, or is the Government to be held accountable only for such accounts receivable as have been recovered by the Custodian?

(5) Whether the Custodian has lawfully deducted from the proceeds of sale of a claimant's real or personal property the expenses of sale,

including commissions paid to auctioneers or real estate agents?

(6) The question raised in relation to the claim at Kamloops, Claim No. 7, of Mrs. Haruko Iwata, as to whether under the terms of reference a claim may be considered for loss arising from the fact that the claimant was compelled to sell property by the exigencies of circumstances created by the evacuation. This question to include sales of claimant's property made before as well as after the Custodian was directed to sell property of Japanese-Canadians who had been evacuated.

7. Claims by corporations or by shareholders for personal loss arising from sale of assets.

Now, gentlemen, is there anything else? Well, can I leave this thought with you; if any of you conceive any ideas that might result in curtailing the time factor in this Inquiry, I would appreciate hearing from you.

MR. SHEARS: You have dealt with the preparation of their statements, have you?

THE COMMISSIONER: Oh yes, that is set out in this memo. Incidentally, in relation to my suggestion made on page 2 of the memorandum as to the nature of the memorandum to be prepared by the claimants, have either of you gentlemen any comment you care to make on that? Is it sufficiently complete? Do you think it is practical or it can be worked out practically?

MR. McMASTER: If we can do it with a little variation, I think so. There are some cases where they

won't know the date of acquisition or construction and will have to give an approximate age, or whether it is new or old or intermediate.

THE COMMISSIONER: May I make this suggestion, that you should inform both Mr. Brewin and Mr. Virtue of the questions that are to be argued in early January and invite them to come omt if they canx find it convenient to do so.

I would only add this, that with regard to some of these questions which are set down for the early January session, I have been asked by counsel to deal with them at that time and others of them, particularly the first two, counsel for the Japanese somewhat reluctantly have acceded to my insistence that an argument should take place on these points and a ruling made as soon as possible rather than to defer a determination of those questions until a later date. I think that fairly puts your stand om it, gentlemen. Is there anything else that we can deal with?

JAPANESE PROPERTY CLAIMS COMMISSION.

MEMORANDUM OF THE HONOURABLE MR. JUSTICE H. I. BIRD.

Vancouver, B. C.,

December 17th, 1947.

Original.

JAPANESE PROPERTY CLAIMS COMMISSION.

MEMORANDUM OF THE HONOURABLE MR. JUSTICE H. I. BIRD.

Vancouver, B. C.,
December 17th, 1947.

My experience to date in dealing with matters relating to the Commission indicates the probability that the Inquiry, if conducted along the lines adopted at the recent Kamloops session, cannot be concluded in less than two years. I base that estimate on the number of claims filed to date, roughly 1500, and the nature of the claims heard and set for hearing at Kamloops as well as Lillooet, which are the only claims I have examined. These claims, probably, present a fair cross-section of all the claims which have been filed.

It is, I think, reasonable to assume that a minimum of another 500 claims will be filed. That is to say a total of at least 2000, the hearing of which will probably extend the duration of the Inquiry to a minimum of three years.

I am sure that counsel are as much disturbed as I am at the prospect of so lengthy a proceeding. Moreover, I feel sure it is the desire of the Governor General in Council that the claims should be investigated and a report made at as early a date as possible, commensurate with an adequate investigation. Conse-

quently I thought it desirable to call in local counsel for the Japanese claimants and Mr. Shears in the absence of Government counsel in the hope that some mutually satisfactory solution might be found which would abridge the time occupied in the taking of evidence.

If the Commission hearings are continued on the basis adopted in Kamloops, i.e. by calling each claimant as a witness to verify his claim on oath, to describe his former property vested in or sold by the Custodian, and to canvass the question of value upon evacuation, fully half the time of the Inquiry will be devoted to the taking of such testimony.

No doubt it is imperative that each claimant should have an opportunity to testify in support of his claim if he so desires, but it has occurred to me that counsel might prepare in advance a short memorandum in which the claimant describes his property in as much detail as counsel deems necessary, states the original cost, date of acquisition or construction, and the estimated value at evacuation in relation to each article. The place of deposit of chattels upon evacuation to be shown, and a declaration made as to the custodian, if any, of the goods.

That memo could be verified by the claimants when called as a witness. If counsel for the claimant deems it necessary, any further explanation of the contents of the memorandum could then be made.

The memorandum would then be filed as an exhibit, and the claimant's claim would so be verified as effectually as if an hour or more were occupied in a verbal description, made by the witness at the hearing, of the property and its value.

The witness would then be subject to cross-examination by Government counsel upon the contents of the memorandum, and the witness would be available for examination by his own counsel in reply.

I put forward this proposal merely as a suggestion for comment. It appears to me that if this course were adopted, much time could be saved at no disadvantage to either the claimant or the Government.

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DECISIONS ON QUESTIONS ARGUED BEFORE
THE COMMISSIONER ON DECEMBER 3rd, 1947.

At the opening session of the Commission held at Vancouver, B.C., on December 3rd, 1947, argument was heard from counsel representing the Government and counsel for various individual claimants, as well as for organizations representing groups of claimants, on numerous questions relating to the procedure to be adopted in the conduct of the Commission, and upon matters of interpretation of the terms of reference. The majority of these questions were disposed of at the conclusion of the argument. Decision was reserved on the following:

Counsel for the Government asked for a ruling upon paragraph 1(b) of Order-in-Council P.C. 3737, dated September 17th, 1947, with a view to determining whether, under the terms of reference, therein set out, the Commissioner is authorized to consider claims arising out of the loss, destruction or theft of personal property which occurred in the interval between the vesting of the property in the Custodian and the date when actual physical possession thereof could be taken by him.

It appears that public notice was duly given on February 26th, 1942, pursuant to authority conferred by Order-in-Council P.C. 1486, and by public notices gazetted under date of February 2nd and March 4th, 1942, whereby all persons of the Japanese race were required to leave forthwith the protected

areas of British Columbia defined under P.C. 365, dated January 16th, 1942. Further, that by Order-in-Council P.C. 1665, dated March 4th, 1942, provision was made for the vesting in the Custodian of property of such persons of the Japanese race. Paragraph 12, Section 1 of Order-in-Council P.C. 1665, reads as follows:

> "As a protective measure only all property situated in any protected area of British Columbia belonging to any person of the Japanese race resident in such area (except fishing vessels subject to Order-in-Council P.C. 288 of the 13th January, 1942, and deposits of money, shares of stock, debentures, bonds or other securities) delivered up to any person by the owner pursuant to the Order of the Minister of Justice dated February 26th, 1942, or which is turned over to the Custodian by the owner, or which the owner on being evacuated is unable to take with him, shall be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading With the Enemey 1939", etc.

Order-in-Council P.C. 3737 directs the Commissioner to inquire inter alia into claims;

1(b) "that personal property vested in the Custodian pursuant to the above mentioned Orders was lost, destroyed or stolen while in the possession or under the control of

"the Custodian or some person appointed by him, with the result that the claimant suffered a loss equal to the fair market value of the property at the time when the same was lost, destroyed or stolen: provided that no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person other than the Custodian, appointed by the owner of the property".

It is conceded by counsel for the Government that personal property of persons evacuated accordingly from the protected areas of British Columbia in fact was lost, destroyed or stolen subsequent to the vesting thereof in the Custodian by virtue of P.C. 1665, and before the Custodian was able to take physical possession of such property; also that similar losses occurred subsequent to the taking of physical possession of property by the Custodian notwithstanding that reasonable precautions were taken to ensure the safety of such property.

Counsel for the Government submits that this Inquiry is limited to consideration of claims arising from loss, destruction or theft of the claimants' property which occurred subsequent to the time when actual physical possession thereof was taken by the Custodian, whereas counsel for the claimants contend that claims for all such personal property losses which occurred subsequent to the vesting in the Custodian are directed to be

considered under the terms of reference.

In my opinion the language of paragraph 1(b) of the terms of reference must be interpreted as a direction to the Commissioner to consider claims for loss of personal property described in paragraph 12 of P.C. 1665 which occurred at any time subsequent to the date when the property was vested in the Custodian, pursuant to Order-in-Council P.C. 1665, dated March 4th, 1942, as amended by Order-in-Council P.C. 2483 of March 27th, 1942; that is to say at any time after the evacuation of the owner from a protected area of British Columbia, that time being subsequent to March 4th, 1942, but exclusive of personal property lost, destroyed or stolen at a time when such property was in the custody, control or management of a person other than the Custodian appointed by the owner.

The terms of reference, in my opinion, contain a clear direction to the Commissioner to inquire into claims for loss of personal property which was vested in the Custodian by virtue of the recited Orders-in-Council which include P.C. 1665 and 2483. The vesting provision in those Orders-in-Council reads in part as follows:

> "As a protective measure only all property situated in a protected area of British Columbia belonging to any person of the Japanese race . . . . . shall be vested in and subject to the control and management

"of the Custodian as defined in the Regulations Respecting Trading with the Enemy 1939".

The rights of the Custodian under that vesting provision are declared by paragraph 21 s.s. (2) of the said Regulations to "confer upon the Custodian all the rights of such enemies including the power of dealing with such property in such manner as he may in his sole discretion decide", and under Section 38 thereof power is given to the Custodian to liquidate any property vested in him.

I think it follows consequently that paragraph 1(b) of the terms of reference is to be taken to relate to property so vested in the Custodian which has been lost, destroyed or stolen <u>while in the possession or under the control of the Custodian or someone appointed by him</u>. I conclude that this phrase relates to personal property so vested which is either in the physical or constructive possession of the Custodian or his appointee. The language is not to be interpreted as limited to an actual physical possession and as excluding a constructive possession or control, i.e., a right of possession or control which had not been exercised prior to loss.

Confirmation of this conclusion is found I think in the proviso which relates expressly to personal property vested in the Custodian of which the appointee of the owner has the actual physical custody, control or management. If the intention had been to limit claims to losses arising

subsequent to acquisition of physical possession by the Custodian, the addition of the proviso would be redundant. The fact that it was deemed necessary to add the proviso I think shows an intention by the use of the phrase above underlined to include therein constructive possession or control in the Custodian.

I do not propose at this time to consider the questions raised by counsel for the Government in relation to claims for loss of personal property by a person who had declared to the Custodian at or about the time of his evacuation that he had not left any personal property in the protected area upon his evacuation therefrom. Such claims must be considered in the light of the ruling now made as to the interpretation to be given the terms of reference and of the evidence adduced in respect of each claim.

MEMORANDUM

Kamloops, B. C.,
December 11th, 1947.

(EXTRACT FROM PROCEEDINGS DURING HEARING OF CASE NO. 16, CLAIMANT HEITARO NABATA).

. . . . . .

MR. McLENNAN: . . . . I would submit possibly argument on these points which are being raised now might probably be dealt with at the Lillooet sittings, and we would continue now and not argue this matter here today, but possibly it would save time at a later date if some of these points were settled before proceeding with the main bulk of the cases.

THE COMMISSIONER: That is the view I have. I do not want to be covering a lot of ground that may be entirely lost effort. So, while I do not wish to put counsel at any disadvantage in dealing with problems such as have been raised immediately, I would expect them to deal with them at an early opportunity. Perhaps it wouldbe as well if we fixed the opening at Lillooet to deal with these two points that have been raised this morning. Would that be satisfactory to you, Mr. Hunter?

MR. HUNTER: Yes. Are there any other points we should deal with at that time?

THE COMMISSIONER: I do not know of any others at the moment.

MR. McLENNAN: There is the argument of Mr. McMaster in the Iwata case.

THE COMMISSIONER: Yes, that is right. That is the lady who came down from somewhere in the vicinity of Salmon Arm and who concurred in, or made a sale, which she said was forced upon her by the exigencies of circumstances created by the evacuation.

I would like it, Mr. Secretary, if you would make a note of these matters to be brought up at the opening in Lillooet. Incidentally, while we are dealing with the Lillooet session, counsel have asked me to give them some additional time and have asked if I can grant it. I quite appreciate counsel do require more time for preparation of their cases, and for that reason I propose to open in Lillooet on the 12th, rather than the 5th of January.

MR. McLENNAN: Thank you, my lord.

MR. HUNTER: My lord, I would suggest at that time we might argue out the question of auctioneers' commission and real estate agents' commission.

THE COMMISSIONER: I think that would be wise. All right, proceed, Mr. McLennan.

(Matters to be argued referred to above are: Has chattel property an additional value

when it is related to a business in the form of goodwill; whether this comes within the terms of reference?

Is the Government under any obligation to collect accounts receivable owing by debtors to a claimant who has been evacuated, or should only those accounts which the Government has been able to collect be held accountable to the Government?

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IN THE MATTER OF THE "INQUIRIES ACT"

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

B E F O R E

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

Vancouver, B. C.,

December 3rd, 1947.

10:30 A.M.

INQUIRY INTO THE CLAIMS OF PERSONS OF THE JAPANESE RACE REGARDING THE MANAGEMENT AND SALE OF THEIR PROPERTY BY THE CUSTODIAN.

PROCEEDINGS AT HEARING.

Original.

INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE
1	Commission	3
2	Advertisement and Newspapers	4 & 5
3	Copy of "New Canadian"	7
4	Letter (undated)	7
5	P.C. 3959, Aug. 21, 1940	14
6	P.C. 5295, Defence of Canada Regulations (Consolidation) 1941	14
7	P.C. 288, Jan. 13, 1942	15
8	P.C. 365, Jan. 16, 1942	15
9	(Canada Gazette, March 4, 1942 (Canada Gazette, Feb. 2, 1942	15
10	Canada Gazette, Feb. 7, 1942	16
11	P.C. 1486, Feb. 27, 1942	17
12	P.C. 1665, Mar. 4, 1942	17
13	P.C. 2483, Mar. 27, 1942	18
14	P.C. 3737, May 5, 1942	19
15	P.C. 5523, June 29, 1942	19
16	P.C. 6247, July 20, 1942	19
17	P.C. 6885, Aug. 4, 1942	20
18	P.C. 469, Jan. 19, 1943	20
19	P.C. 7414, Dec. 28, 1945	20
20	P.C. 1810, July 18, 1947	21
21	P.C. 3737, Sept.17, 1947	21
22	P.C. 9590, Dec. 7, 1941	23

Opening.

IN THE MATTER OF THE "INQUIRIES ACT"

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INQUIRY INTO THE CLAIMS OF PERSONS OF THE JAPANESE RACE REGARDING THE MANAGEMENT AND SALE OF THEIR PROPERTY BY THE CUSTODIAN.

PROCEEDINGS AT HEARING.

APPEARANCES:

J.W.G. HUNTER, Esq.,	appearing for the Dominion Government.
J.A. McLENNAN, Esq.,	appearing for Eikichi Kagetsu, and the Deep Bay Logging Company.
GEORGE TAMAKI, Esq.,	appearing for Fusamatsu Tamaki, and certain other residents in Saskatchewan.
F.A. BREWIN, Esq., J.A. McLENNAN, Esq., R.J. McMASTER, Esq., and GEORGE TAMAKI, Esq.,	appearing for the Co-Operative Committee of Japanese-Canadians.
A.G. VIRTUE, Esq.,	appearing for the Southern Alberta Central Committee. Also appearing as Counsel for Delavergne & Williams, Brooks, Alberta.

F. DREW PRATT, Esq., appearing for:
Gorozaemon Yada.
Hajime Wakita and
Yutaka Wakita.
Saijiro Wakita.
Kuniye Yada and
Hideo Yada.
Shigetaro Nishi.
Kaoru Atagi.

A. WATSON, Esq., Secretary.

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

THE COMMISSIONER: I would ask Counsel and others appearing to announce their appearance and declare for whom they appear.

MR. HUNTER: I am appearing, my lord, for the Dominion Government.

MR. McLENNAN: My lord, I am appearing for Eikichi Kagetsu, and the Deep Bay Logging Company.

MR. TAMAKI: My lord, my name is Tamaki. I am appearing for Fusamatsu Tamaki, and certain other residents in Saskatchewan.

MR. BREWIN: My lord, I am appearing for the Co-Operative Committee of Japanese-Canadians, and associated with me and appearing for them are Mr. McLennan, Mr. McMaster, and Mr. Tamaki, who will appear for the Co-Operative Committee as well as for the individual claimants. I think perhaps a little later I will tell you who the Co-Operative Committee are, but I think at the present time we can say we represent about 700 claimants in various parts of Canada.

Opening.

THE COMMISSIONER: Thank you, Mr. Brewin.

MR. VIRTUE: My lord, I am appearing for what is known as the Southern Alberta Central Committee, who represent approximately 200 or more claimants residing in Southern Alberta.

In addition to that, my lord, I appear as Counsel for the firm of Delavergne & Williams of Brooks, Alberta, who have filed a number of claims.

MR. PRATT: I appear, my lord, for the following claimants: Gorozaemon Yada, Hajime Wakita and Yutaka Wakita, Saijiro Wakita, Kuniye Yada and Hideo Yada, Shigetaro Nishi, Kaoru Atagi.

THE COMMISSIONER: Are there any other appearances? Thank you, gentlemen.

I wish to file the Commission directed to myself by the Governor General in Council. I may say that the Commission is framed in the language of the first Order-in-Council covering the terms of reference as therein contained. Those terms of reference were changed by a subsequent Order-in-Council. Have you the number, Mr. Hunter?

MR. HUNTER: 3737, my lord.

THE COMMISSIONER: 3737. That can be dealt with when you put in the Orders-in-Council, Mr. Hunter.

MR. HUNTER: Very good, my lord.

(COMMISSION MARKED EXHIBIT NO. 1)

THE COMMISSIONER: Mr. Secretary, would you file, please, a copy of the advertisement for claimants

which was published in the newspapers?

THE SECRETARY: Just the one, my lord?

THE COMMISSIONER: One will be sufficient. They are all the same?

THE SECRETARY: Yes, they are, my lord.

(ADVERTISEMENT MARKED EXHIBIT NO. 2)

THE COMMISSIONER: Would you be good enough to read into the record the dates of the publication of that advertisement, and the newspapers in which the advertisement was published?

THE SECRETARY: "The Gazette, Montreal," Friday, October 3rd.

"The Montreal Daily Star", Friday, October 3rd.

"The Winnipeg Tribune, Thursday, October 2nd.

"The Lethbridge Herald, Tuesday, September 30th.

"Nelson Daily News", Wednesday, October 1st.

"The Kamloops Sentinel", Wednesday, October 1st.

"The Vancouver Daily Province", Monday, September 29th.

"The Vancouver Daily Province", Saturday, September 27th.

"The Vancouver Sun", Saturday, September 27th.

"The Vancouver Sun", Friday, September 26th.

"The Vancouver Daily Province", Monday, September 29th.

"Moose Jaw Times-Herald", Wednesday, October 1st.

"The Winnipeg Free Press", Wednesday, October 1st.

"The Toronto Daily Star", Thursday, October 2nd.

"The Globe and Mail", Thursday, October 2nd.

THE COMMISSIONER: Now, Mr. Secretary, have you checked the advertisements to make sure that those which you have put in cover all the advertisements that were published? If you have not, I wish you would do so, and at a future session, if there should be any of them that have been omitted they can be added to the record.

THE SECRETARY: Yes, my lord.

(NEWSPAPERS MARKED EXHIBIT No. 2)

MR. HUNTER: My lord, I did not hear the Secretary say anything about the advertisement appearing in "The New Canadian". Notices were published in that newspaper.

THE COMMISSIONER: That is quite right, Mr. Hunter. You can get copies of the "New Canadian" and file those later, Mr. Secretary.

THE SECRETARY: Yes, my lord.

THE COMMISSIONER: Then will you file a true copy of the advertisement covering this preliminary

session which will have been published in the "New Canadian" on Saturday last, I think.

THE SECRETARY: Yes, my lord. I have a copy of the "New Canadian" dated November 29th, 1947.

THE COMMISSIONER: The advertisement is there. Just mark that as part of Exhibit 2. There is no occasion to read it out. Then will you file a copy of the letter which was sent to various persons who have been in correspondence with me prior to the preliminary session?

THE SECRETARY: This is a copy of the letter that was sent. You wish me to read it, my lord?

THE COMMISSIONER: I do not think there is any need to read it. I would like you to read, however, the names of the persons to whom it was sent.

THE SECRETARY: This letter was sent to the following persons and firms:

Shumiatcher & Shumiatcher,
Grain Exchange Building,
Calgary, Alberta.

R.J. McMaster, Esq.,
675 West Hastings St.,
Vancouver, B.C.

Raymond & Hornsberger,
Barristers,
Federal Building,
Toronto, Ontario.

H. Ishizaki,
Kaslo, B. C.

Morris C. Shumiatcher,
Premier's Office,
Regina, Saskatchewan.

Frank Broughton,
Government Agent,
New Denver, B. C.

A.F. Brewin,
Stirling Tower,
Toronto 1, Canada.

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Lethbridge, Alberta.

Yoshinori Higo,
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460 Main St.,
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15 Toronto St.,
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24 Stirling Apartments,
Winnipeg, Manitoba.

Eric G. Adam,
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Montreal 2, Canada.

That is the list, Mr. Commissioner.

(COPY OF "NEW CANADIAN" MARKED EXHIBIT NO. 3).

(LETTER MARKED EXHIBIT No. 4).

THE COMMISSIONER: All right, thank you. It should be recorded that an application was made before me, I think it was last Thursday, by Mr. McMaster representing the Co-Operative Committee, and Mr. Hunter was present when an Order was made extending the time for the filing of claims,

in the case of persons resident in British Columbia until December 31st, 1947, and in the case of persons resident elsewhere in Canada until January 15th, 1948.

Now, I think it is perhaps desirable to outline the procedure which has tentatively been adopted for future sessions of the Commission, after communication by myself with Counsel for various interests. It is proposed to hold sessions of the Inquiry at which claimants may testify in support of their claims at various points across Canada which have been selected as centres of present Japanese concentration. An effort willbe made to avoid the necessity of claimants having to travel too great a distance. However, it will not be possible to sit at every point at which requests have been made for the Commission to sit, but, insofar as it is possible, an effort will be made to sit at points convenient to concentrations of Japanese residents.

After sessions have been held between Kamloops and Montreal and intermediate points at which evidence will be taken of claimants only, the Commission will resume in Vancouver, at a date to be fixed when testimony will be heard of a character designed to support the Japanese claimants' claims, such as evidence of valuators and the like. Then inconclusion the case for the Government in reply to all

Japanese claims will be put in at sessions to be held in Vancouver. Steps have been taken in this instance by Government Counsel which will avoid the necessity of sessions being held in order to permit Japanese claimants to adduce evidence in reply; those steps being in the nature of advance information furnished by Government Counsel to claimants and their Counsel. I think it will be recognized that it is practically impossible for the Commission to cover the ground a second time in order to permit evidence to be taken in reply.

MR. VIRTUE: Do you wish, sir, to hear any comment at all as you go along, or do you prefer us to wait?

THE COMMISSIONER: I would prefer you wait, Mr. Virtue. I will ask for any comment later, Mr. Virtue.

It should be pointed out the claimants, or the prospective claimants, will be required to attend the session of the Commission in respect of which notice has been given that their claim will be heard. Already the secretary has been advised by one claimant that he will not be able to attend on the day fixed in Kamloops during next week. The duration of the Commission is likely to be such that even if we are able to proceed expeditiously, failure on the part of claimants to attend when they have been notified will make it much more difficult for the Commission to carry on in a business-like

way. So that I am giving notice now that claimants will be required to attend at the time fixed for the taking of their evidence. There may be special circumstances arise affecting their attendance, in which event I will endeavour to see that the individual claimant is accommodated.

Now, may I ask for comment by Counsel on any of the matters that have been dealt with up to this moment.

MR. VIRTUE: Just one very small thing, sir. I know it wasn't intended in that way, but perhaps we should clear it up. You mentioned what I might refer to as "local sessions" being held only at which claimants will be heard. Now, I think probably it will happen in some cases that in addition to the claimant himself there will be some corroborative evidence there at hand from perhaps, say, a neighbour.

THE COMMISSIONER: If that be so, that evidence may be led at the same time.

MR. VIRTUE: It is a very small matter, sir, but I wanted to have it cleared up.

MR. PRATT: My lord, I am appearing here on behalf of eight different claimants today. There is just one little difficulty I have run into, and that is some three or four of my clients are in isolated spots and have been unable to verify their declaration of claim. I respectfully suggest, with your Lordship's approval, that

the claims be recorded now in the form in which they have been sent in, then when the claimants attend they can sign the declaration. It is a mere formality.

THE COMMISSIONER: Would you have any objection to that, Mr. Hunter?

MR. HUNTER: No, my lord.

THE COMMISSIONER: That will be done, Mr. Pratt, and I will direct the Secretary to receive claims even if they are unsworn, on the understanding they will be sworn to before the claimant testifies.

MR. PRATT: There is one from a claimant who is some ninety miles away and he can't get in.

MR. BREWIN: There is one small point, my lord, arising out of what my learned friend, Mr. Virtue, said. Your Lordship said that claimants only would be required to attend sessions. There have been a number of cases that have come to my attention where the claimant personally is bed-ridden, or something of that sort, and the evidence may be tendered by a son or a neighbour or someone else rather than the claimant personally. No doubt that difficulty may be dealt with as it arises.

THE COMMISSIONER: That can be done. I appreciate that even in the case of this request that was made this morning, to which I referred, that probably the man is ill. Of course, if there is some other form of proof that can be put in

at the time the claim is brought on, all right, but I sought to make clear that once a claim has been set down to be heard, I would expect it to be heard on that day.

MR. BREWIN: Yes, we understand that.

THE COMMISSIONER: Mr. Hunter, have you any comment?

MR. HUNTER: No, my lord, I have no comment.

THE COMMISSIONER: Is there anything further? All right, Mr. Hunter, will you proceed?

MR. VIRTUE: Before my learned friend proceeds, sir, there is one little thing arising out of this matter of illness of which we have been speaking, and there is a case in point. I remember one man who, on account of his wife's illness, is now obliged to leave Lethbridge and I think go somewhere to the interior of British Columbia -- Kelowna, or some place. I was wondering in a case like that if arrangement could be made for such a claimant to appear at, say, the sitting of the Commission at Vernon or Kamloops or at the nearest point.

THE COMMISSIONER: I see no reason why not. If Counsel who appear for the individual claimants will communicate with the Secretary and request it be heard elsewhere, then that can be done.

MR. VIRTUE: Thank you, sir.

THE COMMISSIONER: All right, Mr. Hunter.

MR. HUNTER: My lord, I have drawn up a chronological schedule of Statutes, Orders-in-Council, and Government notices. The references are correct,

but the comments are my own. They are just merely trying to briefly state what these things are, and I don't expect Mr. Brewin or any of his friends to be bound by my comments. They are quite at liberty to repudiate them completely.

It is hardly necessary, really, to file the Statutes, but I thought, in order to have a complete chronological tale of the whole story, I would try and file everything, and it may be I have left out something, or that something I have put in here will not turn out to be relevant but at least will be available and yourself and Counsel can refer to them.

MR. HUNTER: The first one I put in is the "War Measures Act", Chapter 206, Revised Statutes of Canada 1927. I would suggest, unless you wish otherwise, my lord, that perhaps it would be better to have these marked separately.

THE COMMISSIONER: I think it would. There is no need, of course, to mark a Statute as an exhibit. It is available to us, in any event, but so far as the Orders-in-Council are concerned, I think it is desirable that they be marked as exhibits.

MR. VIRTUE: I was wondering, my lord, for convenience Exhibit 2 was the copy of the advertisement, then there were the papers put in in which the advertisements appeared, but they were not marked as Exhibits, I don't think. For convenience it might be just as well to have them

marked.

THE COMMISSIONER: They should be. I would mark all the advertisements as one exhibit, Mr. Secretary.

THE SECRETARY: Yes, they become Exhibit 2.

MR. HUNTER: The first Order-in-Council I will be putting in is P.C. 3959, dated the 21st of August, 1940. It cancels the old regulations respecting Trading with the Enemy 1939, and substitutes for the consolidated regulations respecting Trading with the Enemy 1939.

THE COMMISSIONER: I think if you record those, Mr. Secretary, as "P.C. No. so and so", in this instance it is P.C. 3959 as Exhibit 5.

(P.C. 3959 MARKED EXHIBIT NO. 5).

MR. HUNTER: Then, again, my lord, for convenience and not as an exhibit, I should like to file the actual Consolidated Regulations respecting Trading with the Enemy. Those are the 1939 ones, I think. Then there is a later copy, 1943, which I think might be put in for reference by Counsel.

P.C. 5295, July 15th, 1941, sets up the Defence of Canada Regulations (Consolidated) 1941. This is now in the form of a bound volume, my lord, although the Privy Council Order is printed in the front of it. I would suggest it go in as Exhibit 6, my lord.

THE COMMISSIONER: Yes, Mr. Hunter.

(P.C. 5295 MARKED EXHIBIT No. 6).

MR. HUNTER: The next exhibit willbe Privy Council

Order No. 288 which establishes the Japanese Fishing Disposal Committee.

(P.C. 288 MARKED EXHIBIT No. 7).

MR. HUNTER: The next is P.C. 365, January 16, 1942, which amends Section 4 of the Defence of Canada Regulations (Consolidated) 1942 by substituting a new Section 4 which inter alia defines (1) protected areas, and (2) permits the Minister of Justice to order such enemy aliens to leave such areas.

(P.C. 365 MARKED EXHIBIT NO. 8).

MR. HUNTER: The next exhibit is a Government notice dated the 29th of January, 1942, and gazetted February 2nd, 1942, as amended, and I should like to file this other amendment, although it is not in chronological order, by Government notice dated February 27th, 1942, and gazetted March 4th, 1942, because these two notices, combined, define the boundaries of the protected area in British Columbia.

(NOTICES MARKED EXHIBIT NO. 9).

MR. HUNTER: The next Government notice is dated February 5th, 1942, and gazetted on February 7th, 1942. Incidentally, those Privy Council Orders I filed were all certified copies and these notices are taken from the Canada Gazette.

THE COMMISSIONER: That notice will be Exhibit No. 10, Mr. Secretary.

MR. HUNTER: It requires male enemy aliens between the ages of eighteen and forty-five to leave

the protected area by April 1st, 1942, and no enemy alien to have the use of certain chattels, such as a radio, camera, transmitter, firearms, and so on.

(NOTICE MARKED EXHIBIT NO. 10).

MR. HUNTER: Then next is a copy which I have again taken from the Canada Gazette of Privy Council Order 1486, which further amends the new section of the Defence of Canada Regulations, P.C. 365, referred to above, by extending the Minister of Justice's right to order the enemy aliens to leave the protected area, and permitting him to order all persons to leave the protected area, whether enemy or otherwise. That was the first time he was ever able to order allpersons of the Japanese race to leave the protected area, and in the same copy of the Canada Gazette, dated February 22nd, is a Government notice dated February 26th which requires persons of the Japanese race to turn over motor vehicles, cameras, radios, and etc., to the Police, that is the R.C.M.P. or Municipal or local Police, and it also requires all persons of the Japanese race to leave the protected area forthwith. Since these are both in the same copy of the Canada Gazette, I would suggest they be filed as Exhibit 11.

THE COMMISSIONER: The Government notice dated February 26th, that is to say P.C. 1486, which you introduced and the one of the 26th of

February will be one exhibit.

MR. HUNTER: Right, my lord.

(CANADA GAZETTE MARKED EXHIBIT No. 11).

MR. HUNTER: Then we come to the real start of the Custodian's years of headache, my lord, under P.C. 1665, a certified copy of which I file which, first of all, establishes and defines the duties and powers of the British Columbia Security Commission and it vests the under-
10 mentioned property of persons of the Japanese race delivered up to any person by the owner pursuant to the Order of the Minister of Justice, dated February 26th, 1942. That, I presume, refers to the boats. No, it refers to cameras, and things of that kind, or that which is turned over to the Custodian by the man, and also that which the owner is unable to take with him on being evacuated.

This is the first time that the property
20 of persons of the Japanese race, other than alien enemies, has been vested in the Custodian and it excepts from the property vested fishing vessels subject to Order-in-Council P.C. 288, deposits of money, shares of stock, debentures, bonds, or other securities.

(P.C. 1665 MARKED EXHIBIT NO. 12).

MR. HUNTER: Next, Privy Council Order 2483. These are all of the year 1942, my lord. This amends P.C. 1665 by rescinding Section 12, which was
30 the vesting section, and substituting the new

Section 12 which broadens the powers of the Custodian. It broadens them by authorizing him to order any property situated in the protected area of British Columbia and belonging to persons of the Japanese race to be vested in himself. That is, even property, that was formerly excepted by the Order, could now by the vesting Order be vested in himself. It doesn't automatically vest but it may at any time be ordered. Further, it removes the restrictions present in the previous order P.C. 1665.

(P.C. 2483 MARKED EXHIBIT No. 13).

MR. HUNTER: Next, my lord, Privy Council Order 3737, dated May 5th, 1942. Unfortunately, my lord, this isn't a certified copy, because by an odd coincidence this bears the same number as the Privy Council Order setting up our Commission of this year, and when Iwrote up for 3737 of 1942, I presume they thought me insane and sent the one for 1947, which I already had. I have this copy and I shall get a certified copy later and file it.

THE COMMISSIONER: You may substitute a certified copy for it when it is obtained. Is that satisfactory to Counsel? All right.

MR. HUNTER: This isn't a very cogent one at the moment, my lord, but it is really to appraise and limit the loss and damage to equipment and impounded fishing vessels owned by persons of

Japanese racial origin under P.C. 288, and to set up a fund of $80,000.00 to pay for the loss. That was later augmented somewhat.

(P.C. 3737 MARKED EXHIBIT NO. 14).

MR. HUNTER: P.C. 5523 of 29th June, 1942. This clarifies the power of the Custodian to deal with Japanese agricultural land by providing it may not be leased or sold without the consent of the Director of Soldier Settlement of Canada, and it says the Director of Soldier Settlement of Canada shall make an appraisal of the present day value of all agricultural land vested by persons of the Japanese race.

(P.C. 5523 MARKED EXHIBIT NO. 15).

MR. HUNTER: Privy Council Number 6247 of July 20th, 1942. This Order vests the vessels un-sold by the Disposal Committee formed under P.C. 288, and they are vested as of August 1st, 1942, with the Custodian, together with all unfinished business at that time which is vested as of the same date. This is a certified copy which I will file as Exhibit 16.

(P.C. 6247 MARKED EXHIBIT NO. 16).

MR. HUNTER: Privy Council Order No. 6685, dated August 4th, 1942. This is put in purely for the purpose of continuing the continuity. I don't think it is of any great moment. That amends Privy Council Order 5523, which was the one having the values made by the Director of Soldier Settlement, and so forth.

(P.C. 6885 MARKED EXHIBIT No. 17).

MR. HUNTER: Privy Council Order 469. This is a fairly important one, my lord. It revokes Privy Council Orders 5523 and 6685 and gives the Custodian full power to liquidate these fishing vessels or what comes into his hands, and gives the Custodian power to liquidate, sell, or otherwise dispose of all property of the Japanese since the date of such vesting.

MR. VIRTUE: My lord, I am just trying to be helpful, but I notice in the list we have this Order-in-Council is dated January 19th, 1942, but I think it is dated January, 1943, is it not? I may be mistaken.

MR. HUNTER: Yes, 1943.

(P.C. 469 MARKED EXHIBIT NO. 18).

MR. HUNTER: The next is Privy Council Order 7414 dated the 31st of December, 1945. This is, first, to continue all orders and regulations in force after the National Emergency Transitional Powers Act of 1945 comes into force. It may not be relevant but it shows the continuity, anyway. Rather than have a hiatus between the old regulations and the new ones formed under the Act, this was passed prior to the Act coming into force, and discontinued them holus bolis.

(P.C. 7414 MARKED EXHIBIT NO. 19).

MR. HUNTER: The next one, which will not be an exhibit, I will file for the convenience of

Counsel; 11 George VI, Chapter 24, An Act to Continue the Revised Regulations Respecting Trading with the Enemy, 1943. That was when they decided to put the Regulations into Statutory form rather than have them stop when the War Measures Act discontinued. Again, I file, but not as an exhibit, the Inquiries Act which is Chapter 99 of the Revised Statutes of Canada 1927.

Then a certified copy of Privy Council Order 1810 in the year 1947. This is the original Order-in-Council appointing your Lordship and setting up this Commission.

(P.C. 1810 MARKED EXHIBIT NO. 20).

MR. HUNTER: Then as Exhibit 21 the amending Order-in-Council numbered 3737 of the 17th of September, 1947.

(P.C. 3737 MARKED EXHIBIT NO. 21).

MR. HUNTER: My lord, at this stage, and very briefly, if it is your wish, I should like to outline what I believe to be the limitations of the terms of reference of this Commission, insofar as they are applicable to claims. May I proceed?

THE COMMISSIONER: Now, just before we leave the Orders-in-Council, have other counsel present any comment to make in regard to the Orders-in-Council, or as to whether any Orders-in-Council have been omitted that should have been put in?

MR. BREWIN: My lord, I think they have all been put in. I suppose we have hardly had time to look them over. There may possibly be others, but I suppose we can have leave to file them. I think this is very complete.

THE COMMISSIONER: That is probably the best way to leave it. If any Counsel desires to raise any question regarding the Orders-in-Council put in, or the omission of any that should have been put in, they may do so later.

MR. VIRTUE: I think perhaps, my lord, there is one Order-in-Council that might turn out to be necessary later on, that is P.C. 9590, which is the one dated the 7th of December, 1941, immediately after the war with Japan was declared, and made the regulations respecting trading with the enemy apply to Japanese.

THE COMMISSIONER: May I have the date of it again, Mr. Virtue?

MR. VIRTUE: The 7th of December, 1941, sir. It is P.C. 9590, I think.

THE COMMISSIONER: Perhaps it would be as well, Mr. Hunter, to put it in on the chance it will be required later.

MR. HUNTER: Isn't it included in the printed edition of the Regulations respecting trading with the enemy?

THE COMMISSIONER: The 1939 one? It would be 1943, I presume.

MR. HUNTER: In one of them it is listed, if I

remember rightly. There are two Privy Council Orders on the front of it. It is on the blue page on the very outside, my lord.

THE COMMISSIONER: No, this is 3959 and 5353.

MR. HUNTER: This is P.C. 9590, dated which?

MR. VIRTUE: The 7th of December, 1941.

MR. HUNTER: Well, if your Lordship wishes, I will write and get a copy of it.

THE COMMISSIONER: I think, in view of the fact that some question has been raised, that it should be here on file.

MR. HUNTER: I might have a copy here, I will just look and see. I will file the Canada Gazette, dated December 7th, 1941, publishing Privy Council Order 9590, dated the 7th of December, 1941.

(P.C. 9590 MARKED EXHIBIT NO. 22).

THE COMMISSIONER: You are now going to deal with the terms of reference, are you?

MR. HUNTER: I should like to, if you wish, my lord.

THE COMMISSIONER: I think it might be as well if we sought to clarify what the terms of reference mean. Are other Counsel ready, or would they prefer to leave this until later?

MR. BREWIN: My lord, we had a number of points in mind about the terms of reference that we thought it would be convenient to discuss at this time, and I am sure we would all find it very helpful to hear my friend's

views about some of the limitations of the terms of reference. We may agree with some and we may not agree with others. The only reservation I would like to make clear myself is that there may be points on which we will ask your Lordship for rulings at this stage. There is a danger, however, in deciding on the interpretation of these Orders before we know the body of the evidence and the various points that may arise. I myself think it would be helpful to have a discussion on it, but I would like to make the reservation that of course we are not fully prepared perhaps because we don't know what points my friend will bring up. They may coincide with matters we have considered, and they may not coincide with matters we have considered, but certainly I am sure at this stage we are not going to determine, or, rather, I am sure the Commission won't determine what the limitations of these terms of reference are, but the discussion might be helpful.

THE COMMISSIONER: You would like a fishing expedition on the subject of the terms of reference, without any ruling being made now?

MR. BREWIN: I think there may be matters on which your Lordship will see fit to make rulings and on which we should be very happy to ask your Lordship to make rulings. I don't know what my friend is going to say, of course, but

I do want to sound a note of warning that there are many matters about which it is difficult, I would think, to come to a concluded opinion in advance.

THE COMMISSIONER: Suppose you leave it this way, Mr. Brewin, that wherever Counsel can agree on interpretation, we can settle those features now. If there is disagreement, however, you would prefer to have no ruling made at this stage?

MR. BREWIN: Yes, that is so. Of course, your Lordship may think it advisable to make some rulings, even with respect to matters in which there may be some disagreement as between Counsel.

THE COMMISSIONER: There is this difficulty, as I see it, Mr. Brewin; I am going to have the benefit of an argument from all Counsel today, whereas I perhaps will not have the benefit of that a little later. As I understand it, yourself, and possibly Mr. Virtue, are not going to be present at the British Columbia sessions. I assume you are not going to be very happy about being bound by rulings made on interpretation of the terms of reference in your absence.

MR. BREWIN: My lord, may I put it in a little different way? I think it is inevitable your Lordship will be required to make rulings as you go along. The major matters of interpretation of the Orders may be provisional

because we are acting under a Public Inquiries Act, and the Inquiry is not concluded until it is finished, so it does seem to me there will be another occasion when probably most Counsel will be here when your Lordship comes back to Vancouver after having heard all the oral evidence, where at that stage we may have all of the evidence in and we will all have a thorough grasp and understanding of it and what it is all about. So I don't think this is the last opportunity we will have to have a full and complete argument on any of the different points of interpretation that may have arisen, but I do say it may be very difficult -- I don't know what my friend is going to say -- it may be very difficult for us to express an opinion about some point that we hear for the first time this morning; and while I quite agree it would be helpful to have a discussion, nevertheless I do want to sound that note of caution that I hope my friend won't be asking for too definite rulings on some things at this stage.

THE COMMISSIONER: If we can clear the ground of any difficulties now, or any apparent difficulties, I think it is desirable we attempt to do so. Perhaps we had better make no decision in advance and I will hear Mr. Hunter's views and the views of other Counsel present.

MR. HUNTER: My lord, I am somewhat responsive to

what Mr. Brewin has been saying. I quite agree there may be some things onwhich it might be inadvisable at the present time to make rulings, but I do feel there are certain things on which we will have to have rulings to start with or if the rulings are made later, and made in a certain way, we shall not hear a great many cases that would have been heard under the circumstances.

THE COMMISSIONER: Yes, that is the feature that had struck me. Insofar as possible I think we ought to clear the ground now. However, go ahead, Mr. Hunter, and we will see whether we are imagining difficulties or if they are real ones.

MR. HUNTER: Possibly they are imaginary. I should like to preface my remarks by saying that when I speak of property, I am speaking of property of the Japanese race evacuated from the protected area of British Columbia, and similarly when I speak of persons, I am speaking of persons of the Japanese race who were so evacuated.

In my opinion, and I say this with all humility, I feel that the task of this Commission is two-fold; first, to ascertain and to recommend payment of the difference, if any, between the sale price of real and personal property, and the fair market value thereof at the date of sale. Secondly, to ascertain and recommend payment of the fair market value

of personal property vested in the Custodian and lost, destroyed or stolen while in the possession or under the control of the Custodian, or some person appointed by him.

It will be noted that by proviso specifically set forth in sub-paragraph (b) of Privy Council Order 1810, as amended by 3737, that no claim shallbe considered in respect of property lost,destroyed or stolen while under the custody, control or management of any person, other than the Custodian, appointed by the owner of the property. The natural inclination, my lord, after excluding those claims coming within the scope of the proviso, might be to admit all other claims. I submit, however, that there is a further group of claims which, upon the wording of sub-paragraph (b), are specifically excluded and I am referring your Lordship to that group of claims in which property has been lost, destroyed or stolen while vested in the Custodian but which has not yet come into the possession or under the control of the Custodian or some person appointed by him.

THE COMMISSIONER: Just let me understand you, Mr. Hunter. Is the position you are taking now that there is no liability on the Government or the Custodian in the interval between vesting and the taking of actual possession?

MR. HUNTER:. Correct, my lord. The sub-paragraph specifically provides that such property must

be lost, destroyed or stolen, and I quote, "while in the possession or under the control of the Custodian, or some person appointed by him". If these words are to be given any meaning, I think it must be assumed that in the absence of anything to the contrary, they must be given their ordinary meaning. I believe that it must be further assumed, my lord, that the Privy Council has differentiated between vesting, that is ownership, and possession or control.

THE COMMISSIONER: Now, wait a minute. What does "vest" mean? It has two meanings, has it not; one, vesting possession or control; the other, vesting title; and it would appear that vesting as used in this Order means vesting possession and control rather than vesting a title.

MR. HUNTER: I should like to comment on that, if I may, my lord. The ordinary meaning -- first of all, possession is occupancy, if it is real property. It is hard to find a word for personal property other than possession, but it means having some physical contact in some way with the property. The ordinary meaning of control is to be in a position, where one superintends or regulates. It is my submission, my lord, that before a claim may be properly made before this Commission, for personal property lost, destroyed or stolen, all of four conditions must be met; first, the

property must have been vested in the Custodian; secondly, the property must have been lost, destroyed or stolen; thirdly, the property must be in the possession or under the control of the Custodian, or some person appointed by him.

THE COMMISSIONER: Let me get this now. The property must be in the possession or under the control of the Custodian or somebody appointed by him?

MR. HUNTER: Yes. Then, fourthly, it must have been lost, destroyed or stolen so that as a result the claimant suffered a loss equal to the fair market value as at the date of the loss, destruction or theft.

THE COMMISSIONER: Let me see if I have that. If I am correctly paraphrasing your submission, it is this, that the loss must have given rise to a monetary loss equal to the fair market value.

MR. HUNTER: Correct, my lord, that is the wording of the Section. May I very briefly review those four conditions: First, that it must be vested in the Custodian. I think that is unambiguous and unequivocal; secondly, that it must have been lost, destroyed or stolen. Those three verbs are used deliberately, and I feel whatever happened to that property will have to come within the scope of those three verbs. Next, that it must be in the possession or under the control of the Custodian, or some

person appointed by him. I submit the Custodian will have to be in possession, or he will have to be in a position where he is occupying it or in a position where he is superintending or controlling or regulating this property.

THE COMMISSIONER: As I understand your position, it is this: It is not to be deemed constructive possession but an actual physical possession by the Custodian or someone appointed by him, is that it?

MR. HUNTER: That is my submission, my lord. It may be that later I shall have some cause to change it when the full implications of my contentions are made. It may be, if the full implications of what I contend are correct, that there may be certain cases in which hardship would be suffered, and at that point I might have to modify my contention and constructive possession might be considered, but at the moment I should like to make my contention that he must be in actual possession.

THE COMMISSIONER: I suppose Mr. Brewin and his associates won't object to you giving ground later if you are upheld in your interpretation.

MR. HUNTER: Now, in support of my submission, my lord, that the Privy Council has differentiated between "vesting" and "possession" or "control", reference is made to Privy Council Order 1665 whereby, with the exceptions therein named,

all property of all Japanese was vested in the Custodian. In sub-section (1) of paragraph 12, the vesting paragraph, the words used are, "shall be vested in and subject to the control and management of the Custodian". This wording clearly indicates that while the property is vested in the Custodian, it is only subject to his control and management. They do not say anything that would indicate that it is both vested and in his control. If they had wished to have done so, they could have clearly indicated it by suitable wording.

This wording is again reiterated in sub-section (3) of Section 12, and reference is again made to Privy Council Order 2483 where a new sub-section 12 is substituted for the old.

THE COMMISSIONER: 2483?

MR. HUNTER: 2483, my lord, of the same year. It will be noted there that the same words are used, "shall be vested in and subject to the control and management of the Custodian". It is therefore submitted that this differentiation has been continuously used, and is again used in Privy Council Orders 1810 and as amended by 3737.

It is, therefore, my lord, my submission that no claim may be validly made for personal property lost, destroyed, or stolen while vested in the Custodian until such time as it

Proceedings.

has come into his possession, or under the control of the Custodian or some person appointed by him.

THE COMMISSIONER: There again meaning physical possession.

MR. HUNTER: Yes, my lord.

THE COMMISSIONER: I wonder if it would be advantageous to Counsel on the other side to take a break for ten minutes so that they may collaborate on the views expressed on this point by Mr. Hunter.

MR. BREWIN: Yes, my lord.

THE COMMISSIONER: Mr. Secretary, we will adjourn until 12 o'clock.

(PROCEEDINGS RESUMED AFTER RECESS).

MR. VIRTUE: My lord, as far as some of us are concerned, in order to save the time of the Commissioner, if your Lordship is willing we would be glad to have Mr. Brewin speak to some of the main issues, and if there are some things overlooked, then some of the rest of us may have something to say.

THE COMMISSIONER: Very well. It is simply on Mr. Hunter's submission as to interpretation.

MR. BREWIN: No, my lord. I inquired from my friend and he told me the remarks he made included argument on all the points he intended to raise at this time, so that being the case I intend to deal with that point and to raise other points now as well that we

have in mind to bring before your Lordship.

THE COMMISSIONER: Let us confine ourselves, first of all, to Mr. Hunter's submission on the interpretation of the terms of reference, then we will go on and deal with other points afterwards.

MR. BREWIN: My lord, the first thing I would like to say about that deals with the general interpretation that should be given to these Orders, and will apply to a good many points of interpretation that may arise. One has to consider the scope and intent of the Orders-in-Council, and the first point I want to make is that a large and beneficial construction should be given to that language because the clear intent of these Orders is to do justice and to do what is fair to a particular group of Canadian citizens and residents who, through no fault of their own, suffered a special burden by reason of conditions that arose during the war.

There is much, both in the original Orders, and in this particular Order, and in the history of the whole matter, that indicates that that is the intent of the Government and that no, shall I say, narrow, or ill-liberal construction should be given when two interpretations are open. The purpose is to, so far as possible, and within the terms of this Order-in-Council, give recompense to those who

suffered loss as a result of the evacuation, and as the incidental result of the evacuation lost their property of one sort or another, and, my lord, I point out there is no question here in the amended terms of reference of any fault on the part of the Custodian at all.

THE COMMISSIONER: I do not think there is much room for argument there, and I think Mr. Hunter concedes your proposition.

MR. BREWIN: Yes, my lord. Then, perhaps, I had better get on and deal with this particular point that my friend has raised, although I might, in connection with some of the other points we have in mind, have something generally to say about the conditions under which these Orders came about.

First of all your Lordship will remember the words of the vesting Orders which were taken as a protective measure. The actual wording appears in P.C. 1665, and Section 12, with the very opening words, vests this property in the Custodian, "as a protective measure only", and that phraseology was continued into the amendment in P.C. 2483.

THE COMMISSIONER: Let us see how far that submission goes. You say in view of that language as a protective measure that some responsibility was assumed immediately upon vesting?

MR. BREWIN: That is the point, yes, and that is true, and it shows the general intent, and I

am going to point out to your Lordship if my friend's interpretation was right, the person who would suffer most would be the person whose loss was greatest. Supposing the Custodian, through no fault of his own, takes from six months to ten months, shall we say, to reach some remote place and take actual physical possession, which my friend says is essential before any possession arises, it is in that very case where the protection was most needed but could not be supplied for physical and practical reasons beyond the control of the Custodian, then the claimant, the Japanese-Canadian, who has been evacuated, suffers a very grievous loss because, in the meantime, his property has deteriorated. It may have been lost, destroyed, or stolen, the very words that are used, far from their being wrongly valued, and to say that the Government intended that the claims should only be paid where the Custodian was able to take actual physical possession would defeat the whole intent, which is to give a fair compensation to all those affected by these Orders, and again seems to me rather to hark back to the terms of the original Order-in-Council where emphasis was laid on some possible default on the part of the Custodian, whichis clearly out of consideration at the present time.

So I say from the general intent and purpose of this Order-in-Council which is to do justice, the interpretation that my friend relies on would have exactly the opposite result. Mr. "X", whose property is in Vancouver, shall we say, and in respect of whom the Custodian is able to send someone immediately after this vesting Order to control a property, is allowed to make a claim for compensation. Mr. "Y", who lives in some more remote part of the country, which the Custodian cannot reach for a long time, or who, by pure accident, shall we say, the Custodian is not able to send his representative to protect his property, and his property is lost, destroyed or stolen, then he receives nothing. That, on the face of it, is inequitable and we should not look for an interpretation that has that result.

Now, let us concede that if, notwithstanding what I have said, the wording of the Order is clear and excludes the interpretation that my friend gives as the only reasonable interpretation, that your Lordship might feel constrained by the terms of the reference, but as I am going to point out in a minute the wording, in my submission, is far from supporting my friend and goes the other way, but what I am now saying is, if there is any doubt on the interpretation, that is, if there are two reasonable interpretations, then the contention

that my friend puts forward as one interpretation is a most unjust and most inequitable interpretation that there could be in respect to this matter, and I should only be held to it if there is no other wording that can be used.

THE COMMISSIONER: You say if there is doubt, the doubt ought to be resolved in favour of, rather than against, the Japanese?

MR. BREWIN: Quite so, because of the whole purpose of these regulations. It was done for their protection and they are being compensated, with justice, for things that happened that were of no fault of anybody's but were beyond their control, and put a special burden on that particular group of people affected.

Now, when one comes to the actual wording, my friend puts his emphasis on the words, "While in the possession". Now, my lord, this point my friend has raised, I may say, wasn't considered, I don't think, by Counsel before this and we don't have the authorities here at the moment, but your Lordship will be thoroughly familiar with the cases and there are plenty of authorities that go to the proposition that the word "possession" is to be, generally speaking, clearly distinguished from the popular meaning of possession in the sense of actual or physical possession.

THE COMMISSIONER: I suppose you will concede that

"possession" can be interpreted in one of two ways, physical possession or constructive possession.

MR. BREWIN: Yes, my lord, but I would say this, as a general rule the interpretation in legal documents the prima facie meaning, or the normal meaning, is not possession in the broadest sense. The right to control is possession. I am going to point out that the Custodian, by these Orders, was given the right to control, manage and sell from the very earliest moment these chattels were vested in him, and no one else had possession, I would point out. So, my suggestion is where the draftsman of a regulation intends to limit the meaning of the word "possession", as it may be limited, that the usual way to do it is to use some such term as "actual" or "physical" possession. It certainly would have been very easy to have been done. As I say, we haven't the authorities here, and the definitions of possession given in them. There are very many of them and the word may have different meanings in different contexts, but certainly my submission is that the general and most usual meaning in a legal document is the power to control.

Then, my lord, we come on to the next phrase which is, "or under the control of the Custodian or some person appointed by him".

My friend points out a slight difference in the language of P.C. 1665, where the Order itself says that this property (a) shall be vested in, and (b) subject to the control and management of the Custodian. Now, with great respect, I think my friend is drawing an over-fine distinction between the words "in control" and "subject to the control". My friend, in addressing your Lordship, used another word which I say would be synonymous when he said, "under". "Subject to control" means the same way of saying, at least that is my opinion, -- "it is in their control", and there is no essential difference.

THE COMMISSIONER: Just one moment before you go on, Mr. Brewin. Might not the fact that paragraph (b) uses the two phrases, "while in possession" and "under control", might not that indicate that possession is to be taken as physical possession, whereas "under control" would exclude or could exclude physical possession but include a form of constructive possession. It might be that there would be goods of a man on Vancouver Island and the Custodian would be here in Vancouver, nevertheless since the property is vested in him, and under his control, a liability attaches. I simply throw it out as a suggestion.

MR. BREWIN: Yes, my lord. I am not quite sure that I follow clearly the point that your Lordship

Proceedings.

is making. Your Lordship is suggesting that if the word "possession" should be given the broad meaning I have given it, it would then be unnecessary to add "under the control of the Custodian". My lord, my suggestion in answer to that would be that it would be possible for something to be under the control of the Custodian and still not be in possession. In the eyes of the law, possession is a pretty general word and there might be some distinction. My submission is the phraseology is intended to be all inclusive and to make sure nothing is left out, and, in any event, I am now presenting the argument that at least from the date of the vesting Order, even if it were held on the facts of the particular case that the Custodian did not have possession, it did come under his control immediately these vesting Orders were given. If we don't get in under the first clause, "being in possession", we are in under the second one, "under the control of the Custodian". I appreciate the force of your Lordship's observation, but I still think it would be applying a rather fine interpretation to restrict the meaning of possession merely because you add "under the control of the Custodian", which might or might not constitute full, constructive possession.

Now, my lord, to get back to the terminology of 1665 that it is subject to the control of the

Custodian, I would point out that under 469, which is Exhibit 18, your Lordship will see that the power and responsibility of controlling and managing the property of persons of the Japanese race is deemed to include and to have included from the date of the vesting all such property in the Custodian with power to liquidate, sell, or otherwise dispose of such property. So we are in the position from the very beginning with the Custodian that not only was it subject to his control, but he had that wide power. So my submission is that that constituted all the effective elements of possession, and if he did not have possession, who did have possession of these things? I think possession must be somewhere. I recall something from law school days that there must be possession somewhere. Supposing these people who had been evacuated no longer had possession, and in actual fact I think it will be shown during the evidence that some of them sought to exercise some right of possession by instructing someone to do something after the vesting Order had been made, and the Custodian quite rightly took the view they had no right of possession left or right of control or right of ownership, but the full control and possession lay in him. I think it will be found to be a fact there are a number of cases of that sort.

Then, lastly, on this point I call in aid the proviso which seems to me to throw light on the meaning of the original terms, and it would be unnecessary and a waste of words if the contention that my friend made was the right one. It says, "provided that no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person other than the Custodian, appointed by the owner of the property." Supposing what my friend says is right and the Custodian has not taken physical or actual possession, either through himself or his agent, of some chattels and those claims were to be excluded, there would be no need for this proviso at all because if they were under the control or management of some person other than the Custodian appointed by the owner of the property, they certainly wouldn't be in the actual physical possession or under the control of the Custodian himself. So that the whole last proviso would be entirely unnecessary on the contention that my friend makes.

THE COMMISSIONER: Let us see what it does mean, "provided that no claim shall be considered in respect of property lost, destroyed or stolen while under

"the custody, control or management of any person other than the Custodian". What it comes down to, shortly, is this, is it not, if a Japanese having been evacuated turned his goods over to a friend or neighbour, asking that friend to care for them, then he could not have any claim?

MR. BREWIN: Yes, my lord, I think that is right. In individual cases, we may have some possible disagreement on the facts as to whether the particular case falls within the proviso and what is custody, control and management. There will be all sorts of gradations of cases. There might be an informal thing such as someone saying, "Keep an eye on my property", but whether that gives custody, control and management is very doubtful. I imagine we would have to argue it didn't. Let us take the case of a bailee. Supposing the Japanese-Canadian who was evacuated had gone to a warehouse and deposited his goods there and while they still remained in the control of the warehouseman, or the bailee, in whose custody they had been placed, they were lost, destroyed or stolen, then I think we would have to concede that no claim could be made.

THE COMMISSIONER: And, conversely, if they are simply left. The goods must be either in the possession or control of the Custodian.

MR. BREWIN: Quite so, my lord -- quite so. After

all, there is perhaps very little reason why the Government should take the responsibility for acts of private individuals who are entrusted by the individual Japanese-Canadians with their property. They chose what they thought was a good way of protecting it, and if there is any complaint about it, it should be against the individual concerned. What happened in so many of these cases was they had to leave in somewhat of a hurry and in a state of confusion and in many cases they packed up handbags and got out of the house and left it there and there was no one there at all.

As I said before at the beginning, it would be a strange interpretation to say during that period that the Custodian was in control with the right to step in and the duty so far as it lay within his power to exercise protection over those goods and the evacuee being away off somewhere else where he could do nothing about it, that he would have no claim until the Custodian could send someone in to see about it. If my friend's contention is right, you will run into all sorts of problems as to when the Custodian took over, because from what I have heard the Custodian came along and made a list of the chattels and left them where they were. Did he have actual possession by reason of making the list? The determination of possession in a physical

sense would mean the investigation of all the facts in the individual case, a most enormous task with unsatisfactory results.

I think, my lord, that is all I have to say on that particular point.

THE COMMISSIONER: While you are on your feet, Mr. Brewin, there is the further thought that the purpose of the proviso could well have been to protect the Government against fictitious claims arising from the fact that the goods were left in the custody of a friend of the evacuated Japanese-Canadians, and therefore it is conceivable that that friend might have disposed of the goods leaving the claimant to make a claim which was a fictitious one, and that is what the Government is seeking to counter.

MR. BREWIN: Even without going to the extent, my lord, of saying necessarily it was a fictitious claim, it would be a peculiar thing if one had left something with another, especially perhaps a bailee for hire, and he had failed to look after the goods or could be induced to. Suppose he had failed to look after the goods and was therefore liable, that would present a claim against the individual. I don't know that it was so much to protect the Government from fictitious claims.

THE COMMISSIONER: Perhaps the term I had chosen was not apt, but at least I conveyed the thought that was running through my mind.

MR. BREWIN: Yes, my lord.

THE COMMISSIONER: Really it comes down to this, someone else having assumed the responsibility that the Government has provided, or could have been providing, under this proviso there should be no liability under those circumstances.

MR. BREWIN: Yes, and if I may say so, it is a reasonable proviso, though I don't think my friend's argument would be a reasonable interpretation of it. As I said before, he made this very proviso purely unnecessary. There wouldn't be any point in having a proviso, because every case covered by the proviso would be excluded by the narrow terms of the proviso itself. Now I think that is all I have to say on this particular point.

THE COMMISSIONER: Have you considered the meaning or the interpretation that is to be put on the word "vest"? I had given some thought to this earlier and I might point out to you that Wharton defines this as (1) either to place in possession, to make possessor of, or to give an absolute interest in property when a named period or event occurs; and his second definition is either to place in possession of -- to make possession of -- or to give an absolute interest. In other words, a relationship of trustee or bailee or an actual transfer of title.

MR. BREWIN: Well, my lord, my submission is if it

is used in a document of this sort, it usually means the second of those alternative meanings. It means they get a legal interest, the property vests.

THE COMMISSIONER: Is that not negatived by the very fact that the Order refers to protective measures?

MR. BREWIN: No, I don't think it is, my lord. I think it has probably given them a legal interest for the purpose of clearing up any problems as to title, and so on, that there might be in order to protect matters of title. That would be my opinion. I don't think it would be necessary to add these other words about possession if the word "vesting" was used in the sense of the quotations to which your Lordship referred. I do think in Statutes of this sort that vesting usually means, and I think it would mean here, giving the legal property right and it may be necessary to have done that in order to set at rest all sorts of problems that might arise. After all, the power was given to transfer and sell. That power to sell might be a very protective measure, and the only effective way in which you could conserve the assets of the person concerned.

THE COMMISSIONER: That came later, did it not? There was no express power to sell in the first instance.

MR. BREWIN: Not in the first instance.

THE COMMISSIONER: What was the change in the sub-section before they gave the power to sell? How was it phrased?

MR. BREWIN: P.C. 469 reads in this way, and it is rather peculiar language:

> "Wherever, under Orders in Council under the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, the Custodian has been vested with the power and responsibility of controlling and managing any property of persons of the Japanese race evacuated from the protected areas, such power and responsibility shall be deemed to include and to have included from the date of the vesting of such property in the Custodian, the power to liquidate, sell, or otherwise dispose of such property".

THE COMMISSIONER: There seems to be some support for your contention there when P.C. 469 uses the language shall be deemed to include and have included power to sell.

MR. BREWIN:. When something of this sort happens, my lord, if you vest property in someone, it might be a sound matter of legal interpretation that you gave them the power to sell, but in practical matters lots of people not being familiar with legal language would doubt that

power and complain about the exercise of that power. So my submission is that part of 469 was passed to extend the power of the Custodian.

THE COMMISSIONER: Definitely.

MR. BREWIN: Definitely, to make it absolutely clear so he wouldn't be criticized by people who didn't understand the full significance of the original Order.

THE COMMISSIONER: Does that conclude your submission on that first proposition?

MR. BREWIN: Yes, my lord, on that particular point.

THE COMMISSIONER: If you have no objection, I will see if other Counsel have anything to add on that before you go on with something else. Mr. Virtue, have you anything to add?

MR. VIRTUE: My lord, very briefly. I agree with respect to what my learned friend has said, but I just wanted to emphasize one thing your Lordship brought out already, and it is this; that under Clause (b) of P.C. 3737, that is the one amending the original Commission, your Lordship pointed out the use of the word "or" there, that is "lost, destroyed or stolen while in the possession or under the control". I think had my learned friend, Mr. Hunter's submission been correct, the word used there would have been the word "and", because that is in effect what Mr. Hunter's contention would mean that the goods must be in possession and control, and by the Privy

Council expressly using that word "or", as your Lordship suggests, I think it has therefore widened the responsibility of the Custodian.

Just one other thing remains of very great importance with regard to the general intent of the Order appointing the Commission. I just wanted to call to your Lordship's attention some words that had escaped me before. In the preamble of 3737, which you remember was passed in order to remove any negligence or question or negligence on the part of the Custodian, the preamble says, "he is of opinion that the terms of reference should be expressed in terms in line with the Fourth Report of the Standing Committee of the House of Commons on Public Accounts", and so on, which was concurred in by the House of Commons. Now, if there is any question about interpretation, I follow up my learned friend, Mr. Brewin's, remarks by saying that seems to me to be a clear expression of intention, that the broad line of the Inquiry shall be in accordance with the wish of Parliament.

THE COMMISSIONER: On your last point, how are we going to determine what is the wish of Parliament?

MR. VIRTUE: By reason of the preamble itself which recites, "and was concurred in by the House of Commons". I am not over emphasizing it, but I say simply that the whole intent of the

Order was as my learned friend has said that substantial justice be done to those, who, through no fault of their own, were turned out of the Province.

One other little point, my lord, and this is under P.C. 469; I just wanted in passing to point out that not only was the power of the Custodian referred to more than once, but his power and responsibility were referred to. It simply links up with the fact that this was a protective measure. It wasn't for the purpose of taking anyone's property from them, it was a protective measure, and the responsibility was directly put upon the Custodian.

THE COMMISSIONER: Mr. McMaster, have you anything to add?

MR. McMASTER: I have nothing to add, my lord.

THE COMMISSIONER: Mr. Tamaki?

MR. TAMAKI: No, my lord.

THE COMMISSIONER: Mr. McLennan, have you anything to add?

MR. McLENNAN: As a possible alternative, my lord, to what my friends, Mr. Brewin and Mr. Virtue, have suggested is the proper interpretation, with which I agree, but as an alternative I would submit that the words "while in possession and under the control of the Custodian", that the word "possession" as used there involves knowledge. That is, it is expressed so as to exclude goods where the Custodian had

no information about the property, and had no knowledge or no opportunity to take any steps to take care of the property, but as soon as he acquires information that the property is there, then there is possession.

THE COMMISSIONER: Let me understand that and see how far it goes. You say that the term "possession" involves knowledge in the Custodian?

MR. McLENNAN: That there are goods to be taken care of.

THE COMMISSIONER: That there are such goods?

MR. McLENNAN: Yes, otherwise the Government in framing this Order-in-Council may have deemed that the Custodian should not be responsible when he had no information that there were any goods not left in the custody of someone else but goods left somewhere.

THE COMMISSIONER: That is against your interest.

MR. McLENNAN: It is to a certain extent against my interest. I say I do subscribe to what my friend Mr. Brewin has said and I do not go as far as Mr. Hunter goes. I say this is a possible alternative.

MR. VIRTUE: I might say, my lord, I would not be in agreement at all with what contention. The Government knew very well the situation and the Custodian knew very well the situation, surely. Here were hundreds of people being evacuated from the country, and they are presumed to know that all those people must have

had some goods.

THE COMMISSIONER: Mr. Pratt?

MR. PRATT: My lord, I would like to subscribe to Mr. McLennan's proposition. I represent a number of claimants where this very situation you have had described has arisen, and the Custodian, as I recollect it in those days, was a very busy man with no staff or equipment here. He was notified and had knowledge in many instances where these Japanese had left overnight and left their goods and chattels in no one's care. The Custodian had knowledge of it but did not get around to them and was unable to get around and take possession of those goods and chattels.

THE COMMISSIONER: When you say he had knowledge or had notice, you mean express notice had been given him?

MR. PRATT: Express notice had been given him, and otherwise. The Mounted Police took charge of these individuals and ordered them out of the cities and towns overnight. I recollect several instances where individuals had to board up their houses and go suddenly. The Custodian knew about it but didn't have the equipment or machinery to take charge. There were houses that were broken into and goods and chattels stolen in some cases. I am speaking about a number of cases that I represent. Therefore, I submit, while the Custodian did not have

physical possession, he had knowledge of that situation but was unable to control it, therefore a loss was sustained, and I submit it comes within the ambit of your Commission, sir.

THE COMMISSIONER: Mr. Hunter, have you anything you wish to add in reply?

MR. HUNTER: Well, my lord, Mr. Brewin had spoken about what a hardship would take place where some Japanese left his property and his home and the Custodian was not able to take possession of it for some considerable length of time and where it might be looted. I agree with him that would be a hardship, and I think it would be wrong in that case that the Japanese should not be compensated. That is why earlier I said I might like to retract my stand somewhat because I could see that certain cases of hardship would occur, but if my friend Mr. Brewin's contention is correct, then certain cases of hardship to the taxpayers of this country might occur. For instance, supposing someone leaves his property in a home and is brought down to the camp and fills out a J.P. form, and for some obscure reason, or because he doesn't trust the Government, he says he has no chattels.

THE COMMISSIONER: You have more information on this subject than I have, Mr. Hunter, what is a J.P. form?

MR. HUNTER: A J.P. form is a form which the

Custodian had the evacuees fill in showing what property they owned, my lord. Now, admitting that when that J.P. form is made out and it shows chattels there that that might be deemed to be constructive possession, nevertheless, if he certifies, as he does in that form, that he has no chattels of any kind and deliberately writes in, "None", then to my mind it would be quite wrong that he should come along later and claim all kinds of chattels were there and ask compensation therefor.

I would even be willing to concede, if having said he had none, later the Custodian found there were some, that the Custodian should have to account for those which he found and took over, but where the Japanese is claiming a lot of property that he denied having which the Custodian never found and never knew he had, or, in the alternative, where he is asking for property compensation for property of which he declared he had none in his form, over and above what the Custodian later discovered, he should not be permitted to make a claim. It might be your Lordship would prefer to deal with that on the ground of estoppel.

THE COMMISSIONER: That is what occurred to me. Does it not raise very pointedly the question of credibility? In other words, if a claimant comes in before me and says that he has a thousand dollars worth of goods, or had a

thousand dollars worth of goods and under cross-examination you show that he has declared to the Custodian at the time that he had none, then I think I would have great difficulty in accepting his initial statement, and I don't think Counsel could take any great objection to the claim being thrown out in those circumstances.

MR. HUNTER: Well, that is an example that I brought to your Lordship's attention and it may be that specific example should be dealt with on some ground such as credibility or estoppel.

THE COMMISSIONER: Yes.

MR. HUNTER: But it does seem to me if, for example, constructive possession were conceded on the part of the Government, rather than actual possession, that no hardship would occur. That is really the basis of my argument.

I have listened to the other arguments of my friends with the greatest of interest, and I must congratulate them on their skill. I should like to point out that in the original order it refers to that property which the Japanese were not able to take with them. In some instances the Japanese took property with them and I don't think it can be assumed automatically that the Japanese left property behind. In many cases they sold or gave it away. I do not know that you can actually assume that the Custodian must have had know-

ledge that they left property behind them because in some cases they didn't, and similarly I think it was my friend, Mr. Brewin, who referred to P.C. 469 which vests the power and responsibility of controlling and managing the property of these persons. He was vested with the power, but that still doesn't mean he took it over and did control it and manage it. However, those are merely formal things, and I agree with Mr. Brewin that a reasonably liberal interpretation of this thing should be given. I think that is the purpose of the Government, too. I think it a reasonably liberal interpretation to prevent any possibility of the people of this country paying any claims which should not be here on the grounds of justice and equity. That is why at this point I suppose if we took the word possession and said constructive possession, very little unfairness, if any, could occur to the Japanese claimants.

THE COMMISSIONER: I propose to take this question under consideration. I think it very desirable that there should be a ruling on the point raised by Mr. Hunter before we start the taking of the claimants' evidence, and while it may not be possible for me to reach a conclusion before we open in Kamloops, I will certainly on that occasion on the opening at Kamloops give my ruling on this point.

MR. BREWIN: My lord, I think we will probably ask

my learned friend, Mr. McMaster, or Mr. McLennan, to give your Lordship one or two authorities on the usual meaning of the word "possession".

THE COMMISSIONER: I will appreciate any assistance Counsel can give me.

Mr. Hunter, is there anything further on any other question that you wish to raise?

MR. HUNTER: My lord, I am in rather an awkward position in that there are several points which I believe Mr. Brewin wishes to discuss as to whether certain things are within the scope of the Inquiry.

THE COMMISSIONER: I am sorry, I had perhaps overlooked the fact that Mr. Brewin had other points of interpretation that he wanted to discuss.

MR. BREWIN: My lord, first of all, I think I should like to tell your Lordship, if I may, something about the Co-Operative Committee; I don't mean at length, but it is a little unusual to have on a proceeding of this sort an organization turning up to represent a large number of people.

THE COMMISSIONER: Well, just one moment, Mr. Brewin. To what extent am I interested in this Committee? I take it my duty here is to determine as between the Government on the one hand, and the claimants on the other, whether the claimant is entitled to or has suffered a loss for which he is entitled to compensation.

Now, subject to what you may have to say, I cannot see how your Committee comes into the matter with which I am concerned.

MR. BREWIN: Well, no, I don't think it is of so very much importance, but the only thing I was going to do was to tell your Lordship, as I have said before, we represent some 700 claimants and we have Counsel in each Province that your Lordship will be seeing and dealing with, and I thought your Lordship might be concerned to know just how the Co-Operative Committee came to be representing them.

THE COMMISSIONER: I do not think so, Mr. Brewin. I might tell you I have read "The New Canadian" since I was first appointed to this task, so I am to some extent familiar with the work the Toronto Committee have been doing.

MR. BREWIN: I wanted to say, and with respect, that is one of the reasons I wanted to refer to it, because my friend, I think, referred to it as the Toronto Committee. They are not, with respect, just a Toronto Committee, they are a National organization and have affiliated with them, and I think this may be helpful to your Lordship, the National Japanese-Canadian Citizens' Association, which is a pretty representative organization of the Japanese-Canadians themselves, and I only say that because I want to make it clear both for the Co-Operative Committee and for the Canadian

Japanese organization that we are most anxious to facilitate the proceedings of this Commission and to be of any assistance that we can, and it may be from time to time, even though your Lordship will be in contact with our Counsel at various stages, it well may be, and I say this to my friends, too, if there are any general matters by reason of our contact with the Japanese-Canadians in each Province that we may be able to be of some assistance, then we are very anxious to be able to be of some assistance to your Lordship. That really is all I want to say on that.

THE COMMISSIONER: Thank you, Mr. Brewin. I am sure Mr. Hunter will remember your remarks and certainly I shall take advantage of any assistance I can get from Counsel representing the Japanese interests as we go along.

MR. BREWIN: Yes. Some time or other perhaps I can furnish my friend with a list of our Counsel in each Province. I don't know whether he has it already, so as you leave one Province and move into another, you can discuss questions of hearings and problems of that sort. My friend can keep in touch with myself.

THE COMMISSIONER: I think it was published in the "New Canadian". We used it to give notice of this session.

MR. BREWIN: Well then, my lord, I have already said something to your Lordship about the general

interpretation and I am not going to repeat that, but there is just one case that I am going to refer your Lordship to because on such Commissions that I have had any part in, I have found this case rather useful. Your Lordship may be familiar with it. It is a case in the Ontario Court of Appeal of the Children's Aid Society and the County of York. It is reported in 1934, Ontario Weekly Notes, at page 418. That was a case in which the Lieutenant Governor in Council had appointed a Commission under the "Public Inquiries Act" of the Ontario Legislature which is practically the same as ours, to inquire into the conduct, management and administration of the Children's Aid Society.

While the Inquiry was going on, certain questions arose as to the calling and examination of witnesses, and a stated case was taken to the Court of Appeal and a number of questions were asked about what evidence should be heard, and so on, and so forth. Then the Court of Appeal of Ontario gave a judgment, and each member of the Court delivered a separate judgment giving their opinion on the stated case and there are some general observations that I think are helpful if your Lordship has not seen them already.

THE COMMISSIONER: No, I am not familiar with the case.

MR. BREWIN: I imagine, my lord, that there are

probably other cases to the same effect, but I just happen to be familiar with this one. Chief Justice Mulock said:

> ". . . in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner. It is not a question between one person and another. There is no issue referred to the Commissioner to determine, and the rules of evidence have no application to such an inquiry. The Commissioner should avail himself of all reasonable sources of information, giving a wide scope to the inquiry. If, for example, some person were to inform the Commissioner where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information. The inquiry is one on behalf of the general public, and should be conducted in public. There are no parties or sides to the proceedings. It is for the Commissioner, from all available sources, to bring to light such evidence as may

"have a bearing on the matters referred to him. In the conduct of the inquiry, the Commissioner should allow counsel or laymen to assist him."

And it goes on to deal with the problems raised there, about the production of certain documents, which I don't think I need mention. There is one further paragraph in this judgment, though, that might be of some help.

"During the argument, it was said that the Commissioner held that, until some prima facie case was made, he would not require the Superintendent to produce those papers. This is an incorrect view of the position of the matter. In an inquiry such as this no question of a prima facie case arises. There being no parties to the proceedings, there is no one against whom a prima facie case can be made."

THE COMMISSIONER: Well, there, I take it, there was an investigation into the conduct of the County of York Children's Aid Society, is that right?

MR. BREWIN: That is correct.

THE COMMISSIONER: Are we not in a somewhat different situation here? True, this is a Public Inquiry directed under the Federal Act, but does it not

really come down to each individual Japanese Canadian presenting a claim against the Government, and the final result will be a report by me either that he has suffered a loss for which he is entitled to compensation or he has not.

MR. BREWIN: Yes, my lord, I concede what your Lordship says, because as a matter of practical commonsense the nature of this Inquiry is such that until somebody comes forward and presents some sort of evidence of a claim, there is nothing that your Lordship as a Commissioner can deal with very well, and that is perfectly true. Nevertheless, I think that the remarks made here are of general application in a sense for the following reasons: First of all, I think it has a general application, and it is perhaps unnecessary to say that the strict rules of evidence do not apply. We are loathe to present hearsay evidence or evidence of a different nature to what one would present if one had a case in Court.

Secondly, even in this case while it is true that the individual claimants must be in a position to come forward and present something for your Lordship to deal with, nevertheless, with respect, this is not a matter where there are parties or sides to the proceedings. All of us, with respect, should be concerned with seeking to determine the facts, and the very nature of the circumstances in these pro-

ceedings makes it inevitable that it could not be possible for individual claimants to present the sort of case with the sort of evidence that they would be able to do supposing, for instance, their property had been expropriated yesterday, or something of that sort. I have had a few discussions with my friend, Mr. Hunter, about this matter, and it does seem to me that we have to avoid too much the idea that each claimant must present a case and that they must give their evidence in strict form. We have to look at it as a matter in which wherever we can find any light on it, it should be found, and by reason, as I said, of the fact that these people are scattered all the way across Canada, and the circumstances under which they went, and the fact that this Commission is sitting a long time after they left, it just won't be possible for claimants to present their case with the same particularity as if they were pleading a matter and as if they were able to put in formal pleadings, and as if they were able to secure counsel and valuators to value every single matter, and so on, and there are matters of incidents, distance and time. With respect, I make these general remarks apposite to some extent, at any rate.

THE COMMISSIONER: Would this be a convenient time to adjourn, gentlemen?

MR. PRATT: My lord, I can't be here this afternoon,

and I was going to ask what machinery, if any, has been set up for the subpoenaing of witnesses? I think there is power under the Act.

THE COMMISSIONER: There is power.

MR. PRATT: I would like to know to whom I would apply. Would it be to the Secretary?

THE COMMISSIONER: If you apply to the Secretary, I think under the circumstances the subpoenas should be attested in my name as Commissioner.

MR. HUNTER: There is a special form to be used for Commissions. There is a special form of subpoena for Commissions.

THE COMMISSIONER: Mr. Hunter, you will be here until we leave for Kamloops, in any case?

MR. HUNTER: Yes, my lord.

THE COMMISSIONER: Perhaps you can take up your problem, Mr. Pratt, with Mr. Hunter.

MR. PRATT: There are a lot of valuators I want to get a hold of, and so on, and I wonder if Mr. Hunter will undertake the expense of bringing them before the Commission.

THE COMMISSIONER: That is something you can discuss with him. If you have difficulty, perhaps you can refer it to me later.

We will adjourn now, gentlemen, until 2:30.

(PROCEEDINGS ADJOURNED UNTIL 2:30 P.M.)

Vancouver, B. C.,

December 3rd, 1947.

2:30 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT).

MR. BREWIN: My lord, just before the adjournment I was dealing with the Children's Aid Society and County of York case, and I would just like to finish the reference to that case. I would refer your Lordship to the judgment of Mr. Justice Riddell, in which he said he agreed entirely with what the Chief Justice of Ontario said, and then he goes on:

"A Royal Commission is not for the purpose of trying a case or a charge against anyone, any person or any institution -- but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. It is usual and proper to have counsel appointed to assist in the inquiry, but that does not imply that he alone has the right to call witnesses, or to determine what witnesses are to be heard. The learned Justice of Appeal said that he had had considerable experience on Royal Commissions; in the last instance an article

"appeared in an important newspaper saying or suggesting that the Commission had not all the facts before it. Thereupon the Commissioners caused a letter to be written to the paper asking it to give any facts not brought out, and inviting information from any source whatever.

"Everyone able to bring relevant facts before the Commission should be encouraged, should be urged, to do so.

"Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission. Moreover, everyone should have the right to cross-examine any witness whom he believes to be in error or to be suppressing facts. This right, of course, is not to be abused by irrelevant questioning.

"The object of a Royal Commission is to determine facts, not to try individuals or institutions, and this consideration is sufficient to guide the Commissioner in the performance of his duty."

Then Mr. Justice Middleton also gave a judgment agreeing with the remarks made by the Chief Justice and Mr. Justice Riddell, and I don't

know that I need read his judgment, but he says in part:

". . . It is in no sense a trial of any one. It is an inquiry not governed by the same rules as are applicable to the trial of an accused person. The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs."

"This is a matter in which the fullest inquiry should be permitted."

And so on. I don't think I need read the rest of his observations.

Now, my lord, I gave your Lordship that case because I thought the circumstances, as your Lordship has suggested, are somewhat difficult. It seems to me that amongst those who are lawyers and have had legal experience there is a natural tendency for us to think in terms and categories of strictly legal procedure, and the whole nature of an Inquiry of this sort seems to make it very difficult. I do want to say this, that so far as we are concerned as counsel, we are quite appreciative of the necessity of laying down certain rules and not wandering too far afield. We are going to try and be as expeditious as we can, consistent with our duty to our clients.

Yet, on the other hand, we may be asking your Lordship to consider matters and in a manner, and so on, that we would not be doing if we were litigants in an ordinary court of justice.

Now, my lord, I think those observations are perhaps particularly true if I may make this general observation in regard to the circumstances of such a case as we have here. I want to refer for a minute to these forms that have been filed. I am sure it is perhaps unnecessary for me to say this, particularly in the Province of Ontario some of these forms have been completed by persons remote from legal advice, or with all the difficulties attendant upon trying to remember what happened a long time ago, four or five years ago, and in some cases people who are not familiar with these sort of things, and I feel, therefore, your Lordship will not apply any too strict a rule, or view with too much strictness, errors or omissions, or in some cases, perhaps, overvaluation, and in some cases, perhaps, undervaluation, that have been made, because the people who completed these claims were in this position that they could not get, as one would if they were suing in the Court, valuators to look into these matters ahead of time, and particularly on the question of valuation a certain amount of, shall I call it, guesswork may have been inevitable. That really, perhaps,

expresses my general remarks. We may have to expect inconsistencies, deficiencies, omissions and errors in the forms, although from my experience, having seen a great many of these forms, I am sure they will be extremely helpful to the Commissioner to see the information given there and make it unnecessary to repeat a lot of the information. They will be very valuable, but I thought I should say that because I have looked over some of the copies of forms sent in and in some cases, particularly where they did not get legal advice, I have seen things described as personal property that were obviously land, and various other matters of that sort that were in error, but I am sure that the Commissioner will not look too strictly on any mistakes or errors of that sort.

Now, my lord, the next point I wanted to raise was with respect to two matters in respect to which we have found considerable doubt as to whether the terms of the Commission extended to those cases, and we think it might possibly be valuable at this stage, if your Lordship sees fit, to have rulings in regard to those matters. Those of us who have represented claimants have had persons come to them who were shareholders in limited companies. In one or two cases I am thinking of shareholders in what are popularily but incorrectly called one-man companies where the shares of one particular

shareholder represent perhaps ninety-nine per-cent of the shares. Now your Lordship will of course have observed that shares did not vest in the Custodian, nor were they sold by the Custodian. The shares remained the property of and no doubt still are, unless dealt with in some way, the property of the individual Japanese-Canadians who were the owners of the shares. So clearly one cannot make any claim for shares of that sort, but it would appear from the information that we have that either under the terms of these Orders-in-Council which are recited in the Order-in-Council appointing you, or under some other authority, which I will discuss in a minute, the Custodian has in fact exercised authority over and liquidated the assets of certain corporations, and, as I have said, the shareholders of those corporations have come to us as counsel representing the claimants and asked us to put in claims for those limited companies in the name of those limited companies.

THE COMMISSIONER: In cases where the Custodian has in fact liquidated assets of such a corporation, to whom does the Custodian assume to account?

MR. BREWIN: Perhaps my friend can answer this more precisely, but I would think to the president or officers of the companies concerned.

Now, my lord, I am in somewhat of a difficulty in this matter because I don't know

what position my friend will take, but it seems to me that so far as I have been able to judge there were only two bases of legal authority under which the Custodian might have acted in this matter, and one basis mighthave been the particular Orders-in-Council that are recited im this Order 1665, as amended by 2483. I confess I see difficulties in that view, but it may be that that was the authority under which they acted. It also appeared to us, though we don't know that it is the case, that he might have acted by virtue of Section 15 of the Trading with the Enemy Regulations. I have the 1943 Consolidation.

THE COMMISSIONER: You say he may have acted under P.C. 1655 or, alternatively, under Section 15 of the 1943 Trading with the Enemy Regulations?

MR. BREWIN: Yes. I don't know of any other basis on which he might have acted, though my friend might inform us. Your Lordship will see that Section 15 says (reading).

THE COMMISSIONER: Of course, here, I suppose to some extent, we are dealing with Japanese who fall in the category of enemy aliens, are we?

MR. BREWIN: My lord, that is where the difficulty arises. As I say, we are in some difficulty because we haven't had time to analyze all these cases yet and find out all the facts about them, but I know in one case where the majority

shareholders were Japanese nationals and therefore would, under the definition in the Trading with the Enemy Regulations be enemy subjects. They would not be enemies because "enemy" is defined in a way that I think would exclude friendly aliens residing in Canada, and in these particular cases I have in mind, for example, I don't think it would be suggested that the majority shareholder was an enemy, but it would seem to me he might very well b e an enemy subject if he was a Japanese National. An enemy subject is defined in Section 108 (reading). Then, on the other hand, I do know of one case and again I haven't investigated it thoroughly, it is a case in which my friend Mr. McLennan is interested and one in which I may say there is quite a substantial claim, the Deep Bay Logging Company. I mention it merely by way of illustration. My information, or instructions, from Mr. Kagetsu in that case was he was a naturalized Canadian citizen, and therefore neither an enemy or an enemy subject, and yet the two companies, that is Kagetsu Company Limited and the Deep Bay Logging Company, then owned considerable assets which were wound up and liquidated by the Custodian. For that reason I can only put it this way, that I don't know where the Custodian has gone for his assertation of authority to sell those assets, whether it is on the basis of

P.C. 1655, that in a sense one could attribute to a corporation as to a personality, that is a nationality or the racial origin of the original shareholder.

THE COMMISSIONER: What are you primarily concerned with in this regard at the moment? As to whether claims should be filed, or should not?

MR. BREWIN: We are concerned with that and we are concerned with this further, that if your Lordship were to make a ruling after hearing what we have to say about it that you could not consider the claims of a corporation because they were excluded by the terms of reference, then we would be in the position, if that was definitely known, of being able to suggest to the Government that that matter should be dealt with. The situation may arise of one man who incorporates a company and all his assets are sold and he has no claim under the Commission, and another man who carries on without being a company can make a claim and that would be anomalous, and if your Lordship happened to be of the opinion, after hearing what we have to say about this, that those claims do not fall within the terms of reference, then we would like to go to the Government and ask it whether it agrees with us or not.

THE COMMISSIONER: You think this question can be dealt with in vacuo, as it were, effectively, or

would it not be better to make the claim and raise the question when the claim is first heard? I am a little worried, Mr. Brewin, about ruling on your problem now without getting enough of the facts to know just what the real picture is.

MR. BREWIN: Yes, my lord, I appreciate that, and I think unless your Lordship is clear about it after reading the Order-in-Council and hearing what we have to say, I think myself it would be very proper not to make a definite ruling now. But supposing your Lordship, after hearing from my friend, is very definitely of the opinion these could not by any sort of reasonable argument be covered, that a claim of a corporation is out, then it certainly would be helpful to all of us, and perhaps to your Lordship, in the long run, because we are going on hearing these claims and supposing the Government at some later date decides it wants this matter investigated, we wouldn't want that decision to mean that we had to start out, as it were, all over again.

THE COMMISSIONER: I appreciate your difficulty.

MR. BREWIN: My lord, all I can say in addition on that, and I don't want to press this too hard, is at least it is a possible interpretation that where you are given authority and permission to inquire into claims of persons of the Japanese race -- the whole idea of a cor-

poration after all is a fiction of law and it might not be a mis-interpretation to say that a corporation, where the majority of the shareholders of it were of Japanese racial origin were included, and if that is a possible interpretation, then I would submit it should be adopted for two reasons: First, on the basis, and I think this is rather a strained interpretation but it may, nevertheless, be a reasonable one which might be properly adopted, that the Custodian has in a sense adopted it himself and proceeded without objection on the part of the companies to sell assets on the basis that the corporations were persons of Japanese racial origin.

THE COMMISSIONER: Your submission on that head would come down to this, then, that the individual shareholder has personally suffered a loss by reason or by virtue of the Custodian having sold property of the company in which the individual was a shareholder.

MR. BREWIN: No, my lord, I don't think that is how I would put it. I would say that the corporation has suffered loss and that the corporation is of the Japanese race by reason of the evacuation and the fact that its arms and legs were removed, as it were. That isn't too unreasonable. It has been removed and evacuated too, and that where the Custodian stepped in and sold their property, then the claim isn't

the claim of the shareholder. In my submission, it would be the claim of the corporation, and, if your Lordship came to the conclusion that some amount should be paid, it would go strictly to the corporation and not to the shareholders, except insofar as the shareholders might, on a winding up, be entitled to those assets, but the claim of the corporation would be regarded as a person of the Japanese race.

My lord, I don't think there is anything more I can say on that. Again, I would say this; that if my friend can tell us that the Custodian at no time purported to exercise any authority under these Orders in respect to corporations, and can make that quite clear, I think I would have a very, very hard time in arguing that your Lordship, under the terms of reference, had any authority to deal with that.

THE COMMISSIONER: But you do state as a fact that personal property, and perhaps real estate, also, of such corporations, was realized by the Custodian.

MR. BREWIN: Oh, very definitely. I don't think there is any question about it. Let me give an illustration of what we are talking about. I mentioned the case of Mr. Kagetsu whom Mr. McLennan and myself jointly represent. Mr. Kagetsu owns substantial timber limits in

his own name. He is presenting a claim to the Commission on that basis. In addition, he was a majority shareholder in the Deep Bay Logging Company which also owned considerable timber limits and machinery -- bulldozers and a lot of other things that are used in connection with that -- and he also had incorporated a personal company for some reason, I don't know what it is, a company called E. Kagetsu & Company Limited, in which were vested certain assets. In respect of all three, the Custodian did, in fact, step in and manage his affairs at different stages and sold his property and he thinks, rightly or wrongly, in both cases he sold at less than a fair market value, which of course he will have to establish. Now, in this particular case I understand it will be a matter of proof or investigation. As I understand it, he was a Canadian citizen so I am somewhat puzzled. I haven't been able to discover yet in that particular case as an illustration which is a fairly substantial one in the amount of the claim, because he had fairly substantial business holdings -- I can't discover under what authority the Custodian acted. The Custodian may tell us he was not acting under any authority at all. I would be surprised to hear him say that, but it may be so. If he did that because he regarded that corporation as being a person of

the Japanese race, and he had authority under P.C. 1665, and is not relying on Section 15 of the Trading with the Enemy Regulations as conferring authority, then my submission would be that would help us to a conclusion and he could make a claim under the terms of the Commission, and, as I say, we would like to get it determined if we can now so that if we come to a clear conclusion that it is not covered by the present terms of reference, we may be able to make representations at an early date to the Lieutenant Governor in Council to include them.

I might say, as far as I am aware, there are not very many of those claims. I have had five or six brought to my attention.

THE COMMISSIONER: The mere fact there is one makes it desirable to clear the ground.

MR. BREWIN: Yes, there are, as one might expect, in some cases most substantial claims as far as the amounts are concerned.

I wonder if I should leave that point for discussion, and go on to something else.

THE COMMISSIONER: Perhaps it might be more convenient to take your reply now, Mr. Hunter.

MR. HUNTER: That suits me.

THE COMMISSIONER: We will just find out first if there are any other representatives or counsel who wish to make any comments on the same point. Mr. McMaster?

MR. McMASTER: No, my lord.

THE COMMISSIONER: Mr. Tamaki?

MR. TAMAKI: No, my lord.

THE COMMISSIONER: Mr. McLennan?

MR. McLENNAN: No, my lord.

THE COMMISSIONER: All right, Mr. Hunter, we will hear your reply on that point then.

MR. HUNTER: This has been one of the more difficult questions for me to try and decide, my lord. There has been a continuous conflict of opinion in the Custodian's office as to the meaning of these Orders-in-Council and some have contended that under the wording of Privy Council Order 1665, Section 12, where it refers to any person of the Japanese race, that "person" is meant to include corporations. On the other hand, if one refers, for instance, to Privy Council Order No. 5523, one sees it is set out therein under Section 1 which actually defines a Japanese company --

THE COMMISSIONER: Which is that?

MR. HUNTER: 5523. It is Exhibit 14, my lord. That is the one ordering the Director of Soldier Settlement to make valuations, and limiting to a certain extent what the Custodian could do with this property. He was not permitted to lease or sell without the permission of the Director, but in that they have made a point of defining both a Japanese company and a person. Therefore, when

regarding these two Orders-in-Council, it became clear to the legal advisers of the Custodian's office that the question would be bound to arise as to whether the term "person" in Section 12 of P.C. 1665 was meant to include "company".

THE COMMISSIONER: There is an interpretation section, but "person" is not defined.

MR. HUNTER: No, "person" is not defined, your Lordship. On the other hand, in P.C. 5523, they define both. They define "person" and "Japanese company".

THE COMMISSIONER: That definition is limited to 5523, isn't it?

MR. HUNTER: It seems to be, my lord.

THE COMMISSIONER: How about the Dominion Interpretation Act? Is a "person" defined there?

MR. HUNTER: I can't recall, my lord. I haven't it available at the moment.

THE COMMISSIONER: I will see that it is brought here.

MR. HUNTER: Wellthen, under Section 12 of Privy Council Order 1665, if I may refer your Lordship to that again?

THE COMMISSIONER: Yes. According to 12 you have to read "person" along with "resident", haven't you? "A person resident".

MR. HUNTER: Yes. The prima facie interpretation would seem to be that it only refers to a living person, rather than a legal entity or

corporation. Down further it has been argued "subject to the control and management of the Custodian as defined in the Regulations covering Trading with the Enemy 1939", and Section 2 says (reading), but if you refer, of course, to the Regulations respecting Trading with the Enemy, we find there is a definition of "person", but the argument again arose, or the question arose, that under the wording of this particular sub-section which says, "and for the purpose of the control and management of such property rights and interests by the Custodian", which seems to come back again to "person" as appears in sub-section (1) of Section 12.

THE COMMISSIONER: I find some difficulty in appreciating how one can get assistance from the interpretation of the word "person" in P.C. 1665 from Trading with the Enemy Regulations.

MR. HUNTER: Well, only insofar as they might be made applicable as sub-section (2) of Section 12 says.

THE COMMISSIONER: Yes.

MR. HUNTER: If we could say that that did apply, that is that the Regulations respecting Trading with the Enemy 1939 did apply, and we could turn over to the word "person" in the Consolidated Regulations, we could see there that it includes corporations, but the objection that has been raised to that is that these

regulations apply mutatis mutandis only insofar as such property rights and interests arise which are limited in the preceding sub-section. Now, whether that is a correct interpretation of that, I can't say, my lord. As I say, it has been a question of debate all these years.

THE COMMISSIONER: In a period of five years, the State Department hasn't managed to solve their difficulties, now I suppose they expect me to do it in a week.

MR. HUNTER: Exactly, my lord. However, when we get on a little further to Privy Council Order 2483 -- no, I am sorry, this is the amending one of 1665, 2483 where they substitute a new section 12 for the former Section 12 in 1665.

THE COMMISSIONER: Could I have that, Mr. Secretary, please? 2483, is it?

MR. HUNTER: Yes, it is Exhibit 13, my lord. There we find a new Section 12 which incorporates sub-sections (1) and (2) of the old Section 12 but it adds something new. They are practically incorporated in Section 1 of the new Section 12. I say it as my opinion , not as any definite statement, but in sub-section (2) of the new sub-section (12) the Custodian is given a further power. He is given the power to order that all or any property whatsoever situated in any protected area of British Columbia belonging to any person of the Japanese race, shall, for the purpose of pro-

tecting the interest of the owner or any other person, be vested in the Custodian. Up until that time he has excepted these things, like fishing vessels and stocks, and so on. Again I am trying to get close to the subject of corporations, because this is one of the methods by which the Custodian assumed control of corporations.

Now there are a number of things that have happened in connection with these companies, and I don't think any one company, or the history of what has happened to any one company, is the same as with any other company, as far as I know.

THE COMMISSIONER: Just before you go on, Mr. Hunter. I presume you will have observed that "person" is defined in P.C. 2483; a person of the Japanese race, that is.

MR. HUNTER: Yes, my lord. Of course, that is really amending 1665 which was a much larger Order-in-Council for merely vesting property in the Custodian. This is really the one setting up the British Columbia Security Commission, but it does define it but it doesn't seem to include corporations.

THE COMMISSIONER: Yes. Let us see if we can get any help from the "Interpretation Act". You see, "person" under the "Interpretation Act" Revised Statutes of Canada 1927, Chapter 1, is defined. "'Person', or any word or

"expression descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends".

MR. HUNTER: That may be very helpful, my lord.

THE COMMISSIONER: Just what is the situation so far as an Order-in-Council is concerned? Does it have the force of a Statute?

MR. HUNTER: I think the general rules of interpretation shall apply, my lord. I haven't any judicial decision on it.

THE COMMISSIONER: I was wondering if we can look to the "Interpretation Act" definitions to interpret a phrase or word in an Order-in-Council.

MR. VIRTUE: If it would be of any help, sir, I remember one or two decisions given during the war to the effect that Orders-in-Council passed under the "War Measures Act" are to be viewed with the same effect as the Act itself.

THE COMMISSIONER: That is my recollection. That will tie things up pretty well with the definition of "person" in the "Interpretation Act".

MR. VIRTUE: Yes, my lord.

MR. HUNTER: That is, I think, a very interesting point, my lord, and it may solve the whole

situation. There are some other points. I would like to try to convey to your Lordship what went on in the minds of the advisers.

THE COMMISSIONER: Yes. I wanted to raise it now. I hope my interruptions are not making it embarrassing to counsel in the presentation of their argument. If they are, let me know and I will stop.

MR. HUNTER: No, they are very helpful because my position is one of extreme neutrality in this.

THE COMMISSIONER: A seeker after knowledge, is that it?

MR. HUNTER: Exactly, my lord, but the load has been placed on your frail shoulders. Well then, that was one method that was adopted. In certain cases -- I don't know that it is actually the truth, but it may be that the Custodian took over property of companies, as Mr. Brewin suggests, whether under the authority of this Order-in-Council or purely to save wasting assets, or for some other reason I can't say. If this Order-in-Council gave him authority, then he had it. If it didn't, he took it over without authority, if it did happen. The way it usually happened, as I understand it, was someone would direct their attention to the fact these assets were wasting and they would have to dispose of them to save anything for the Japanese person. Well then, other Orders came down, for instance, from the Controller

of Timber, in the case of timber, directing that these properties be sold and put into production, and how authoritative the direction of the Controller of Timber was, I haven't yet been able to find out. I haven't any doubt they had powers under their Orders-in-Council but how defined or definite those powers were, I don't know. I have asked Mr. Wright, counsel for the Custodian, to try and find out from the Department of Reconstruction and Supply because they would have a record of the powers there, but he hasn't yet been able to find them. I think that point will occur in other cases, and in other cases I think a form of estoppel may arise because the owners apparently agreed to these things. Whether that will crop up very often, I don't know, but they have in their minds that doubt as to whether that Order-in-Council did give them the authority. The procedure that was adopted in order to sell the property and wind up the company was under the authority of the amendment in 2483 which vested the shares of the individual shareholders in the Custodian. That is, they had no authority to do it previously, but under the authority of Order-in-Council 2483, sub-section (2) of the new Section 12, where the Custodian had the power to order any property to be vested in himself, he did that, and ordered that these shares of the individual shareholders be vested in him,

and as such he then proceeded to liquidate the company and appoint a liquidator and have it wound up. Now, whether that was the best procedure available, I can't say at this point, but that was done. In other cases under Section 15, which Mr. Brewin referred to in the Trading with the Enemy Regulations, the Minister did appoint persons as controllers to carry out and supervise the carrying out of his orders and usually the liquidators appointed were the same persons.

THE COMMISSIONER: What was it you said first? He appointed whom?

MR. HUNTER: A controller, my lord.

THE COMMISSIONER: Oh yes.

MR. HUNTER: The only point that comes into my mind there is, as Mr. Brewin has so clearly stated, he was only authorized to do it in the case of enemy companies, but under the Regulations the point arises having appointed these chaps liquidators and controllers, can we go behind his order and ascertain why he appointed them? My recollection of the law as relating to Orders-in-Council of this type is if the man has the authority and all he has to do is in his opinion -- "where it appears" -- is the way it is worded here, believe it is an enemy corporation, or say he believes it, and then he appoints the person. Can we go behind that and say, "He should not have appointed them, it was not an

enemy company, it was an evacuated company, or the shareholders of it were evacuees"? If, therefore, we must take it to be an enemy company by reason of the fact he appointed these people under the authority, it would not appear to come under the terms of the reference because we are not dealing with enemy companies.

THE COMMISSIONER: There are too many "if's" and "and's" in that. Surely I would have to be satisfied that the Secretary of State was acting under the Trading with the Enemy Regulations.

MR. HUNTER: Well, he was when he appointed these people. That is the only way they could be appointed, and he did state he was doing it but he didn't state, if my recollection is correct, that he considered them enemy companies. He just went ahead and appointed them.

THE COMMISSIONER: That seems to point to the wisdom of refraining from dealing with this matter now without having all the facts before us, does it not?

MR. HUNTER: I think we shall find, your Lordship, that every single one of these cases is different. Perhaps some general principle can be decided now. It would be obviously pleasant at this point to decide whether you are going to hear the claims or whether they do not come within the terms.

THE COMMISSIONER: I think I can go that far now

without determining whether they are entitled to be heard on the claims or not. I certainly think the claims ought to be heard in view of the situation described to me now, and I rather doubt whether you would argue to the contrary.

MR. HUNTER: I, frankly, don't know the answer to this problem. I have been trying to make up my mind for weeks. I might add, to clarify this, that it was consistently advocated by the Custodian's counsel that an amendment to the Order-in-Council be passed deeming "persons" to include Japanese companies. That recommendation went forward and was even drafted several times.

THE COMMISSIONER: But it was never done?

MR. HUNTER: Ottawa invariably took the position it was unnecessary, that it did include or they seemed to have taken the position it did include Japanese persons, therefore it was a form of redundance, and I think perhaps later on when they were perhaps more willing to accede to the point, Orders-in-Council became exceedingly unpopular and the very minimum was presented to the executive meetings. There have been all kinds of legal opinions in the Custodian's office from counsel in Ottawa and here, and they are conflicting legal opinions all very carefully worked out, but leading to entirely different conclusions and

I cannot conclude anything myself from them except on the face of it I don't think they cover it. On the face of the Order, when they only use the word "person", while in many other Orders they always define "person" and "Japanese companies", here it was something they forgot about and didn't put it im when they drafted it -- whether that was the case or whether they deliberately intended to leave it out and have it refer to apparently living persons, I can't say, my lord.

THE COMMISSIONER: Your conclusion would be that something was done for which there was no express ~~desire~~ authority. I don't ask you to put that forward as a submission.

MR. HUNTER: If Mr. Brewin's submission is we did deal with properties before we took over the shares, and if that submission is correct, that may well be so.

MR. VIRTUE: May I just say a word on this point? After all is said and done, under the terms of the Commission, your Lordship is going to recommend, so it isn't like an absolutely final dealing with the matter. It is a recommendation and in view of the position of the Government as stated by Mr. Hunter just now, it seems to me that such a recommendation would be welcome all around, that is both on the part of the Government and on the part of the claimants.

Now, if that is the case and such a recommendation would be welcome, it seems to me we are probably setting up unnecessary obstacles for ourselves and if the matter were just gone on with and the recommendation made, that would solve the whole thing satisfactorily and not leave a lot of loose ends that would have to be dealt with elsewhere.

MR. BREWIN: I just wanted to say this, my lord, that I feel somewhat fortified by my friend's statement of what happened and I would say that at the appropriate stage, I would contend very vigorously, if it is necessary to contend it, that corporations are covered by the Orders-in-Council, because my friend himself tells us that there was some doubt about whether they were with some of the officials within the Government and that they apparently thought they were. Then he used the phrase at one stage in regard to P.C. 2483 that that was one of the ways in which they took control of property. So whether rightly, or, as it might be held, as a matter of law, wrongly they did apply these orders in one form or another to corporations.

Now, my submission is that is very helpful from my friend on the matter of interpretation. I would have started out with some qualms about submitting very strongly that a corporation was a person of the Japanese race within the meaning of these various Orders,

because of the very point your Lordship has mentioned, the reference to residents evacuated, and things of that sort that seemed much more appropriate when applied to living individuals, but when my friend says, in effect, as your Lordship pointed out, whether they acted without authority or whether they acted under the Orders-in-Council, he at once found himself in a position that he acted with authority and the only authority I can find are these Orders-in-Council. I think they certainly were ready to see the interpretation extend to them.

THE COMMISSIONER: I suppose it is right to assume that the authorities at the time believed they were acting in authority.

MR. BREWIN: Yes, and, therefore, that seems to me to carry us this far that at least that was a possible and fair interpretation of those Orders, and one should strain against finding that the Orders were abused and that both the Japanese-Canadians themselves who were concerned and the Custodian are all perfectly satisfied as my friend says. They were satisfied to have them dealt with -- they did not complain. The Custodian was exercising a protective jurisdiction. While they may not have been happy with some of the details of the things he did, they were happy generally with what he did, whether they were actually stopped in law, which I hope you will not have to find.

I think there is just one small point that I wish to call your Lordship's attention to, and that is the definition under the Trading with the Enemy Regulations, under Clause (m) as well as Clause (a). Clause (a) defines "person", and Clause (m) -- that is 1943 -- says, "Words imparting the masculine gender include females and corporations". That again seems to cover it. After all, these Regulations which are my friend's good points have their nice definitions as to whether or not these Regulations were to be applied mutatis mutandis in every respect. I say in general terms they were to be applied in regard to those matters and in regard to a definition of what is a person, that should be applied, too, and if that involves a little bit of mental gymnastics as far as talking about a corporation being resident of a particular place, or evacuated from a particular place, or something of that sort, then in those circumstances it is perfectly justifiable to make that jump as the Custodian's advisers or some of them seem to have done, and I think we can do that.

Now, my friend suggested that at least this question was in a matter of sufficient doubt that these claims could be presented and your Lordship might hear them. At the end your Lordship might say, and I think this is

what my friend, Mr. Virtue, is in fact suggesting, "If I have jurisdiction which is a very difficult question under the strict terms of the Order; I have looked into this and I would say that is my view of the matter but I am not sure whether I have jurisdiction or not". You may not have to determine that, but I feel quite sure justice would be done all around and everyone wouldbe satisfied, and I have achieved what purpose I have in raising this matter apart from hearing my friend's explanation of his own difficulties which I have shared with less information than he has, and it may be with that in mind we can advise those who come to us to present these claims and your Lordship may hear the facts and reserve these points, and if, on a final analysis, your Lordship thinks you cannot accept the argument that you have any jurisdiction in regard to that, perhaps we can get the matter cleared up in some way or another at the time.

THE COMMISSIONER: Did you find any assistance, from your point of view, in the definition of "person" in the "Interpretation Act" which includes corporations?

MR. BREWIN: I do find some help in it, my lord, but I don't think there is any difficulty about saying that a person includes a corporation in any normal Statute or Order-in-Council in view of the "Interpretation Act".

It seems to me so far as there are difficulties in this Order-in-Council, they apply not to the word "person", which I think it clear, but to the idea of race being attributed to a corporation.

THE COMMISSIONER: The difficulties arise from the context of the Order itself.

MR. BREWIN: It is only persons of the Japanese race, and in the ordinary case were it not for what we have heard of the circumstances here, I would find it very difficult if someone came to me and said, "This corporation is of Japanese racial origin", it would seem like an odd interpretation to attribute racial origin to a corporation. It is a difficult enough concept to apply to living persons. In fact, a lot of expert scientists say it doesn't have very much meaning as applied to living persons, but after all we are dealing with fictions of law when we are talking about a corporation and we may, I think, quite legitimately ask your Lordship to give the interpretation to this that the Custodian himself appears to have given, or at least some of his advisers gave it, and say that these corporations were of the Japanese race for the purpose of the Order.

THE COMMISSIONER: I do not propose to determine the question now beyond this that I will say finally now I will hear claims from persons

who own shares in corporations and claim consequently to have suffered a loss without determining now whether they are entitled or not to claim.

MR. HUNTER: I wonder if I could have that clarified slightly? Are these claims, then, to be made by individual shareholders for the value of their shares, or are the claims to be made by the corporations through their proper officers for the assets of the corporations sold by the Custodian or liquidated?

THE COMMISSIONER: I think the latter should be applied. If we treat the corporation as a person for the purposes of investigation, then if any division is to be made, it can readily be made and in that way it would avoid a multiplicity of claims. There might be shareholders from here to Montreal, each of which under the other interpretation might be called on to present a claim. For the purposes of investigation only, I propose to receive claims from corporations, treating them presently as persons without determining whether they are so or not. I think that should cover the situation.

MR. HUNTER: I might say, purely for your Lordship's information, I think I can safely say that in all cases these shares of corporations have been vested in the Custodian under authority of the amendment under 2483, and in all cases

liquidators have been appointed under the authority of the Trading with the Enemy Regulations and the companies have been or are being liquidated.

MR. BREWIN: My lord, the next point I have to raise is a much simpler one and a much briefer one, and one in which I think there is very little doubt but I raise it for this reason; there are a number of claimants who have come to us and asked us to put claims in in respect to --

THE COMMISSIONER: Would you just excuse me one moment, Mr. Brewin? I wonder, Mr. Hunter, if you could supply me with additional copies for my own use of the Orders-in-Council that were filed this morning?

MR. HUNTER: I will try and make up a file for you, your Lordship. I might have a few missing, but I will write to Ottawa and get them.

THE COMMISSIONER: Yes. I don't like marking up the exhibits, which I will probably do if I am using them. I am sorry to have interrupted you, Mr. Brewin.

MR. BREWIN: This point is a fairly simple one, I think, although counsel who are with me may disagree with me about it, but I don't think my friend Mr. Hunter will. We have had a number of people who have come to us and asked us to make claims with regard to fishing vessels which appear to have been sold by the Fishing Vessels Committee, I think it is.

Proceedings.

THE COMMISSIONER: Mr. Justice Smith's Committee.

MR. BREWIN: Yes, sometimes called the Smith Committee. That is Order-in-Council 2388 which authorized that to be done under somewhat different terms to the other.

Then as your Lordship will recall, a subsequent Order-in-Council, and I can't lay my fingers on the Orders-in-Council right off, said the vessels not sold by this Committee are vested in the Custodian as of the 1st of August. That is Order-in-Council 6247. I am told there were some 100 or 110 vessels not disposed of by the Smith Committee, and thereby vested in the Custodian, and I must confess it seems fairly clear to me now that your Lordship is not authorized by the terms of reference to investigate claims of those whose vessels were sold by the so-called Smith Committee under the original Order-in-Council.

THE COMMISSIONER: That had been my impression.

MR. BREWIN: I raise that point because I would like your Lordship to rule that is so if you think so after other counsel speak to it, so that again we may either raise with the Government the question of whether the Order-in-Council should be expanded, or if they say it shall not be expanded, we shall not be either building up the hopes of those who seek to make claims under this Order and your Lordship may not feel obliged to give attention

to claims where the vessels were sold before the 1st of August --

THE COMMISSIONER: I think in all probability we have enough claims without including vessels that were sold.

MR. BREWIN: Your Lordship will understand I have been asked to raise this point by different counsel all the way across Canada.

THE COMMISSIONER: Do not get the idea I was questioning the fact you are raising it.

MR. BREWIN: No. To tell you the truth, I don't myself see very much doubt about it, but for me to say that or to advise it is a very different thing than to get the agreement of all of us that that is so, and perhaps your Lordship's view, if you think that is so, so that as I say we can try to increase your Lordship's burden by trying to include those matters, or if they should not be included, we will know our position.

THE COMMISSIONER: How do you suggest they are included or not included in the phraseology of the amendment in the terms of reference?

MR. BREWIN: I confess it seems to me they are not included. Your Lordship will see there is a reference to 6247 in the third paragraph whereby it was provided that all vessels not disposed of by the Committee established by the said Order-in-Council should on and after --

THE COMMISSIONER: The Order-in-Council setting up

the Smith Commission was not one of the Orders-in-Council referred to , is that right?

MR. BREWIN: Yes, and perhaps even from the point of view of those who might seek to contend it was covered by reference to them, ships are personal property, as I suppose they are, and are vested in the Custodian. Your Lordship can deal as my friend says with personal property vested in the Custodian which was lost, stolen or destroyed. I am inclined to the view that none of these vessels were vested in the Custodian unless they were undisposed of by the Committee on the 1st of August, 1942. After that date, they fell into the hands of the Custodian and we can make a claim for them, but it seems to me that is the almost inescapable conclusion of the terms of the order, but I thought I would raise it. It may be some of my friends have another view on the matter.

THE COMMISSIONER: Just as a matter of information because I forget some of the details, but I was under the impression that the Smith Commission in the case of every sale of every vessel gained the approval of the Japanese owner before completing the sale. Am I wrong in that?

MR. HUNTER: That is correct, my lord. I don't know , but they may claim some of these approvals were obtained under duress, but that is irrelevant to this Commission. These boats were never

vested in anyone until the final Order vesting with the Custodian. Up to that time they were vested in the Japanese, and they had to sign the deed. This Order says they cannot be sold without their consent.

THE COMMISSIONER: Without the disposal Committee's consent?

MR. HUNTER: Yes, and they were to try and facilitate sales by persons of the Japanese race.

THE COMMISSIONER: Have any of you gentlemen appearing for the Japanese-Canadians anything to say to the contrary to the view expressed by Mr. Brewin?

MR. VIRTUE: There seems to me to be no doubt about the matter, my lord.

THE COMMISSIONER: Mr. McLennan?

MR. McLENNAN: No, my lord, I agree with the views of Mr. Brewin.

THE COMMISSIONER: Mr. McMaster?

MR. McMASTER: I am inclined to agree, my lord, and to certainly think, in any event, it is desirable to have the matter clarified by the Government if it is to be included.

THE COMMISSIONER: I do not think I need hear you further, Mr. Hunter. My view would very definitely be that the vessels sold under the terms of the Smith Commission are not included in the terms of reference to me.

MR. McMASTER: There is only one aspect that I think I might draw to your Lordship's attention,

and I don't put it forward as any conclusive argument at all. In Order-in-Council P.C. 288, Exhibit No. 7, there is a provision in Claude 3 (reading). Then in Clause 2 (reading). Whether it could possibly be stretched to say that in Order P.C. 6247, Exhibit 16, where it provides for the transfer to the Custodian of unfinished business of such committee, referring to the Smith Committee (reading). Frankly I think that is a matter that should properly be represented to Parliament. That is to say there is a provision for the Smith Committee to recommend with respect to claims concerning those vessels. If, however, something further ought to be done with regard to the Smith Committee Report, or, alternatively, they have done all they ought to do, then we want those matters dealt with at this time. I would concur in Mr. Brewin's submission.

MR. HUNTER: My lord, may I add something to that?

THE COMMISSIONER: Yes, Mr. Hunter.

MR. HUNTER: Under the Japanese Vessel Disposal Committee, they did make a recommendation, and the Privy Council Order was passed setting up a Claims Fund of $80,000.00 for claims, and those vessels were all inspected by marine appraisers and inspectors who recommended certain amounts in connection with individual vessels, and the allocation of $80,000.00 was found to be inadequate and later on another

$10,000.00 was provided to augment the fund.

THE COMMISSIONER: I have a recollection of that. I may say I have some little knowledge of it due to the fact that my brother Sidney Smith and I are in the same Court. I know there was damage done to some of the vessels. I recall there was damage by the Fraser River storms to the vessels while im anchorage, and as you say a fund was set up to provide compensation which I understood was provided.

MR. HUNTER: Well, my lord, it is under P.C. 3737 it is filed, that is the one establishing the fund.

THE COMMISSIONER: I am quite clear on that, that I have no jurisdiction to investigate claims in connection with vessels which never were vested in the Custodian. Is there anything further?

MR. BREWIN: My lord, I have anumber of points that do not deal with the matter of jurisdiction. Some are matters of procedure which I thought it wouldbe convenient to raise now. They won't take very long, I don't think, and I have some suggestions. I wouldn't call them any more than suggestions to be made to you, sir, and through you to my friend, Mr. Hunter.

The first item is in regard to production of documents by the Custodian. I have been asked to raise this point by a number of counsel concerned. I wrote to my friend at an earlier stage in this matter and asked him about that,

and I think we are going to be able to work the thing out satisfactorily. My friend, Colonel Hunter, wrote to me on the 10th of November and pointed out he was commissioned for the Dominion Government and was not counsel for the Custodian, and then he said he was not in a position to produce documents from the Custodian without his approval. He said he had discussed the matter with the Custodian at some length and in order to facilitate the hearing, it is at present proposed to produce for the solicitors appearing for the claimants any documents which are deemed relevant to the claim. Then he goes on to tell me they have photostatic copies made of the appraisals of properties sold under the "Veterans Land Act", and then as they have been made in triplicate it is proposed to furnish the solicitors for the claimants with one copy, and suggested we wouldn't raise any objection, which we certainly wouldn't. Then my friend goes on to say as far as appraisals of other property are concerned and insofar as statements of account and other relevant documents are concerned, they all boil down to the question of whether it is physically possible for the Custodian's office to make copies of all the relevant material. He says, "We should like to be able to do this and furnish solicitors for the claimants with the material before

the oral hearings take place," because he feels all this would greatly facilitate the hearings; but he says it may be for some reason there may be an occasion for which they do not care to furnish the material, and "in that case you will have to apply to the Commissioner for an order for production", and so on.

Now, I haven't had a chance to have any further discussion with my friend. The proposals he makes in general terms are very satisfactory and I most warmly agree with the observation he makes. If the material is furnished in good time before the oral hearings go on, it may save a lot of time and confusion, but I am raising the point now because my friend's letter was very tentative. We haven't had any further advice from him and if he can tell us now, it will assist us. He said then he could not speak for the Custodian, but if he could now tell the Commission that these copies will be produced and we will have the right to inspect the files, although I may say that we think it would be a very difficult proposition to inspect all the files in detail. They are very, very long and voluminous, but if we have that right, as it were, or if at least my friend is conceding that right or agreeing -- I am not asking him to concede it in a blanket way because, if, for example, in some cases of a special nature he won't produce, then we

can speak to it and deal with it.

If my friend can go so far as to tell us now what is planned in this regard, and how he is getting on in his endeavours to give us this information, we might be able to deal with it, because your Lordship is starting to hear evidence very soon. I would have liked to have discussed it with him before this in which case I don't think we wouldhave had to ask your Lordship for any rulings in regard to production.

THE COMMISSIONER: Perhaps at this point we might hear from Mr. Hunter.

MR. HUNTER: My lord, when I wrote that letter to Mr. Brewin, I hoped to do everything I said I was hoping to do in it. However, this is what has been done to date; to date, taking the claim as it comes in, we are starting a new file, and from the old file in connection with that individual property, we are taking all the documents which would appear to be relevant. There is a great mass of correspondence in there from such people as real estate men and the Lord knows but that appears to have no relevance insofar as value is concerned or insofar as any other thing is concerned connected with this Commission. Now, those files are anywhere from two to three inches to about six inches in thickness. I have read through some of them and they take hours to read through and to produce the original file for the benefit

of the individual Japanese claimant would, in my opinion, be worthless to him. He wouldn't have time to examine it. We are taking off what appears to be relevant and taking it off as objectively as possible so that everything pertinent to the claim, as far as sales are concerned, will be in that file, and we have been making one copy of the valuation and appraisal and that has been done to those claims as we can send out the claims. They are mailed directly to the claimant if he has sent them in directly. In the case of a solicitor filing a claim, they will be mailed to the solicitor. In the letter sent to the claimant, we suggest if he intends to use a solicitor, this claim form or appraisal form, rather, should be retained by him and turned over to his solicitor.

Now, insofar as other documents are concerned, we have found it would be absolutely impossible at the present state of affairs with the staff of the Custodian to make copies of all these documents. It would require the services of about from anywhere in the neighbourhood of 20 to 30 stenographers, and it is absolutely physically impossible.

THE COMMISSIONER: From your knowledge of the contents of such files as you have examined, Mr. Hunter, will your new file include everything that is likely to be of any help to the Japanese claimants?

MR. HUNTER: As far as I know, it will include everything. We are not making the slightest effort to suppress bad news, and we are trying to form a file with the one purpose in mind, that is to present a clear picture of what has happened, and that file, as soon as it is formed, will be available to the claimant or to his solicitor or to the solicitor's agent here in Vancouver.

We should like very much to have those documents copied and mailed to the individual, but it is impossible. For instance, there are 29 claims to be heard at Kamloops next week. The folders for many of them have been prepared and the others are being prepared and the first part of them are available for production and inspection by the solicitors now.

THE COMMISSIONER: You think the most convincing argument, Mr. Hunter, might be to allow them to examine the complete files in some instances to show just how valueless they would be to them?

MR. HUNTER: I should be only too happy to do it.

MR. BREWIN: We are not in the least suspicious, my lord, of my friend or the Custodian, but it is possible, for example, in some cases where a very large or substantial claim is made that the claimants may tell us some letter is written which he thinks is important or has some idea of that sort in his mind, and however futile the procedure might be, we might want

our representative to wade through all the documents, whether good or bad, in case there is a slight possibility that my friend's view of what was important or what was helpful didn't coincide with ours.

THE COMMISSIONER: The practical solution, Mr. Brewin, might be in such instances as you have in mind you could make an application to me.

MR. BREWIN: My lord, I think that would be very satisfactory, but I don't understand my friend to say if any of us want to go through the futile procedure of wading through all the files if we come to the Custodian's office and without too much trouble they could turn them up, that they will allow us to waste our time in that way -- in other words, I don't understand my friend to say he objects to producing these, but he says he thinks it would be wasting our time to do it. I am sure we are all very grateful to him and to the Custodian's staff that they are going to make these extra files which I imagine in ninety-nine cases out of one hundred will thoroughly satisfy us.

THE COMMISSIONER: I imagine the staff of the local office of the Custodian unquestionably have their hands full with the receipt of claims and the preparation of files for this investigation. If, in addition to that, they are to be required to produce files to you or some of

your associates in any substantial number, it is unquestionably going to add a great deal to their labours. I wonder if counsel could not manage to work this out and if they find they cannot, then they can come back to me.

MR. BREWIN: My lord, I think that would be quite satisfactory.

THE COMMISSIONER: I am quite sure that Mr. Hunter will not stand in your way if it can be done at all conveniently.

MR. BREWIN: Yes, my lord, that is quite satisfactory, at least to me.

MR. HUNTER: I would like to make it quite clear, my lord, that I am not counsel for the Custodian, and while the Custodian has agreed to certain suggestions I have made, at no time has he agreed all these files will be completely available to anyone who walks into his office and says he is representing some Japanese.

THE COMMISSIONER: We are only concerned with solicitors who are appearing.

MR. HUNTER: Yes. I can only say this, if Mr. Brewin came to me and wanted to examine an original file, I would recommend it to the Custodian, but I can't actually force the Custodian to produce it. The only person who can do that is your Lordship, who gives an Order.

THE COMMISSIONER: Mr. Brewin, if need be, you can bring it to my attention.

MR. BREWIN: Yes, my lord. I don't think I need say anymore than it is ex abundanti cautela.

MR. VIRTUE: I am glad to know from my friend, Mr. Hunter, that he is sending off a copy of the appraisal to each claimant, but I would like to offer a further suggestion as to one further document that might be sent out. I am thinking, my lord, of our right to reply and the fact the claimant won't be here to reply. I am quite sure that one document that will be valuable would be the form given to the applicant when he was evacuated.

THE COMMISSIONER: You mean the J.P. form?

MR. VIRTUE: Yes. If that were furnished to the applicant now, he would be in a position to answer it. If he could send it out with the copy of the appraisal -- the J.P. form, or whatever it is -- that would be very helpful.

MR. HUNTER: They will be available for inspection here by counsel or their agent. We are not proposing to make any copy of the J.P. form and send it out. We can't do it. We haven't the stenographic help.

MR. McMASTER: I appreciate the problem of the Government, my lord, but some concern must be had for counsel acting here. We are not only going to be engaged in appearing for individuals, but we will be also acting as agents in many respects for others across the country. Now perhaps the theory is you should go out and

engage a large staff on the same basis that the Custodian might go out and enlarge his staff. Now, I don't think either of us are desirous of putting the other in that position, but it would seem to me reasonable that if counsel for the Government or the Custodian is preparing a file which I take it will include all the material to which counsel for the Government will desire to refer to in putting in his own case, and in cross-examination of the claimant, that if they are preparing such files I am wondering whether it might not be possible to make those files available to counsel for the claimants, say, a week before the hearing.

THE COMMISSIONER: I had understood that was Mr. Hunter's proposal.

MR. McMASTER: Just from a very brief conversation before this sitting, I got the impression that wasn't so, but that the agents might examine these files.

MR. HUNTER: My proposal is that the agents here will examine them and after we reach the place where the hearing is to be, then counsel there can examine them, but it wasn't my proposal, nor has it ever been, to consider forwarding them my files and letting them completely out of my hands for them to examine.

THE COMMISSIONER: I don't think that is what is suggested.

MR. McMASTER: No. My suggestion would be that

counsel for the Crown might well appoint an agent in the centre where the hearing will be held and forward them to his own agent and say, "If you want to inspect them, they are there for you". Then it is up to counsel who is taking the hearing to have the papers available the day the hearing is starting. After all he is in the midst of conducting a hearing and at the same time in the midst of examining files of what he is going to be confronted with the next day.

THE COMMISSIONER: You think it would not be practical to have that disclosure of documents made here in Vancouver, rather than to send those files throughout the country?

MR. McMASTER: It involves agents here examining the files. Presumably if the agents did not have a great pressure of work, their principals might be satisfied to rely on their discretion as to what was material and relevant. On the other hand, if I were acting as agent for someone in the circumstances, not knowing the story of the claimant, I might, for instance, feel I should send the whole J.P. form. That involves not so much solicitor work, but a stenographic problem on the part of counsel to get out all these lists, and so on, whereas if that material could be made available, say a week in advance of the hearing, at a particular place where counsel might attend and

examine it, I think it wouldbe a far more satisfactory and fair way of handling it.

THE COMMISSIONER: Do you think that might be worked out, Mr. Hunter?

MR. HUNTER: My lord, I can see how it would be eminently satisfactory from Mr. McMaster's point of view and counsel for the claimants, but I don't think, while it would be very nice for them, it would be very unfair to myself. While these claims are away and we will always be in short supply as to time for the preparation of the cases, it means I am placed in the position that they claim they are placed in due to the fact the files are not with me. I haven't the files, they are off to some agent of mine who will have them purely for production for them, and I couldn't do any work on them because they would not be available. While I should like to facilitate these people, I don't think that is an entirely reasonable request. They are making these claims, and it is up to them if they wish production to come and examine them. I never heard of a claimant in civil litigation being entitled to ask for production of documents or send for them over to my office. With production of documents, they always have to go and examine the documents in my office.

THE COMMISSIONER: We have a rather difficult situation here, Mr. Hunter, in that claims will

be presented in one place and the Custodian's files are hundreds of miles away, and in addition to that I am proposing to deny the Japanese claimants the right of reply, consequently I am most anxious that the Custodian's office should do everything they can do to facilitate the counsel for the claimant in preparing this in advance so that it will be possible to provide a reply. That is all I have in mind. I appreciate the difficulty the Custodian's office is in as well as yourself, but all of us are undertaking a tremendous problem here.

MR. McMASTER: I wonder if I might say, with regard to my friend's statement, that from a theoretical point of view that might put him in a very difficult position; I realize he has to go in and prepare his cases from day to day. In practice, in British Columbia, for instance, we will have, I take it, the opportunity to examine the claims that are coming on in Kamloops before we go up; when you renew sessions at the beginning of the year, we will have that and we will probably be in the same position. I have in mind that counsel will probably be going through together, and between us we can examine the files without much difficulty. Now, where I see difficulty arising is when we hop over into another province, that is when we go into Alberta where there will be

two solicitors acting there, and I presume possibly two or three weeks in advance the notices should go out of the first hearings in Alberta. If the files for those cases could be made available, then I presume once counsel get there and work together, they can work out the examination of documents as matters proceed, but it is in that period when you come right fresh into it, you need to have a head start in the preparation of your case, and I think if my friend would agree to make those files available, at least on the first ones that are being heard in any new centre, say a week in advance or three or four days in advance of the hearings in each centre, he would be able to work very well with counsel. I don't think we are going to try to get his documents away from him so he doesn't have a chance to prepare his case.

THE COMMISSIONER: I do not feel disposed to make any definite ruling in the matter now. I am going to ask counsel to endeavour to work the situation out themselves, and if difficulty arises, and it does not appear that one side or the other is at fault, although I may tell you very definitely now if anyone is at fault, they are not going to get very much consideration from that time on in the matter of documents. I do not believe there is going to be the difficulty you are anticipating, and

that is why I prefer to leave it with you to work out, but I do wish you to know if difficulty develops, you should let me know at once.

MR. BREWIN: Then, my lord, I have one or two other points.

THE COMMISSIONER: Just before you go on with anything else, Mr. Brewin, we have several other matters on the agenda that I have prepared, matters that have to be taken up. I propose we should sit through until five o'clock in the hope we can finish with them. I suggest we take a break now for five minutes, and then resume, if that suits counsel.

MR. BREWIN: Yes, my lord.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. HUNTER: My lord, I have been discussing this matter of production with Mr. Brewin, and what he has suggested and what seems eminently reasonable to me is to send on say the first week's files to any place of hearing, and have them there available for their inspection a week ahead of time. In that way when I arrive, the rest will come along and they can work on them from week to week. That is only a tentative suggestion from Mr. Brewin, but it strikes me as reasonable and fair and it seems to me it would obviate the necessity of sending on a large batch of them.

THE COMMISSIONER: Mr. McMaster, counsel in your absence have been discussing the question of

production, and the tentative proposal is made that one week's files should be sent on in advance so that examination can be made of them.

MR. VIRTUE: I was wondering, sir, how that would work out. If he sends down one week's files, it is true that that week's files on hand could be read, but the next week, if Mr. Hunter arrived and the Commission, I imagine they would be pretty busy -- counsel would be pretty busy attending at the Commission sittings, and wouldn't have much time to read the files for the next week ahead. That would put us in an embarrassing position. You would not only have to try and read the files, but attend the sittings and interview claimants as well.

This is a practical clerical problem, and there are firms who specialize in the turning out of photostatic copies of documents, and in a matter involving as much money as this will involve, it seems to me in the long run it would save money if such a firm were employed to turn out photostatic copies, not of the total file but of the file selected by my friend of documents which he deems essential.

THE COMMISSIONER: There is a thought for Mr. Hunter to consider. Perhaps you can communicate on it later with Mr. Virtue if you find it possible to carry out his suggestion, if not, say so.

MR. HUNTER: I don't know, my lord. We have con-

sidered that as a matter of fact and our trouble has been not to have the file photostated, though that would be an enormous expense when you consider everything in each file, but it is to get the relevant documents in the file and try to decide what is relevant and what is not. That has been a terrific task, and will continue to be so. Whether we could get the file set up in time to get it photostated and sent on to counsel -- well, I don't know whether it is possible but it may be.

THE COMMISSIONER: We will keep that under consideration. In the meantime it is very evident to me if there is the necessary spirit of give and take between counsel, then it can be worked out . Now, something further?

MR. BREWIN: My lord, the next point I wish to bring up is perhaps a point of detail, but it may be helpful to know about it now. I was wondering if it wouldbe possible -- I don't know the mechanical details of this, but copies of the evidence which no doubt will be transcribed in each case will be furnished for your Lordship and for Crown counsel, and we are wondering whether or not we could ask that copies be also made for counsel for the claimants and be made available to them. I was going to make this further suggestion, which again is a matter of detail, but I don't know that there are any mechanical difficulties about

it, that in particular claimants' cases the evidence in regard to that particular case might be put under a separate cover instead of having it, as is sometimes the case with these commissions, a great big thick volume dealing with perhaps twenty, thirty or fifty claims. My suggestion is we have just the evidence in regard to the particular claim in a separate folder and copies made, so that as we are going to have to take these claims in a sense piece-meal, we may be able, perhaps, to give back the copies or bind together, shall we say, the extra evidence that is given in that individual case later on.

THE COMMISSIONER: Your suggestion, I take it, is that it should be done at Government expense, is that it?

MR. BREWIN: Yes, that is my suggestion. I think the Government will have to, for your Lordship's convenience, make copies of the evidence and a transcript of the evidence will have to be furnished to Government counsel. He will want one copy and it would seem to me it wouldn't be an unreasonable concession or very much additional expense -- it is just the expense of paper, as far as I know -- to make one extra copy for us without charging us. I don't want to deprive the Reporter of whatever he is entitled to for making the extra copy. Your Lordship will recognize that many of these

claimants have no funds at all, and we are anxious to keep down the expense to them.

THE COMMISSIONER: The expense, after all, Mr. Hunter, is a matter for you. What is your view on it?

MR. HUNTER: Well, I think I did suggest at one time to your Lordship that the transcripts should be made. I don't know about here, but the usual rate at home is $10.00 a day for the Reporter and 30 cents a folio for transcript which includes three carbons, and since those are included I should think one carbon might be furnished to myself and one to counsel for the claimants and the expense charged to the expense ofthe Commission.

THE COMMISSIONER: You are content with that?

MR. HUNTER: Yes.

THE COMMISSIONER: Seeing that the expense has to be incurred in the first instance, in any event.

MR. HUNTER: Absolutely.

THE COMMISSIONER: In the circumstances, it appears that can be done, Mr. Brewin.

MR. BREWIN: The next point I think is one on which I am really asking the question for information. I think your Lordship probably proposes to, or has already, I don't know which, appointed interpreters to be available at the different hearings. The only reason I raise the matter now is I don't know whether your

Lordship has appointed one or two or a number of interpreters to go all across the country. If you haven't done so, then all I wanted to say to you and to my friend was if we could be of any assistance in the different provinces in suggesting possible interpreters, we would be very glad to.

THE COMMISSIONER: Thank you, Mr. Brewin. Arrangements have been made for the employment of two interpreters, and the present proposal is they shall be carried with the Commission so that they can alternate in making the interpretation as we go along.

I may tell counsel that as to reporter service, there have been two reporters appointed who will travel with the Commission, as well as a typist, so that there will be some possibility of getting transcript within a reasonable time after it is taken.

MR. BREWIN: Now, my lord, next is again a point of detail. Your Lordship mentioned you proposed to travel across the country and to go to centres where people might eventually come. While I do not expect that your Lordship can quite determine at this stage where you will go, I have been asked by Mr. Cherniack of Winnipeg to speak to the matter regarding Fort William.

THE COMMISSIONER: I have had a letter from him, and the Secretary has advised him that in all

probability, we will sit in Fort William. I appreciate the difficulty there but I do not want to make any final decision on it until we see what number of claims actually come in. If it is a matter of only a few, it probably would not warrant the expense of staying over there. On the other hand, if there are enough to warrant a stop there, there is no reason why we shouldn't stop.

MR. BREWIN: Your Lordship will forgive me for saying it would be an extraordinarily heavy burden on an individual claimant to have to travel from some place perhaps 200, 300, or 400 miles in some cases north of Fort William, all the way to Toronto and stay there.

THE COMMISSIONER: I agree.

MR. BREWIN: So even if there are not very many cases -- I know there are at least ten or twelve-- even ifyour Lordship was only going to be there a day or two as you came across, I know it would relieve some claimants of a great hardship.

THE COMMISSIONER: While we are on the subject of places where sessions are to be held, it has become apparent that so far as British Columbia is concerned, that we will have to sit in Vernon in addition to Kamloops. The Secretary tells me there are almost as many claims filed from the Vernon area as have come in from the Kamloops area. In addition to that, I under-

stand, there are a considerable number of Japanese residents in Greenwood and in the immediate vicinity of Grand Forks. So tentatively, I propose to sit in Grand Forks in addition to Nelson. Therefore, the British Columbia sessions, as at present proposed, will be held at Kamloops, Vernon, Nelson, and Grand Forks; and as the claims come in, if it transpires there are a sufficient number of claims from residents close to another centre where there is adequate hotel accommodation and Court room accommodation, arrangements may be made to sit there, and the same thing will apply right across the country.

MR. McMASTER: I take it I would be at liberty to speak to that matter as things develop. I haven't had an opportunity of examining all the claims as yet.

THE COMMISSIONER: That is right. Anything further?

MR. BREWIN: There isjust another point, and I don't know whether we need discuss it now at all, but your Lordship has, as you will be aware under the "Public Inquiries Act", power to appoint experts and such people to compile special technical or statistical information. In some correspondence that I had with my friend, I didn't ask any such thing should be done, but I did mention the subject, and I thought it might be proper at this stage to at least ask if any such proposal were

underway, if your Lordship could advise us, we might have a few suggestions to make about it. We are not asking your Lordship to do such a thing at this moment, although we may find, when we get into it, we shall have to ask your Lordship to assist the claimants to get information in that way.

THE COMMISSIONER: What you have in mind, Mr. Brewin, is some assistance from appraisers or valuators in relation to land claims, I take it?

MR. BREWIN: Well, my lord, we have in mind the question of the assistance of valuators or appraisers, and in that regard we feel to the limits of our ability, both financial and otherwise, we should take the responsibility of trying to bring in our own valuators, especially for this added reason, that if your Lordship were to appoint someone, in a sense you might be appointing someone to do the very thing that you yourself are responsible for doing, and that is determining the fair market value, and there may be, and I am not saying there will be, but there may be certain matters of, say, statistical information as, for example, the number of sales in a particular area. Supposing we find in one municipality, say a farming municipality in which a large number of claims are concentrated, it might be extremely helpful or it might not be, I don't know, to have someone with statistical ex-

perience appointed by you, sir, to investigate all the sales that have been made in that area, or even to investigate their possible relationship to assessment values. It might save a tremendous lot of time and evidence.

THE COMMISSIONER: So much would depend there on what is comparable, would it not?

MR. BREWIN: Yes, it would, and we would of course have to supplement that information. But to give an illustration, supposing we find there are a number of fruit farms in a particular area, some ten acres and some eleven acres, and so on, if two ten-acre farms adjoin each other and they are, according to the evidence, of a comparable nature, and upon a statistical investigation we find that one of those farms not the subject of an inquiry has in fact been sold in 1942 for such and such a sum of money, that might very well be the best possible evidence and it might not be. It would depend, as your Lordship suggests, in establishing the properties were comparable.

There are other things I have in mind about which we may have some considerable argument, but I don't think this is the right time to bring it up, for example, as to what is meant by a fair market value. The word "fair", as I understand it, implies its market value without special abnormal conditions affecting it. It may be that certain statis-

tical, objective evidence might help to assist us in determining whether conditions were normal or abnormal in trying to find out values. Supposing a property was sold in June, 1943, we might have some very cogent evidence as to its value in June, 1942, and we might have some difficulty -- everybody, I am saying, might have some difficulty in determining what its value was in 1943. Your Lordship might be assisted by getting some statistical information to show that matters are such that values have either declined or increased between 1942 and 1943.

THE COMMISSIONER: Now, this is a matter that either you have raised with me in correspondence, or you have discussed that with Mr. Hunter, because I have discussed it with him in the interim.

MR. BREWIN: Yes.

THE COMMISSIONER: And I am presently waiting for information as to what can be done in that regard that is likely to be available, and until I get the advice that I am waiting for, I would prefer you don't deal with it. The question you raise, I agree merits consideration and it will have to be considered before we get very far into the Inquiry.

MR. BREWIN: Might I make two observations about it, because I won't be able probably to be here later. Perhaps the two observations are

MR. unnecessary, but first of all I would imply from what I have said already, we do suggest as far as possible the information secured from such experts should be of such objective or statistical nature. We wouldn't be altogether happy at the suggestion that such a person should be asked to give too much opinion evidence or anything of that sort. The other point is, if such a person is appointed, we assume or hope assistance might be made of his reports and that they be made available to all of us and that we have the right to discuss with him, through your Lordship, what things he thinks he might usefully look into that might help us as well as my friend. Perhaps as we go along, if your Lordship chooses to appoint such a person -- we can deal with it better when we come to it, and I am only mentioning it now, that we hope when such a person is appointed we may have an opportunity for him to see all of us before the final hearing.

THE COMMISSIONER: The information wouldbe available in ample time, both for counsel for the claimants and the Government.

MR. BREWIN: Mr. Virtue has some ideas to express, I think, on it. Perhaps he is not entirely in agreement with the suggestion I have made in going so far as to suggest it might be useful. He thinks perhaps it might not be.

MR. VIRTUE: My lord, I have had the opportunity of having a discussion with my learned friend and one or two of the other counsel yesterday with a view to saving time today for your Lordship, and on most of the matters I think we found ourselves entirely in agreement, but on this particular matter I am sorry to say that I couldn't find myself able to agree with the suggestion.

It seems to me that the crux of this whole matter is going to come down to this; that it will be a question of your Lordship weighing all the evidence on the two sides and arriving at what is in most cases fair market value of real estate or of chattels. Now it seems to me that duty is a very important duty, which, by the terms of the Commission, is imposed on your Lordship and I can see where the appointing of an expert by your Lordship might lead us into a sea of difficulties, because I think the natural tendency of that expert, if he was to be of any value at all, would be to attempt to give his opinion about values at a certain time. If he couldn't do that, I don't think he could be of any use at all.. Now, as I take it, what will happen as the matter works itself out is evidence will be given by the claimants themselves with perhaps some corroborative evidence, and then, no doubt, some valuator or valuators will give evidence on

behalf of the claimants and although I am not anticipating what Mr. Hunter's course will be, I presume he will have other evidence of valuators to submit from his standpoint. Now in giving their evidence, those valuators are bound to take into account the very things that are suggested might be brought to your attention.

THE COMMISSIONER: They must make those investigations before they can arrive at any opinion.

MR. VIRTUE: Yes, but I think the appointment of any such person by the Commissioner would lead us into a sea of difficulties, and without saying more, I would not be in agreement with that suggestion.

THE COMMISSIONER: Mr. McMaster, have you any views on the subject?

MR. McMASTER: I think Mr. Brewin has expressed my views with regard to it. My personal feeling is, subject to proper instructions being given to such a person, they might be quite helpful to the Commission and to counsel. However, I would emphasize the fact it would have to be objective information.

THE COMMISSIONER: You subscribe to the views expressed by Mr. Brewin?

MR. McMASTER: Yes.

THE COMMISSIONER: Yes, Mr. Hunter.

MR. HUNTER: I think you are aware of my views, my lord. I doubt very much whether we can get

anything out of it, but I think it should be done if it will get us anything of any value.

THE COMMISSIONER:. Well, I will keep this matter under consideration to await the information I have spoken of earlier, and before making any decision about it, I will again refer to counsel.

MR. BREWIN: My lord, I think there is just one other point I have to raise -- I am afraid I am raising a great many of them. In discussing the matter of productions, we have referred to production ofindividual files. It has occurred to us that there may be other productions of a general nature which I haven't mentioned; for example, there were instructions of a general nature given to the Government valuators, shall we say, the people who made valuations which are going to be relied on by my friend. They won't necessarily or presumably be related to any particular file or to any individual case. Such instructions that there are in writing would be, I think, highly relevant and I thought I should remind my friends when we are talking of production, if there is any material of that sort, we wouldbe glad if it would be made available because, after all, what the various appraisers did, both in respect to the time when they did it and the instructions they received, may be of very great weight in determining or may help us a great deal in deciding how we can approach

the valuations they actually made. I would ask my friend if there are such written instructions, or anything of that sort dealing with the whole subject generally, rather than the individual case, that that also be made available to us.

MR. HUNTER: My lord, I am, of course, quite agreeable to that but as far as this specific example adduced by my friend is concerned, no written instructions were given so I can't produce those. However, if there is anything of a general nature that I can think of -- I might overlook it and in that case if Mr. Brewin or Mr. McMaster or someone would ask me about it, I should be only too happy to produce it.

THE COMMISSIONER: As I understand your statement, Mr. Hunter, no instructions were given to valuators. They were simply called on to make an evaluation. Is that the situation?

MR. HUNTER: Generally speaking, that is correct, your Lordship. In the case of Soldier Settlement Board appraisers, they probably received verbal instructions of some kind, but no written instructions were given.

MR. BREWIN: I am satisfied if my friend will look into it he can assure us.

MR. HUNTER: I have attended to it and there are no written instructions.

MR. BREWIN: My lord, I think that concludes the points I had in mind raising.

MR. VIRTUE: My lord, if you will permit me to just ask -- I realize all your Lordship could do is to give me a very tentative answer, but I thought I might ask if your Lordship had any idea at all about when you might arrive in Lethbridge for the sittings there?

THE COMMISSIONER: I am afraid I cannot do so now. This is the situation, Mr. Virtue, there have been a substantial number of claims filed, so the Secretary tells me, Those are all from across Canada with a considerable number from around Lethbridge. Now, until the final date for the filing of claims arrives, it would not be wise to make any plan at all because we do not know how many claims there are going to be. I can tell you this, though, that every effort will be made to give appreciable advance notice of any hearings in a particular place.

MR. VIRTUE: I take it, sir, in view of the fact that the date for filing claims in Alberta has been extended to January 15th, there would be no possible chance of your Lordship getting there before the 1st of February.

THE COMMISSIONER: Or as early as that. I propose to sit in Kamloops and then to go on to Vernon and from there to Grand Forks and Nelson. The number of claims filed presently indicate we might be two months in B. C.

MR. VIRTUE: I would like to add this in a personal

way, that if I can be of any assistance at all im helping in making advance arrangements for the Commission, I should be only too happy.

THE COMMISSIONER:. Thank you, Mr. Virtue, we appreciate that very much. We may call upon you.

Mr. McMaster, have you anything more?

MR. McMASTER: I have nothing more, my lord.

THE COMMISSIONER: Mr. Hunter, have you anything?

MR. HUNTER: I know it is getting rather late, your Lordship, and it may be this is not the time to discuss the question of proof of evidence, but I am just wondering whether some agreement could be reached on it; for instance, in a case where property was sold. Would my friends be willing to admit the date of sale and the price, or do we have to actually prove there was a sale and the price was so much and prove the date it was sold? I don't want to have to prove things like that if they are willing to accept the Custodian's word for it that it was sold on such and such a date and that such and such a price was received for it. Would my friends be prepared to accept that or do we have to prove all these details of the sale? I realize, in order to show the fair market value, we will have to produce evidence to show it was advertised and things like that. And again copies of letters. Are we going to have to produce copies from the

Custodian later to prove they were written, or will we be able to produce them as copies of such letters sent and received?

THE COMMISSIONER: This relates somewhat to the question raised by your friend, Mr. Brewin, this morning. I may say that as presently advised, my disposition would be to certainly considerably relax the rules of evidence on an Inquiry of this nature.

MR. VIRTUE: As far as I am concerned, my lord, generally speaking we would be quite prepared to accept any statement my friend might make with regard to these things. If, in any individual case, it became necessary to question them, we could let him know about it in advance.

MR. BREWIN: I think I can say the same thing, my lord. I think as we go along it will develop into a sort of mutual proposition in order to save time. As with my friend's files, when they are looked into then my friend may be in a position to admit the claimants did have those things they claim, or something of that sort, without the detailed proof of it being necessary if his records show the same thing. I am not asking him to make any admissions now nor formally am I making any particular admissions myself now except to say I am quite sure if the Custodian produces his list of things he sold at a certain value, it is highly improbable that we shall raise any objection to

that.

THE COMMISSIONER: I do not know that any bargain can be made at this stage, because not even you gentlemen can bind all claimants because you may not be representing a percentage of them.

So far as your problem is concerned, Mr. Hunter, you are not going to be faced with the difficulty for quite some time, in any event, and perhaps by the time you are getting close to it, we will have provided the answer for you.

MR. HUNTER: Yes, my lord.

THE COMMISSIONER: Shortly then, I can say this; as presently advised the strict rules of evidence will not be enforced on this Inquiry. If any party is placed in any difficulty in the matter of proof, opportunity, I think, shouldbe given them to produce better proof if the proof offered is attacked or questioned.

MR. HUNTER: That is quite satisfactory.

MR. TAMAKI: It just occurred to me, my lord, in the case of sales to the Soldier Settlement Board, they were dated, if I remember correctly, January 1st of 1943. It may be at some stage or other we should discuss that because some of these statements were mailed later and the claimants were notified say in the fall.

THE COMMISSIONER: I am afraid I do not follow you, Mr. Tamaki. You say sales were made January 1st?

MR. TAMAKI: Made effective as of January 1st, my

lord.

THE COMMISSIONER: Oh yes.

MR. TAMAKI: And it may be just one would be enough to show that was actually so, because claimants were advised these sales were made effective as of January 1st.

THE COMMISSIONER: I am not sufficiently familiar to deal with your problem directly. Perhaps counsel for the Government can assist me in regard to Mr. Tamaki's question.

MR. HUNTER: I am not just quite sure what he is driving at, but sales to the D.V.A., the first group -- there was a later group -- were made with adjustments effective to the 1st of January. The adjustment was for the purpose of closing the transaction as of the 1st of January. Obviously 700 sales couldn't have been made January 1st, but that is the effective date if that is the point.

MR. McMASTER: My understanding, my lord, is some of these properties were taken over by the D.V.A. six or eight months after the 1st of January but they were deemed to be made the 1st of January. Now, we are going to be involved possibly with some cases as to what is the date for the fair value to be taken and the point in raising it now is I think in cases like that it would be fair for counsel for the claimants to request the date of the actual transaction as well as the date which

is formally taken to be the date of the transaction, but I am sure my friend would be prepared to give both those dates.

THE COMMISSIONER: As I understand it, the D.L.V.A. was all consummated as at one time. It took some time to complete it, is that the situation?

MR. HUNTER: That is my contention, and that is what I believe took place, my lord.

THE COMMISSIONER: In other words, the Soldier Settlement Board were bound as of a certain date, and that date was what, January 1st, 1943?

MR. HUNTER: Correct, my lord.

THE COMMISSIONER: So that would seem to me to be the effective date, Mr. Tamaki. On January 1st, 1943, the Soldier Settlement Board was bound by that bargain. If that is so and they could compel the Custodian to convey, then that must be the effective date. Does that meet the point you raised?

MR. TAMAKI: Yes. Instead of bringing it up in every case, we can settle it now.

THE COMMISSIONER: According to Mr. Hunter's statement, that is the effective date of all the D.L.V.A. transactions.

MR. HUNTER: Yes, of that large group. There was another small group later.

THE COMMISSIONER: Have counsel anything further? There are one or two points I have in mind.

I have had some inquiries regarding the proof of claims by affidavit, and I have instructed the Secretary to inform the inquirer I would make no decision until this session of the Commission. Subject to what counsel may have to say on the subject, my disposition would be to accept affidavit evidence, but the party presenting it must realize when there has been no opportunity given for cross-examination, that if there be evidence given to the contrary, affidavit evidence would have little weight.

Would you have any objection to accepting an affidavit as evidence in some cases, Mr. Hunter, where the claimant is unable to attend?

MR. HUNTER: No, my lord, subject to the realization that its credibility is somewhat weakened by the lack of cross-examination.

THE COMMISSIONER: Yes, as long as that is made very clear to the claimants that if they choose to rely on affidavit evidence in support of their claim, it will be accepted, but they must realize if there is evidence to the contrary their affidavit evidence cannot have the same value as oral evidence or testimony that is adduced by the opposite side, or anyone expressing a contrary view. Now, so much for that.

I have this query, what, if any, advance information is to be given by Government

counsel to claimants as to the grounds of defence proposed to be made by the Government to each claim? This relates to the question of reply, and my reason for propounding the question is that I want to be sure, insofar as it is possible, that the claimant is at no disadvantage in being unable to be present or to present evidence in reply to the case made out by the Government. Would it be reasonable, Mr. Hunter, for me to call on the Government to declare in general terms the line of defence or reply which the Government proposes to make to a claimant's claim?

MR. HUNTER: I am not sure, my lord, that I understood your Lordship's question completely. Do you mean that in each specific case we are to furnish the claimant with our general ground of defence or reply?

THE COMMISSIONER: That is the thought that runs in my mind. Is it throwing too great a burden on you as Government counsel, knowing the number of claims that have already been filed?

MR. HUNTER: Well the only thing that occurs to me is I am not sure I will be able to give that answer until I have had a thorough study of the file.

THE COMMISSIONER: I am sure you would not be able to.

MR. HUNTER: All I can say is we will endeavour to justify the sales as made at fair market value,

but other matters may arise like estoppel or concurrence by consent. If they wrote in and asked me about a certain file, if I had considered it I would be only too pleased to reply and say that my defence, if it is a defence, will be conducted along the following lines, but in many cases I won't know.

THE COMMISSIONER: Take a concrete case, say the Kamloops cases which we know are going to be considered commencing Monday next. Could you now inform counsel for those claimants, or the individual claimant, that the Government's defence in each instance will be along such and such a line?

MR. HUNTER: Well, I am afraid I can't, my lord. I have only had a chance to go over twelve of the twenty-nine claims. Some of the twelve have been cancelled since, but as I go over them I will be only too pleased to tell them what defence I propose to adduce eventually. Of course it would be subject to change if I find I have to change my mind.

THE COMMISSIONER: Quite true. Can we have this understanding that so far as you can, you will apprise counsel for the other side or the claimant whenever not represented by counsel what general line of defence you propose to take to his claim? My reason for making that request is this, that I would like the claimant to be in a position to anticipate the defence

when he gives his evidence in the first instance.

MR. HUNTER: Yes.

THE COMMISSIONER: And in that way he will suffer no disadvantage by being unable to reply.

MR. HUNTER: If you request that, your Lordship, I will do it. I would rather have it only where they request it, rather than furnish it to them automatically. It is going to be quite a task.

THE COMMISSIONER: Well, perhaps we can put it this way; if they are represented by counsel and you will know by now which claimants are represented by counsel -- as I understand it, any claim that has been filed by a solicitor or in which the claimant has adopted the printed form put out by the Committee, the counsel for the Committee or some other solicitor represents them, am I right?

MR. BREWIN: No, I am afraid we could not go as far as that. The Co-Operative Committee printed this form and sent it out and lots of people have filed what they call replies to the Economic Loss Survey. In addition we made the forms available to certain groups throughout the country who were in touch with Japanese-Canadians, and we said, "If you want to retain us, we will do the best to handle your case and explain the circumstances", and so on. In a great number of casts -- as I have already told your Lordship I already know of 700 actual

retainer forms to the Committee were signed, and I anticipate a great many will come in from claimants who have used those forms and have no intention of asking us to represent them.

THE COMMISSIONER: Yes, I appreciate your difficulty. Where you know counsel will present a claim, Mr. Hunter, you are under no obligation to furnish your line of defence unless you are asked for it, but where there is no counsel, I think the Government counsel should furnish some indication of the defence because in those instances the claimant probably would not appreciate the significance of this task and this discussion we are having now, in any case. I think I am not putting too great a burden on you in that respect, Mr. Hunter.

MR. HUNTER: It isn't that, your Lordship, but as soon as I have gone through the file and made up my mind, I will be only too pleased to do it, but it will be a long time.

THE COMMISSIONER: Yes, it will be a long time before we reach a great many of these cases.

Now, there is only one other matter that I desire to discuss, and that is the question of taking a view of the Fraser Valley farmlands while you gentlemen from out of town are here. Is it your wish to take a view?

MR. BREWIN: Speaking for myself, my lord, if I am still here, I think I would very much enjoy

it.

THE COMMISSIONER: How long are you going to be here?

MR. BREWIN: Until Friday.

THE COMMISSIONER: You are leaving Friday night?

MR. BREWIN: Yes, my lord. I must say I am no expert myself, but I would certainly enjoy seeing some of the things we are talking about. It would be very interesting.

THE COMMISSIONER: I think it might be very helpful to all of us who are not familiar with the situation.

MR. BREWIN: Naturally we don't know what changes have happened since 1942 and 1943.

THE COMMISSIONER: Undoubtedly there will be changes, but they can be described later by the witnesses called. I simply asked counsel's views on the subject.

MR. VIRTUE: Would it be possible for that to be done tomorrow, sir?

THE COMMISSIONER: Thursday? I would prefer to hold it over until Friday.

MR. VIRTUE: As a matter of fact, I have no personal knowledge of the lands but I have driven through the Valley a number of times and have a knowledge in that way, sir. However, I wouldn't be able to stay until Friday.

THE COMMISSIONER: You have to leave tomorrow?

MR. VIRTUE: I really should, sir.

THE COMMISSIONER: Mr. McMaster, have you any views on the subject of taking a view?

MR. McMASTER: No. I think probably I have seen the Fraser Valley, but I think it might be useful. Undoubtedly your Lordship is familiar with it.

THE COMMISSIONER: I am in the hands of counsel in that regard.

MR. McMASTER: I think it might be very interesting and useful if Mr. Hunter and Mr. Brewin and Mr. Tamaki were to go along.

MR. BREWIN: I don't suppose we have reached the point where the identical properties could be pointed out.

MR. HUNTER: We could easily arrange to have any specific properties pointed out. These properties vary greatly. This is only a suggestion, but my suggestion would be to get someone, perhaps the Custodian, to take what he considers are two typical examples of the better class properties, and two medium class, and two lower class properties, and go and have a look at those properties.

MR. BREWIN: I take it my learned friends would be with us to know what we are talking about. It isn't evidence, but I wouldbe very happy of the opportunity and I don't want to exclude my friend, Mr. Virtue.

THE COMMISSIONER: Do I take it the consensus of opinion is favourable to taking a view?

MR. HUNTER: I am just wondering, your Lordship, if the specific properties could be pointed out

for which claims have been made or perhaps specific properties, say, berry farms, under the D.L.V.A., so that those could be identified to the counsel concerned. They would know that was one of the ones they are claiming for, or something like that.

THE COMMISSIONER: I do not see how you can pick out a particular property in respect of which claims have been filed, because I know the claims have come in so very recently that I know it would be throwing a very heavy burden on you to make the selection. Perhaps the Custodian can help you in that regard.

MR. HUNTER: Possibly Mr. Shears could pick out a couple of each type.

THE COMMISSIONER: Whether claims are filed in respect of them or not. From what I am told, these properties fall into pretty definite categories as Mr. Hunter described them.

MR. McMASTER: I would respectfully submit, my lord, that I think there may be some merit in picking out property that we know to be Japanese property, but there is not much point going and looking at someone else's property. I don't think it should be identified as the property of this, that, or the other claimant. Presumably there is some merit in the Commission seeing the property, but it would be either giving one claimant an edge over another claimant, or alternatively or possibly

harming his claim in relation to someone else's. Therefore, I think while it might be a very splendid idea to select property on the ground of it having been Japanese property, I think there ought to be no identification. This is not a matter of evidence. In other words, it is a matter of general information to the parties concerned.

THE COMMISSIONER: Now, gentlemen, I want you to understand very clearly the fact of my suggesting a view, from that it does not follow at all that I am advocating it.

MR. VIRTUE: I am inclined to think I would follow Mr. McMaster's thoughts on that, especially in the absence of the claimant himself. I think perhaps it might lead into difficulties.

MR. BREWIN: In this connection it sounds to me like a very interesting and helpful trip. I understood when you made the original suggestion it wasn't with a view to deciding that somebody's property was sold for $1200.00 or a thousand dollars and it looks like a pretty miserable property, or it looks like a fine property and obviously was worth $5000.00.

THE COMMISSIONER: It is purely informative.

MR. BREWIN: It is purely informative. I can't see that any great harm would come of it, in fact it might be the other way around. My friend suggests there might be a little disadvantage to someone who didn't have his property looked

at, and so on, but I don't think we will retain the names. We are only going, as I say, to try and get a broad view of it so when Mr. Hunter and I have to address you later or advise some one, we have a better understanding of what we are talking about. We are at a disadvantage in Ontario where we have probably more Japanese-Canadians than in any other part of Canada of being unfamiliar with the things we have to talk about. I would find it very helpful.

THE COMMISSIONER: It seems to be the consensus of opinion, then, that a view should be taken. Is Friday a satisfactory day except for Mr. Virtue? Mr. Tamaki, would you care to come out on this view with us?

MR. TAMAKI: Yes, very much, my lord.

THE COMMISSIONER: And Mr. McMaster?

MR. McMASTER: Well, I am afraid with the opening in Kamloops on Monday I will have to be excused.

THE COMMISSIONER: Mr. Virtue is not available to go but Mr. Brewin will?

MR. BREWIN: Yes, my lord.

THE COMMISSIONER: Well, suppose we leave the Court-house -- I think the earlier we start, the better. Say half-past nine or ten o'clock Friday morning.

MR. HUNTER: I think half-past nine would be preferable.

THE COMMISSIONER: Then half-past nine on Friday morning. Is there anyone present who desires to say anything? If there is nothing further,

then, we will adjourn now, and I wish to thank counsel for the assistance they have given me today.

(PROCEEDINGS ADJOURNED TO RECONVENE AT KAMLOOPS, B.C., ON DECEMBER 8th, 1947, AT THE HOUR OF 10:30 A.M.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein.

T.P. Horrobin

"T.P. Horrobin"

Official Reporter.