B-2027 Iwasaki, Torazo v. The Queen 1967-1970 2/7

R14188 Vol. 2619

3. The Suppliant joins issue with the Respondent on Paragraph 3 of the Amended Statement of Defence filed herein.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of March, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS REPLY AND JOINDER OF ISSUE is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

VOL. I—No. 5 EXTRACTS

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, FEBRUARY 8, 1943

AMENDMENTS TO DEFENCE OF CANADA REGULATIONS

Order in Council amending Defence of Canada Regulations (Consolidation) 1942—carrying of cameras, etc.

P.C. 757

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 2nd day of February, 1943

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of National Defence for Naval Services reports that for the security of Canada, it is deemed advisable that special measures be taken with regard to the carrying of cameras and the making of any photograph, sketch, plan or other representation while on board any Canadian ship or vessel outside Canada, or while on board any ship or vessel in waters touching the coastline of Canada and in certain other inland waters.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of National Defence for Naval Services concurred in by the Minister of Justice, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended by revoking paragraph (1) of Regulation 18 and substituting therefor the following:

"18 (1) Subject to an exemption for which provision may be made by order of a competent authority, no person shall, except under the authority of a written permit granted by or on behalf of a competent authority,—

(*a*) take, make or publish any photograph, or make or publish any sketch, plan or other representation,

(i) of a protected place, or of any part of or object in a protected place, or of any object of any such description as may be specified by order of a competent authority;

(ii) of, or of any part of or object in, any area in Canada as may be specified, by order of a competent authority, being an area in relation to which the restriction of photography appears to that competent authority to be expedient in the interests of the safety of the State;

(iii) of any of His Majesty's Canadian ships either commissioned or under construction wherever such ship may be or of any armament of any such ship or any armament intended to be installed in any such ship;

(iv) of, or of any part of or object on, the coastline of Canada, or of the shore of the St. Lawrence River east of Cornwall, Ontario, or of the shore of any waters of Canada declared by a competent authority to be defence waters; or

(v) while on board any Canadian ship or vessel outside Canada, or while on board any ship or vessel in the waters of the St. Lawrence River east of Cornwall, Ontario, or in any other waters of Canada declared by a competent authority to be defence waters, of any object in, or visible from, the ship or vessel including any other ship or vessel or any part thereof;

(*b*) have a camera with him in any such place or area; or on board any Canadian ship or vessel outside Canada; or on board any ship or vessel in the waters touching the coastline of Canada, in the waters of the St. Lawrence River east of Cornwall, Ontario, or in any other waters of Canada declared by a competent authority to be defence waters."

A. D. P. HEENEY,
Clerk of the Privy Council.

Order in Council amending Defence of Canada Regulations (Consolidation) 1942 — Regulation 38D

P.C. 808

AT THE GOVERNMENT HOUSE AT OTTAWA

MONDAY, the 1st day of February, 1943

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas it is deemed advisable to amend the Defence of Canada Regulations so as to provide for the collection and disposal of certain articles which have dropped from any aircraft, or which are believed to be the property of a member of any of the armed forces of the enemy, or to have been or form part of any missile discharged by a member of any armed force, or which have been lost or abandoned.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, chapter 206 of the Revised Statutes of Canada 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended by inserting immediately after Regulation 38C the following Regulation:

"38D. (1) If any person finds any article which he has reasonable cause to believe:—

(*a*) to have dropped from any aircraft, or to have formed part of any aircraft; or of the equipment of any aircraft; or

(*b*) to be the property of a member of any of the armed forces of the enemy or to have formed part of the arms, clothing or equipment of such a member, or to have been or formed part of any missile discharged by a member of any armed force; or

(*c*) to have been used or intended for use by a member of any armed force and to have been lost or abandoned; or receives any such article from any other person whom he does not have reasonable cause to believe to be entitled to transfer it to him, or from a member of any of the armed forces of the enemy, he shall forthwith cause the article to be delivered to a member of His Majesty's naval, military or air forces on duty or to a justice of the peace residing in or near the locality where such article was found, or to an officer or constable of a police force of the province or city in or near such locality, or to an officer or constable of the Royal Canadian Mounted Police, or if

by reason of the size or the weight of the article, or other good cause, it cannot conveniently be so delivered shall report the nature and situation thereof to such a member, justice of the peace, officer or constable, and save as provided in this paragraph no person shall remove or tamper with any such article.

(2) Any justice of the peace or any such officer or constable receiving any such article or any such report of the nature and situation of such article shall report the fact to the Commissioner of the Royal Canadian Mounted Police.

(3) The Secretary of State or the Minister of National Defence, or the Minister of National Defence for Naval Services, or the Minister of National Defence for Air, may give directions enabling such authorities or persons as may be specified in the directions to grant exemptions from the requirements of this Regulation, and, in the case of articles which are not required to be retained for the purpose of His Majesty's naval, military or air forces or by the Commissioner of the Royal Canadian Mounted Police, to permit them, after those requirements have been complied with, to be retained or otherwise dealt with by persons who have complied therewith.

(4) The obligations and restrictions imposed by this Regulation shall not apply to anything done by any person for the purpose of preventing or minimizing damage caused or likely to be caused by enemy action or of discharging any official function exercisable by him.

(5) In this Regulation the expression "official function" means, in relation to any person, a power or duty conferred or imposed on him as a member of His Majesty's naval, military or air forces, of a police force, or of a civil defence organization, or as a person acting under the instructions of any such member; and the expression "civil defence organization" means any organization in which persons serve or are engaged under any public authority in the performance of functions in connection with the safety of the state or the securing of public safety."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

April 6th 1968.

Mr. Bruce Allen,
Senior Clerk,
The Exchequer Court of Canada,
Court House,
800 West Georgia St.,
Vancouver, B.C.

Dear Bruce:

RE: Torazo Iwasaki, v. The Queen,
Court No. B-2027.

I enclose herewith the original file in the above mentioned action in order that Sheppard D.J. may deal with any applications that the parties may wish to make on dates for trial.

Yourstruly,

Walter C. Collier,
Court Registry Clerk.

B-2027

Iwaski v The Queen

Registry

Please ask Sheppard J. ~~Thyst~~ Mr. Allen to deal with any application the parties may wish to make or date for trial in Dave. v Vict.

5/4/68

B-2027

The Daily Colonist

EDITORIAL DEPARTMENT — ESTABLISHED 1858 — VICTORIA PRESS LIMITED

P.O. BOX 300 Victoria, B.C.

December 27, 1967.

John Matters, Esq.,
Reporter,
The Daily Colonist,
P. O. Box 300,
Victoria, B.C.

Dec. 13, 1967.

Dear Sir:

Re: Torazo Wasaki v. The Queen
Court No. B-2027

With reference to your inquiry of December 13, 1967, please be advised that the above action had not yet had a trial date fixed to be heard. ~~Accounting~~ according to our records, there was no way of indicating when a date may be fixed.

I would request that any future inquiries with reference to this action may be obtained by contacting our local office at Vancouver, 800 West Georgia Street.

Yours very truly,

Registrar.

Friday August 30, 1968

Before Sheppard J in Chambers.

File No "B2027"

Torazo Iwasaki - J.R. Macleod.

Her Majesty the Queen - W.S. Maxwell & B. Hrytsak

10.43 commenced

Application to amend par. 7 St. of Claim Amendment opposed

-- allowed costs to Defts etc. Resp in cause in any event

11.00 am completed.

Vancouver 1, B. C.,
August 28th, 1968.

Mr. John Matters,
Reporter,
The Daily Colonist,
P. O. Box 300,
Victoria, B.C.

Dear Sir:

re: Iwasaki vs The Queen
B-2027

In reply to your letter of the 21st instant regarding the above action, the trial has been set to commence on September 30th at the Exchequer Court, 5th Floor, Bank of Canada Building, 900 W. Hastings St., Vancouver, B. C.

Yours faithfully,

J. P. ABEL
DEPUTY REGISTRAR

Per _____
Authorized Signing Officer.

BA/fr

1858 **The Daily Colonist** 1968

In its 110th Year of Publication

P.O. BOX 300
Victoria, B.C.

EDITORIAL DEPARTMENT

Aug. 21, 1968.

Mr. J. P. Abel
Deputy Registrar
Law Courts
Vancouver, B.C.

Dear Mr. Abel:

In regard to Torzao Iwasaki vs. The Queen, File No. B-2027, does it still look as if a hearing may proceed about Sept. 30?

My last letter was April 3.

Sincerely,

John Matters,
Reporter.

VANCOUVER
AUG 23 1968
REGISTRY

Thursday, January 25th, 1968

Before the Honourable
F. A. Sheppard

File # B2027.

Between:-

Tozazo Iwasaki

Suppliant

v

Her Majesty The Queen

Respondent

Motion:- Amend Petition of Right

N. Mullins for Respondent.
J. Barrett for Suppliant

Called: 10:33

Mr. Barrett opens - asks for amendment. 10:34.

Mr. Mullins replies - not sufficient particulars in proposed amendment. 10:50

Discussion re adjournment to enable Suppliant to redraw proposed adjournment.

Adj. to 8/2/6 @ 10:30 AM.

Thursday, February 15th, 1968

Before The Honourable
F. A. Sheppard.

In Chambers

File # B2027

Torazo Iwasaki
Suppliant

v.

Her Majesty the Queen
Respondent

Motion: Amend Petition of Right

Called: 10:31

F. Barrett for Suppliant
N. Mullins for Respondent.

Mr. Barrett opens 10:32

Mr. Mullins replies - opposes. 11:05

Mr. Barrett replies 11:08

Mr. Mullins replies - states what he understands the proposed amendments are. 11:12

Discussion regarding amendments.

Order - amendments allowed as per agreement. Leave granted to file amended Statement of Defence. Costs to Respondent in any event of cause.

No. B-2027

IN THE EXCHEQUER COURT OF CANADA

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED 1 V 1968 DEPOSÉ
VANCOUVER

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

-and-

HER MAJESTY THE QUEEN

RESPONDENT

BRITISH COLUMBIA -1 V '68 $ 0.10 LAW STAMP

NOTICE OF MOTION

TAKE NOTICE that this Court will be moved at the Exchequer Court, 900 West Hastings Street, in the city of Vancouver, Province of British Columbia, by Counsel on behalf of the Deputy Attorney General of Canada on Tuesday, the 14th day of May, A.D. 1968, at 10:30 o'clock in the forenoon or so soon thereafter as the motion may be heard for an order:

1. That the Suppliant do reattend before the Deputy Registrar of this Honourable Court at the City of Vancouver in the Province of British Columbia at his own expense to answer a certain unnumbered question on page 9 of the transcript of his examination for discovery conducted on the 26th day of March, A.D. 1968, which reads as follows:

> "In paragraph 3 of the petition of right, it is alleged that the Custodian acted through his Agent, Gavin C. Mouat, and I would like to know on what facts the Suppliant relies on for the allegation that Gavin C. Mouat was the Agent of the Custodian?"

and to answer the further questions numbered 47, 48, 49 (on page 16), 64, 65, 82, 83, 86, 105, 106 and 107 on his said examination for discovery and all proper questions

Thursday, February 8th, 1968.
Before The Honourable F. A. Sheppard.
In Chambers.
File # B 2027.

Torazo Iwasaki — Suppliant
Her Majesty The Queen — Respondent

Motion: Amend Petition of Right

J. Barrett for Suppliant
N. Mullins for Respondent.

Called: 10:42.

Mr. Barrett opens. 10:43

Mr. Mullins replies - opposes motion 10:45

Adjourned to 15/2/68 @ 10:30 A.M.

Friday, March 8th, 1968.

Before The Honourable
F. A. Sheppard.

In Chambers

File: # B2021.

Torazo Iwasaki
Suppliant

Her Majesty The Queen.
Respondent.

Motion: - Commission Evidence

Called: 10:32

Mrs. M. C. Desfosses for Suppliant
N. Mullins for Respondent.

Mrs. Desfosses opens - asks that a commission be issued to take the evidence of the Plaintiff 10:33

Mr. Mullins opposes 10:37

Order - for Commission (in Van. before Dep. Reg.) evidence, subject to closing the proceedings, and examina the Suppliant making discovery of documents & examination. Costs in cause.

B-2027

Iwaski v The Queen

Registry

Please ask Sheppard J. ~~Thyst~~ Mr. Allen to deal with any application the parties may wish to make or date for trial in Wave. a v ict.

5/4/08

THE EXCHEQUER COURT
OF CANADA

OTTAWA

Vancouver 1, B.C.,
June 3rd, 1968.

Exchequer Court of Canada,
Ottawa, Ontario.

Attention: W. C. Collier, Esq.

Dear Sir:

Re: Iwasaki vs The Queen
B 2027

Enclosed please find invoice No. 21690 together with a photo-copy of an Order by Mr. Justice Sheppard dated 14th May, 1968.

We are holding the file in this matter pending trial on September 30th next and are therefore retaining the original copy of the above Order.

Yours faithfully,

J. P. ABEL
DEPUTY REGISTRAR

Per _____
Authorized Signing Officer.

RLP/fr
Encl.

that he inform himself and answer fully and conclusively those unanswered questions in the transcript of his Examination for Discovery of March 26th, 1968, namely, the first question on page 9 and Questions 47, 48, 49, 82, 83, 86, 105, 106 and 107 and any further consequential questions arising out of the answers so given;

AND THIS COURT DOTH FURTHER ORDER that the costs of

REGISTERED MAIL

$2.10

No. B-2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

-and-

HER MAJESTY THE QUEEN

RESPONDENT

BEFORE THE HONOURABLE) TUESDAY, THE 14TH DAY
MR. JUSTICE SHEPPARD) OF MAY, A.D. 1968.

UPON the Motion of the Respondent coming on this day; AND UPON READING the Notice of Motion filed herein the 1st day of May, 1968, and the transcript of the Examination for Discovery of the Suppliant dated the 26th day of March, 1968; AND UPON HEARING Mr. Norman D. Mullins of Counsel for the Respondent and Mr. J.R. MacLeod of Counsel for the Suppliant;

THIS COURT DOTH ORDER that the Suppliant do re-attend before the Deputy Registrar of this Honourable Court at the City of Vancouver, in the Province of British Columbia, at his own expense for cross-examination on behalf of the Respondent on the issues raised in the Reply and Joinder of Issue herein and that he inform himself and answer fully and conclusively those unanswered questions in the transcript of his Examination for Discovery of March 26th, 1968, namely, the first question on page 9 and Questions 47, 48, 49, 82, 83, 86, 105, 106 and 107 and any further consequential questions arising out of the answers so given;

AND THIS COURT DOTH FURTHER ORDER that the costs of

this application be costs to the Respondent in any event of the cause.

BY THE COURT

Checked
RP.

R.A. Briggs.

DEPUTY REGISTRAR

78.
D.J.

APPROVED AS TO FORM

J.R. Macleod

Counsel for the Applicant.

Iwasaki v. R.

Crown Argument

1. History of the legislation.

(a) War Measures Act R.S.C. 1927, C. 206.
s. 3. Powers of Governor General in Council.

(b) Defence of Canada Regulations (Consolidation) 1941 - P.C. 5295
s. 4 Power to declare protected area and control movement of persons in the area.

(c) P.C. 365. Amendment to Defence of Can. Regulations.
s. 4 Allowed Minister of National Defence and Minister of Justice to declare protected area.

(d) Order. January 29, 1942
- established protected area West of Cascades and including all islands.

(e) P.C. 1486. Amended Defence of Can. Regl's.
(i) authorized Minister of Justice to require any or all persons to leave protected area.
e.g. clear invasion zone of non-combatants.
(ii) authorized orders re possession of articles.
e.g. guns, requisition vehicles
- expanded by P.C. 1542.

(f) Order. February 26, 1942.
- required all persons of Japanese race to leave protected area.

(g) P.C. 1665 March 4, 1942.

(i) established Security Commission.

(ii) S. 12 vested Japanese property in Custodian. - read preamble.

- from this date Iwasaki's land was vested in the Custodian and Iwasaki no longer had any interest in or claim to it whatsoever.

(iii) incorporated Custodian powers in Regulations re Trading with Enemy (1939) P.C. 2512.

A. S. 23(1) definition of Custodian;
B. S. 24(1) property vested;
C. S. 24(2) Sole discretion to deal with property;
- negatives any trust for Iwasaki:
D. S. 36-39, 43-46 powers of Custodian;
E. S. 40 registration procedure;
F. S. 55, 61 onus of proof and Court remedy.

(h) P.C. 2483
- slight changes to P.C. 1665.

(i) P.C. 8862 Defence of Can. Regulations (1942).
cf. S. 39E "persons of Japanese race."

(j) P.C. 469. January 19, 1943.
Power to sell land.
- deemed to have existed from date of vesting, i.e. March 4, 1942.

(k) P.C. 8526 Revised Regulations re Trading with Enemy.

- no material changes.
- re-numbering.

S. 6 Custodian defined;

S. 21 Powers of Custodian;

S. 23 L.R.O. procedure;

S. 28 and 58(1) Court remedy;

S. 49-51 Land not exigible.

2. Validity of the legislation.

(a) Japanese reference (1946) S.C.R. 248.
aff'd. (1947) 1 D.L.R. 577 (P.C.)

(i) War Measures Act valid.

(ii) evacuation regulations valid.

(b) Nakashima v. R. (1947) Ex. C.R. 486.
Vesting and Sale regulations valid.

3. Application to Iwasaki.

(a) P.C. 1665 and 2483, S. 12.

(i) Salt Spring in protected area.
Order January 29, 1942.

(ii) person of Japanese race.

A. born in Japan of Japanese parents;

B. regulations intended to deal with problems arising out of war with Japan;

C. P.C. 9760 - registration of Japanese.

D. P.C. 288 - Canadian citizens.
- in pari materia.

E. Japanese reference
S.C.C. at 267, 286, 315.
P.C. at 592, 593.

F. Nakashima at 487, 488.

G. Court must find meaning:

Fawcett v. Buckingham (1960)
3 All E.R. 503 (H.L.)
Interpretation Act S.C. 1967,
C. 7, S. 11, 31.

H. Shorter Oxford English Dictionary.

I. On JP form Iwasaki acknowledged he was "person of Japanese race".

J. Iwasaki made claim to Bird Commission under P.C. 1810.

(iii) Iwasaki was resident in the protected area;

(iv) He was evacuated;

(v) He couldn't take this property with him.

Therefore on March 4, 1942 Iwasaki's lands vested in Custodian by operation of law. - neither the Custodian or Iwasaki had any choice or control over that vesting.

- no judicial or administrative procedure involved so as to necessitate notice or hearing.

- act of Parliament and recourse for that must be only to Parliament.

Iwasaki was divested of all rights in the lands. - later refusal to hand over C.I.T. of no significance.

(b) P.C. 469 January 19, 1943.

(i) Power to sell.

(ii) Vesting certificate filed March 31, 1943.

arising from the answers given, or for such other order as may seem just, pursuant to Rule 137; and

2. That the Suppliant do attend before the said Deputy Registrar to be examined for discovery upon the Reply and Joinder of Issue filed by him or on his behalf on the 27th day of March, A.D. 1968, or for such other order as may seem just.

AND TAKE NOTICE that in support of this Motion will be read the pleadings and proceedings in this action, the transcript of the examination for discovery of the Suppliant and such further and other material as Counsel may advise.

DATED at Vancouver this 1st day of May, A.D. 1968.

D.S. Maxwell
Deputy Attorney General of Canada

TO: The Registrar of this Honourable Court

And TO: The Suppliant

And TO: J. Raymond McLeod,
Solicitor for the Suppliant

(iii) Trading with Enemy Regulations 1939, S. 46 (1943, S. 40(1)) gave power to sell privately or publicly to anyone.

(iv) March 30, 1944 public advertising.
- 3 offers received.

(v) August 5, 1944 Wilson appraisal.
- Commission report of procedure.
- re-offered to 2 bidders.

(vi) August 23, 1944. Salt Spring Lands offer accepted.
- highest bidder.
- above appraisal value.
- no evidence Custodian knew of involvement of Mouat.

- could have sold to him anyway.

(c) March 1, 1945 letter to L.R.O.
- corrected title.

(d) March 1, 1945 Deed to Salt Spring Lands.
- everything done was authorized by the legislation.

(e) Land Registry Act not applicable to Federal Crown: *

4. The action is against the wrong party. - against Crown.

(a) If any cause of action, should have been against the Custodian:

(i) Nakashima

(ii) Ritcher v. R. (1943) Ex. C.R. 64.

(iii) P.C. 2512, S. 61.
P.C. 8526, S. 27.

(iv) onus on suppliant: P.C. 2512, S. 55.

* Gauthier v. R. (1917) 56 S.C.R. 176
Zakrzewski v. R. [1944] 4 D.L.R. 281 (Ex.)
R. v. Murray [1965] 2 Ex.C.R.663 at 682
Deeks McBride v. Vancouver Assoc. Contractors (1955) 14 W.W.R. 509 (B.C.C.A.)

(b) Custodian is not an officer, servant or agent of the Crown and therefore the Crown is not responsible for anything done by him.

- independent of Crown
(as Courts are)

(i) Power to delegate P.C. 8526, S. 6(2)

(ii) Power to employ. S. 6(3).

- employees not public servants.

(iii) no forfeiture of property: S. 51.

- not necessary if agent of Crown.

(iv) a Minister is not an officer of the Crown so as to make Crown sueable:

Pouliot v. M. of T. (1965) 1 Ex.C.R. 330.

Belleau v. M. of N.H.&W. (1948) Ex.C.R.288.

5. There was no trust and no breach of trust.

(a) Crown not bound in trust unless expressly created by statute or contract:

Chipman v. R. (1934) Ex. C.R. 152 at 159.

Henry v. R. (1905) 9 Ex. C.R. 417 at 443.

- none created by these regulations.

- absolute power to sell contradicts suggestion of trust.

(b) Breach of trust cannot be imputed to the Crown:

R. v. Quebec North Shore (1904) Ex.C.R. 390 at 398.

aff'd. (1906) 38 S.C.R.

of. Idington J. at 69.

Hereford v. R. (1894) 24 S.C.R. 1 at 15.

R. v. Black (1900) 6 Ex. C.R. 236.

Rustomjee v. R. (1875-76) 1 Q.B.D. 487

aff'd.(1876-77) 2 Q.B.D. 69.

Civilian v.R. [1932] A.C. 14 (H.L.)

(c) Statements by Mouat.

(i) not pleaded as creating trust.

(ii) he had no authority to create trust.

(iii) Crown is not estopped by misinterpretation of law by officers or servants:

R. v. Black supra at 253.

Kennedy v. M.N.R. (1929) Ex.C.R. 36 at 38.

Producers Cold Storage June, 1968, Exchequer Court. Judgment Gibson J. June 24, 1968

6. Fraud.

(a) everything done was in accordance with statutory authority.

- even if Custodian wanted to benefit Mouat knowingly, he had power to make a private sale and Iwasaki would have no recourse under the law.

- but no evidence of any such intent.

- nor would such sale have been a breach of trust if there had been a trust.

(b) Fraud cannot be imputed to Crown:

Jones v. R. (1877-83) 7 S.C.R. 570 at 590.

Bank of U.C. v. Bradshaw (1865-67) L.R. 1 P.C. 479 at 488-490, 491;

Merchants Bank v. Whidden (1891) 19 S.C.R. 53 at 75;

R. v. Black, supra, at 250

In re Frost Bros. (1925) 2 W.W.R. 459 at 460.

(c) Fraud is a tort for which the Crown cannot be held liable in this case.

(i) Tort claims must be based on the Crown Liability Act S.C. 1952-53, c. 30.

A. but it is not pleaded;

B. such an action is barred by S. 24.-

(ii) No declaratory judgment can be given in respect of alleged tort:

Henry v. R. (1905) 9 Ex.C.R. 417 at 48

7. Release

(a) Bird Commission

- read Report

- read Iwasaki conclusions

(b) Iwasaki made claim

(i) accepted jurisdiction of Commission

(ii) gave evidence

(iii) represented by counsel;

(iv) presented evidence of $12,000 value

- accepted by Bird J.

(c) Cheques:

	Oct. 5, 1948	$ 4,932.99
	Nov. 8, 1950	7,608.95
fees	Nov. 8, 1950	474.55
		$13,016.49

- included some chattels

(d) Executed release

- both of Crown and Custodian

8. Delay

(a) Sequence of events

(i) Mar. 4, 1942 property vested in Custodian;

(ii) By JP form Iwasaki knew Custodian involved in April 1942

- had Beckwith as lawyer then

(iii) July, Aug. 1942 received Custodian's letters;

(iv) Sept. 17, 1942 Beckwith wrote Custodian;

(v) 1943 letters;

(vi) Feb. 15, 1945 Custodian letter mentioned sale;

(vii) May 23, 1945 Custodian sent sale statement;

(viii) Aug. 1945 hostilities ended;

(ix) Aug. 19, 1947 first complaint;

(x) Nakashima case;

(xi) Mar. 1948 made claim to Commission;

(xii) Oct. 1948 objected on cheque;

(xiii) Nov. 1950 received payment and gave Release;

(xiv) 1952 War ended;

(xv) 1967 action started;

- 25 years after vesting;
- 22 years after hostilities ended;
- 19 years after Bird Commission;
- 17 years after payment.

cf discovery

(b) Prejudice to Crown:

(i) witnesses dead - Mouat

(ii) documents destroyed

Wilmott v Barber 15 Ch. D. 96

Nutt v. Easton [1899] 1 Ch. 873
affd [1900] 1 Ch. 29

Erlanger v. New Sombrero [1878] 3 A.C. 1218, at 1278 - 1280

(iii) S. 53 Trading with Enemy Regl does not apply to Crown

A. Crown not expressly bound;

B. Applies to persons affected by S. 4 and 5

9. No right to restitution

(a) barred by Petition of Right Act
R.S.C. 1952, c.210, S. 7
- no evidence P/R served on present owners

(b) Statute of Limitations R.S.B.C. 1960,
c. 370, S. 16
- 20 years - expired 1962
- S. 38 not pleaded or proved
- reasonable diligence not shown

****

IWASAKI v. R.

Ex 86

COMMISSION PROCEEDINGS.

CASE NO: 252.

IN THE MATTER OF THE "INQUIRIES ACT"
PART I, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

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

Grand Forks, B. C.,
March 2nd, 1948.

IN THE MATTER OF THE CLAIM OF
TORAZO IWASAKI.

PROCEEDINGS AT HEARING.

APPEARANCES:

J.W.G. HUNTER, Esq.,	appearing for the Dominion Government.
R.J. McMASTER, Esq.,	appearing for the Claimant.

A. WATSON, Esq.,	Secretary.
D.J. HANDFORD, Esq.,	Official Interpreter.
T.P. HOBSBIN, Esq.,	Official Reporter.

MR. McMASTER: No. 10 on the list, my lord, T. Iwasaki.

TORAKO IWASAKI, the claimant herein, being first duly sworn, testified through the Interpreter asfollows:

DIRECT EXAMINATION BY MR. McMASTER:

MR. McMASTER: My lord, with regard to the claim, referring to the first page, the value placed on the property at Salt Spring Island is $60,000.00 by the claimant. He has no special knowledge of values, and on property of that kind I am sure I haven't any. It will be a matter of proof, and I will leave it stand.

THE COMMISSIONER: What is the acreage?

MR. McMASTER: It is quite a large acreage, about 600 acres. With regard to property "B" which is shown on the front, that is property situated in the City of Vancouver. The claimant has only a half interest, being a joint owner with a nephew at New Denver whom I am advised is making a separate claim and has engaged his own soliciter. So, this claimant will make his claim on his half interest.

Now with regard to the claim for the chattels and goods and equipment, there is an inventory attached to the claim form, and I will file in the course of putting in the claimant's evidence another inventory, the total of which will reduce the chattel claim to $1772.00.

THE COMMISSIONER: That is in lieu of $2,224.00, is it?

MR. McMASTER: Yes, my lord. Perhaps my friend will be able to advise as to what credit, if any, the Custodian says should be deducted off that. I think

it is pretty small, whatever it is.

Q I would like to deal first with the property situated in Vancouver which you owned jointly with your nephew.

A: Yes.

Q Did you instruct Mr. Leckie to prepare this statement (producing) with regard to that property?

A Yes.

Q Would you be good enough to sign it, please? Are th the contents of that statement true, to the best of your knowledge and recollection?

A Yes.

MR. McMASTER: I will file that as Exhibit No. 1. This statement is marked "claim 2" referring to the claim for property in Vancouver.

THE COMMISSIONER: What is it, a house property?

MR. HUNTER: Vacant land.

MR. McMASTER: Vacant land, my lord.

(STATEMENT MARKED EXHIBIT NO. 1).

MR. McMASTER: I will file as Exhibit 2 a copy of the appraisal on behalf of my learned friend. This property is situated in South Vancouver as appears from the statement, my lord, and was purchased in January, 1912, for a price of $3000.00. After buying the city expropriated two small portions for roadway purposes and paid $50.00 for each piece.

THE COMMISSIONER: He is not applying 1912 values, is he?

MR. McMASTER: Apparently so. He states, "In my opinion the appraisal of $230.00 on the basis of the land assessment is wrong and is far below the fair market

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
31 V 1968
DÉPOSÉ
VANCOUVER

No. B-2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

-and-

HER MAJESTY THE QUEEN

RESPONDENT

BRITISH COLUMBIA
31 V 68
$= 2.10
LAW STAMP

BEFORE THE HONOURABLE) TUESDAY, THE 14TH DAY
MR. JUSTICE SHEPPARD) OF MAY, A.D. 1968.

UPON the Motion of the Respondent coming on this day; AND UPON READING the Notice of Motion filed herein the 1st day of May, 1968, and the transcript of the Examination for Discovery of the Suppliant dated the 26th day of March, 1968; AND UPON HEARING Mr. Norman D. Mullins of Counsel for the Respondent and Mr. J.R. MacLeod of Counsel for the Suppliant;

THIS COURT DOTH ORDER that the Suppliant do re-attend before the Deputy Registrar of this Honourable Court at the City of Vancouver, in the Province of British Columbia, at his own expense for cross-examination on behalf of the Respondent on the issues raised in the Reply and Joinder of Issue herein and that he inform himself and answer fully and conclusively those unanswered questions in the transcript of his Examination for Discovery of March 26th, 1968, namely, the first question on page 9 and Questions 47, 48, 49, 82, 83, 86, 105, 106 and 107 and any further consequential questions arising out of the answers so given;

AND THIS COURT DOTH FURTHER ORDER that the costs of

value of these lots. I believe that the value of the land at the time of the sales by the Custodian (he sold for $230.00, the amount of the appraisal in May, 1944) would be at least $3000.00, which was the amount I paid in 1912."

THE COMMISSIONER: I suppose he has paid taxes for 35 years and he has to get it out of somebody.

MR. McMASTER: To whence it goes, he expects it to return, my lord.

Q Witness, did you instruct Mr. Leckie to prepare this statement with regard to your property situated on Salt Spring Island? A: Yes.

Q Would you be good enough to sign it?

I might say with respect to the last appraisal, my lord, as I said before, this man has no special knowledge of real estate values and it will be a matter of calling expert evidence. I would ask to file this statement with regard to the real estate on Salt Spring Island as the next exhibit.

(APPRAISAL MARKED EXHIBIT NO. 2)

(STATEMENT MARKED EXHIBIT NO. 3)

Q Witness, are the statements contained in Exhibit No. 3 true to the best of your knowledge and recollection?

A Yes.

THE COMMISSIONER: Just before you get into the Salt Spring Island property, as a matter of interest, where is this piece of vacant land in South Vancouver? What is the street address of it?

MR. McMASTER: Q: Could he advise us at what streets the property in Vancouver is situated?

A The corner of Joyce Road and School Road.

Q Joyce Road and School Road. That is a few blocks off Kingsway where Joyce Road crosses, my lord. On behalf of my learned friend I would file what purports to be an extract of the appraisal of D. Keith Wilson with regard to his property, dated August 5th, 1944.

THE COMMISSIONER: That is of the Salt Spring Island property.

MR. McMASTER: The Salt Spring Island property. The statement shows, and the reporter doesn't need to take it down, I am going to refer to the statement, my lord, (reading).

THE COMMISSIONER: I do not think I will allow this claim to pass, Mr. McMaster, without making some comment on the extravagance of the claim. I know something of Salt Spring Island and anyone who come up with a proposition that Salt Spring Island lands were worth a thousand dollars an acre would make it ridiculous.

MR. McMASTER: Probably the problem is the claimant is expanding his idea of the development of the land into the future rather than the present time.

THE COMMISSIONER: Very far into the future. However, I will say nothing more on the matter at present.

MR. McMASTER: I appreciate that, my lord. It will be a matter of expert evidence on it. He states, (reading). Unfortunately we have no advice from the Custodian's file or otherwise as to what was the ultimate end of that contract.

THE COMMISSIONER: When did the logging operation take place?

MR. McMASTER: The contract was entered into on the 10th day of December, 1940, my lord, and he agreed to sell all the merchantable timber on the lands.

THE COMMISSIONER: At what price per thousand?

MR. McMASTER: As to purchase price the purchaser was to pay to the vendor $2.00 per thousand feet board measure. (Reading Exhibit 1). Now, what he says, my lord, is —

THE COMMISSIONER: Just a moment, please. It appears that the operator, having a stumpage contract at $2.00 per thousand, ceased operations, the claimant says, before all the timber was cut off, is that it?

MR. McMASTER: I think that is a presumption on his part, my lord. His money ceased coming in, so he frankly doesn't know what happened, but in his opinion there was much more timber than was represented by the money he received.

THE COMMISSIONER: No operator having any sense was going to pass up the opportunity to cut at $2.00 a thousand stumpage in 1940 and succeeding years. However, I can pass that up.

MR. McMASTER: That is a matter to investigate, my lord.

MR. HUNTER: I have some information from the Director of Lands.

THE COMMISSIONER: I am simply commenting from my own knowledge of what the market conditions for readily accessible timber were in 1940. $2.00 per thousand was pretty cheap timber if it was at all accessible.

MR. McMASTER: He points out in his statement he had in contemplation the development of the property, (reading).

THE COMMISSIONER: Does he declare who the parties were?

MR. McMASTER: I regret, my lord, he doesn't recall their names. (Reading). Then he states he has no special knowledge.

THE COMMISSIONER: That is very obvious.

MR. McMASTER: I think so, my lord. However, my lord, that is a matter that we will have to inquire into as far as the property is concerned and ascertain.

THE COMMISSIONER: I am reluctant to make any comment with regard to claims, but when a claim so grossly extravagant, as this is, is made, I think comment should be made upon it.

MR. McMASTER: Q: Witness, did you instruct Mr. Lockie to prepare this statement with regard to your personal chattels and equipment with respect to which you are making a claim? A: Yes.

Q Would you be good enough to sign the statement, please? Are the statements contained therein true to the best of your knowledge and recollection?

A Yes.

Q And is this list, that is this typewritten list, — was that prepared by you in conjunction with this statement that you had Mr. Lockie draw?

A Yes.

Q To the best of your recollection, do the items shown on there, the prices paid, the condition at evacuation, and your estimated value, are those true to the best

of your recollection and your ability to estimate the values?

A. Yes.

MR. McMASTER: I file the statement, my lord, with regard to personal chattels and the inventory as one exhibit.

(DOCUMENTS MARKED EXHIBIT NO. 5).

MR. McMASTER: Do you wish to file your statement on this, Mr. Hunter?

MR. HUNTER: I don't know. I don't think so.

MR. McMASTER: My lord, there is a detailed statement on this exhibit which shows the various items and from the Custodian's file perhaps my friend will admit it appears that the items claimed for substantially agreed with the list supplied by the owner to the Custodian and confirmed by the Custodian, and perhaps also my friend will agree that everything moveable appeared to have been stolen in innumerable raids on the property from the water. That is the only information I have is the information from his file.

THE COMMISSIONER: Will you concede that there was extensive pilferage in this instance?

MR. HUNTER: Whatever was there was stolen, my lord.

THE COMMISSIONER: Whatever was there was stolen.

MR. McMASTER: I take it my friend is conceding that the articles claimed are substantially the same as those declared in the inventory by the Custodian.

MR. HUNTER: I think that is correct, my lord.

MR. McMASTER: My lord, the last exhibit shows that the goods were left in the house and in the warehouse. The logging and donkey engine and box mill were

dismantled and the parts stored in the warehouse and the house. The house and warehouse were locked, planked and boarded and the keys handed to Mr. Mount, the Custodian's agent. He states in estimating values for the items claimed that he has valued at cost price for all new and unused articles, and as to the used articles he has allowed depreciation, taking into consideration their use and condition at the time of his evacuation.

THE COMMISSIONER: If he had been less extravagant in his real estate claim, I would give more credence to his claim for chattels.

MR. McMASTER: I would submit that I regret his extravagance on the real estate claim, my lord, but the man knows very little about real estate matters. On the other hand, he has had experience in logging matters and would likely know the cost of his equipment. He might not know the used sale price of equipment, but he ought to know the cost of his equipment new. Your witness.

MR. HUNTER: It is submitted, my lord, that both of these pieces of property, both in Vancouver and on Salt Spring Island, were sold for their fair market value. It is submitted that the values for which the claim was made in connection with the chattels are exorbitant. It is submitted that there may be some question of under whose custody control or management these chattels were left, and I would like to make that statement at this time in case when we investigate further what I suggest may be

substantiated, my lord.

THE COMMISSIONER: Am I to infer from that that the defence of agency will be raised here?

MR. HUNTER: Yes, my lord. I don't say that definitely. I don't know enough about it yet, but that may be raised.

THE COMMISSIONER: Have you any questions?

MR. HUNTER: The Salt Spring Island property, my lord, was sold on the 22nd of March, 1945, for $5,250.00. I presume my friend will admit that the assessed value of that land was $3709.00.

MR. McMASTER: If my friend says it was, my lord, I will.

THE COMMISSIONER: It was sold in 1945 for $5,250.00, was it?

MR. HUNTER: Yes, my lord, the 22nd of March, 1945.

THE COMMISSIONER: What was the assessed value again? $3250.00, was it?

MR. HUNTER: In 1945 it was assessed in two parcels, one for $2700.00 and another for a thousand dollars, my lord, making a total of $3700.00. I see by our records in 1943 it was assessed at a slightly larger figure, for a total of $3950.00. The Vancouver property was sold for $230.00, my lord, the vacant land.

THE COMMISSIONER: The appraisal was $230.00, was it not?

MR. HUNTER: Yes, my lord. I was trying to find the date for you.

MR. McMASTER: The assessed value was also $230.00 if I might state it on the Vancouver property.

MR. HUNTER: That is correct; that is also the assessed

value, my lord. I don't seem to have the date of sale here, but I will just check it.

THE COMMISSIONER: Reeve puts his valuation on the basis of the assessment. He says, "We are of the opinion the assessment represents the fair market value".

MR. HUNTER: Yes, my lord. I don't seem to have the date of that sale. I think that the material I have here was taken off another file as it was only a half interest this man was claiming. I haven't as full details of the property as I should have.

THE COMMISSIONER: It was not appraised until July of 1943.

MR. McMASTER: There is a memorandum in the claimant's statement with regard to the property, that it was sold in May of 1944. I presume that must have been taken from the Custodian's file.

MR. HUNTER: It may be here somewhere.

THE COMMISSIONER: Well you can establish it later.

MR. HUNTER: Yes, Mr. McMaster is right. I find it here, May 27th, 1944, $23,500.

CROSS-EXAMINATION BY MR. HUNTER:

Q Mr. Iwasaki, I notice in your statement concerning personal property, you state the key was left with a Mr. Mouat. In your J.P. form you say the key was left with a neighbour, B. A. Wilson. Now, which is correct?

A I left the key with Bishop Wilson with the request that he hand it to Mr. Mouat, and I understand that Mr. Mouat did receive the key from Bishop

Wilson.

Q I see. Did you notify the Custodian that the key was with Wilson aside from the J.P. form? Let us change that question. DMyou notify the Custodian that Wilson was to hand it to Mount?

A A Mr. Green came to the island and I told him all the details with regard to those arrangements.

Q Was that before or after you completed your J.P. form?

MR. McMASTER: Will my friend make sure this man knows what a J.P. form is?

THE COMMISSIONER: Show him the document and have him identify his signature.

MR. HUNTER: Q: Is that your signature (producing)?

A Yes.

Q And you completed this form?

A Yes, he told the Custodian.

Q Where was this completed? A: On Salt Spring Island, in his house.

Q This is dated the 5th of April, 1942. Was Mr. Green there to see you before or after this date?

A I don't remember.

THE COMMISSIONER: What was the other document in which he said the key was left with Mount? You mentioned it earlier.

MR. HUNTER: That was in his statement of personal property, my lord, one of the exhibits.

THE COMMISSIONER: Oh yes.

MR. HUNTER: Q: When you completed this J.P. form, and you put in that the key was held by B.A. Wilson,

did you give them any further detail?

A I asked when Mr. Mount came to Salt Spring Island that the key be given to him.

Q Who didyou make that request of?

A Bishop Wilson.

Q What time were you evacuated from Salt Spring Island?

A About the 20th of April, I think.

Q You are sure this form was made on Salt Spring Island? This J.P. form, you are sure it was made on Salt Spring Island?

A: Yes.

THE COMMISSIONER: It might be as well to put that in since you have cross-examined on it, Mr. Hunter.

MR. HUNTER: Yes, I am intending to do that, my lord.

Q Was there a Japanese interpreter present when this was filled in, or can you speak some English?

A I am not very good at English. There was no interpreter.

Q How did you give this information to the person if youcan't speak English?

A My English speaking children were present.

Q And they gave the information? The information they gave was in accordance with your direction?

A Yes.

MR. HUNTER: That will be Exhibit 6, my lord, the J.P. form. That is all, my lord.

(J.P. FORM MARKED EXHIBIT NO.6).

MR. McMASTER: My lord, I would ask my learned friend to admit that Gavin C. Mount did, in fact, on or about October 7th, 1942, attend at these premises and take an inventory.

this application be costs to the Respondent in any event of the cause.

BY THE COURT

DEPUTY REGISTRAR

CHECKED.

Approved as to form

Counsel for the Suppliant

MR. HUNTER: I beg your pardon?

MR. McMASTER: I am asking my friend to admit that Gavin G. Moust did, in fact, attend these premises on the 7th of October, 1942, and take an inventory.

MR. HUNTER: That may be correct. I can't admit it, I am not sure.

MR. McMASTER: It is in your statement, and I would ask my friend to produce the inventory that Gavin G. Moust took and the report that Gavin G. Moust made when he took the inventory.

MR. HUNTER: I don't think it is here, Mr. McMaster.

MR. McMASTER: I would ask my friend to produce it then. They have referred to it in their claimsanalysis, which is the only information I have with regard to this matter.

THE COMMISSIONER: The claims analysis has not been put in, has it?

MR. McMASTER: No,my lord.

THE COMMISSIONER: If you have a report from Moust, it should be filed, Mr. Hunter.

MR. McMASTER: Perhaps my friend would admit that Gavin G. Moust was the agent of the Custodian.

MR. HUNTER: That is something I wouldn' t care to admit, my lord. He may have had a limited agency, but I wouldn't like to say he was the general agent of the Custodian.

MR. McMASTER: Perhaps my friend will admit he was the agent of the Custodian when he took this inventory.

MR. HUNTER: I don't care to make any admissions at this point.

THE COMMISSIONER: It is just as well to have it on the record because that is a matter that should be cleared up when the Custodian comes to put in his case.

MR. HUNTER: Yes, my lord. What is it you want, Mr. McMaster, the inventory?

MR. McMASTER: The inventory, and any report that Gavin C. Mount made. Could I see the J.P. form, Mr. Secretary, please? Now, I draw attention to the J.P. form which is filed as an exhibit. It is marked at the top, "Ganges, B.C." and purports to be witnessed by one Green. No further questions, my lord.

MR. HUNTER: For your Lordship's information, I see here a statement that the A Director of Lands informs us that up to the 3rd of October, 1944, 1,377,419 feet had been logged from the land, and then there is an account of what happened after that. I thought possibly that information might be of some interest to your Lordship.

THE COMMISSIONER: Yes. Apparently there was quite an extensive stand of timber there.

MR. McMASTER: Can my friend advise me whether the money was collected for stumpage and paid to the claimant?

MR. HUNTER: I can read this.

MR. McMASTER: Perhaps it is a matter of accounting, my lord. I could check on it afterwards.

MR. HUNTER: It gives the history of the deal if you are interested.

THE COMMISSIONER: I do not know that this is a matter with which I am concerned. I take it the timber

was removed before the land was sold, so the value of timber does not come into the question of the value of the lands sold.

MR. McMASTER: May I see it for a minute, please, Mr. Hunter?

THE COMMISSIONER: Let me know what the situation is with regard to Mount having taken an inventory and when.

MR. HUNTER: That is what I understand I am to file.

THE COMMISSIONER: Oh, I thought you set it out.

MR. McMASTER: My lord, I think my friend ought to file this analysis of real and personal property which he prepared and which was to be the notice to me of what the Custodian's position was with regard to this matter because the statement is quite clearly made with regard to these articles. If it is not correct, I am grossly misled.

THE COMMISSIONER: In this instance it is a matter of considerable moment as to whether there is any record to show that this chattel property was there. I have indicated in the remarks I have made previously that I have not been at all impressed with this claimant in view of the values he has put on real estate. Now, if there is anything in this chattel claim at all, it is bound to be affected by the view I have taken of the claimant in regard to his real estate, and if the Custodian did make a check on the chattel property, I would like to know it.

MR. HUNTER: What Mr. McMaster is referring to, my lord,

is a statement here in a sort of analysis of the claim for real andpersonal property. I am not sure that the facts in this are as stated, but for his benefit I am willing to have it read into the record. It says, "The articles listed in the claim are in substantial agreement with the list supplied by the owner and confirmed October 7th, 1942, by Custodian's agents on the spot, Gavin C. Mouat. Everything moveable appears to have been stolen in innumerable raids on the property from the water." Now, agency is a matter of law in many cases and I am not at all sure that the person in the Custodian's office was on sound ground when he said Mouat was an agent.

THE COMMISSIONER: That will be a defence that will be open to you, Mr. Hunter. All I wish to know at the moment is this, was there an inventory taken by anyone subject to the departure of the claimant; and, if so, did the inventory so taken to any degree verify the claim as to chattel property being present. I take it from this document that you read that there was such a check made.

MR. HUNTER: It would appear so. That is the only information I can give you, my lord, I am sorry.

MR. McMASTER: I notice further on looking at this statement it says, "The Salt Springs Lands Limited offered under date of the 28th August, 1944, to purchase this property at a price of $5,250.00, enclosing cash payment of $2000.00 and balance to be paid within two years. This was amended by

a cash offer of $5,250.00 on the 29th of June, 1945. On the 27th of that month, we notified the Salt Springs Lands Limited that conveyance of the title would be subject to the timber agreements registered, and the Salt Springs Lands Limited advised on the 28nd May, 1945, that it was arranged to procure a quit claim of the agreements from the Glen Lake Logging Company Limited. It also stated that it assumed that outstanding amounts owing by the Glen Lake Logging Company would be transferred to the purchaser."

THE COMMISSIONER: Well that is a matter —

MR. McMASTER: That is a matter we will have to look into, but it would indicate those agreements were still in effect and a quantity of timber still remained on the land.

THE COMMISSIONER: It is highly improbable that any logging operator left any standing timber for $2.00 stumpage in 1940.

MR. McMASTER: My point is this, that from that report, and I will have to look into it, it appears possible that the operation was still going on.

THE COMMISSIONER: That is a possibility.

MR. McMASTER: I would ask if my friend would be good enough to give me a copy of the report with regard to the history of the land; not to file now, but at a later date.

MR. HUNTER: I think we could probably give you that. I would like you to understand that this report is drawn up for my benefit and taken from the

file. You have the privilege of going through that file and these are not made available to counsel on the other side, simply because the facts in them are supposed to be taken from documents on file and Mr. McMaster has the same privilege of going through it and making it himself.

MR. McMASTER: I have no comment.

THE COMMISSIONER: You are not committed by anything that is said in that report, is that the situation?

MR. HUNTER: This obviously is a report based on facts in the file, and if they mistake a fact or something like that, I am not going to consider myself bound by that.

THE COMMISSIONER: I think you are wise to take that position. Mr. McMasterknows what the situation is.

MR. McMASTER: I would like to say this with regard to it, I have appreciated, my lord, the cooperation of the Custodian's office, but sometimes there are statements as, for instance, in this claim report which was delivered to us and in the other report which are not substantiated by the documents in the file produced to us, and it sometimes makes it difficult. I appreciate my friend has a difficult job in producing these files.

THE COMMISSIONER: It probably cuts both ways in many cases. All right, thank you, Mr. Iwasaki.

(Witness aside)

(PROCEEDINGS ADJOURNED SINE DIE)

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

T. P. Horohorin

"T.P. HOROHORIN"
Official Reporter.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

SUPPLEMENTARY AFFIDAVIT
AS TO DOCUMENTS

I, TORAZO IWASAKI, of 4493 West 12th Avenue, in the City and County of Vancouver, in the Province of British Columbia, the above-named Suppliant, MAKE OATH AND SAY as follows:

1. THAT I have the following documents in my possession which I do not object to produce:

(a) Copy of letter dated May 11th, 1943 from the Department of the Secretary of State, Administration Department, to Torazo Iwasaki;

(b) Copy of letter dated June 10th, 1943 from the Department of the Secretary of State, Administration Department, to Torazo Iwasaki;

(c) Copy of letter dated June 15th, 1943 from the Department of the Secretary of State, Insurance Department, to Torazo Iwasaki;

(d) Photocopy of letter dated May 23rd, 1945 from the Department of the Secretary of State, Administration Department, to Torazo Iwasaki;

(e) Photocopy of letter dated February 11th, 1946 from the Department of the Secretary of State, Administration Department, to Torazo Iwasaki;

(f) Original of letter dated August 28th, 1947 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

(g) Original of letter dated February 17th, 1948 from Messrs. Campbell, Brazier, Fisher & McMaster to Torazo Iwasaki;

(h) Original of letter from the Secretary of the Japanese Property Claims Commission to Torazo Iwasaki;

(i) Registered letter dated October 5th, 1948 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki.

2. THAT according to the best of my knowledge, information and belief, I have not now in my own possession, custody or power any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in Paragraph 1 hereof, in Paragraphs 1 and 2 of the Affidavit as to Documents sworn by me on the 7th day of March, A.D. 1968, and filed and in Paragraph 1 of the Supplemental Affidavit as to Documents sworn by me on the 26th day of March, A.D. 1968, and filed.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 7th day of August, A.D. 1968.

A Commissioner for taking Affidavits within British Columbia.

Torazo Iwasaki

TORAZO IWASAKI

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the 5th Floor, 900 West Hastings Street, in the City of Vancouver, in the Province of British Columbia, on Friday, the 9th day of August, A.D. 1968, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order that the trial of this action be set down for September 30th to October 4th, A.D. 1968 inclusive.

DATED at the City of Vancouver, in the Province of British Columbia, this 7th day of August, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant.

Consented to:

Norman D. Mullin
Solicitor for the Respondent

THIS NOTICE OF MOTION is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

Order Made that action be set for trial for September 30th to October 4th, A. D. 1968, inclusive.

Dated this 7th day of August A.D. 1968.

THE HONOURABLE
MR. JUSTICE SHEPPARD

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
9 VIII 1968
DEPOSÉ
VANCOUVER

BRITISH COLUMBIA
$ 0.10
9 VIII 68
149209
STAMP TAX

N O T E

Counsel for the Suppliant estimates that this action will have a duration of Five (5) days.

Counsel for the Suppliant proposes to call Five (5) witnesses at the trial of this action.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of August, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant.

No. B 2027

VANCOUVER
AUG 27 1968
REGISTRY

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

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AND:

HER MAJESTY THE QUEEN

RESPONDENT

BRITISH COLUMBIA
27 VIII '68
$ 0.10
149209
LAW STAMP

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the Court House, 800 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, on Friday, the 30th day of August, A.D. 1968 at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order to amend the Reply and Joinder of Issue herein by adding to Paragraph 1 immediately after the letter "(b)" and before the letter "(e)", the letter "(c)".

AND TO FURTHER amend the Reply and Joinder of Issue herein by adding thereto the following:

"4. And without limiting the generality of the foregoing, the Suppliant in further answer to the Statement of Defence herein says that Orders in Council No. PC 2483 referred to in Paragraph 1, sub-paragraphs (a) and (c) and No. PC 469 referred to therein are void ab initio for uncertainty because the said Orders in Council fail to define the term "Japanese Race" contained therein and further fail to stipulate the class or classes of individuals referred to thereby. And the term "Japanese Race" is a misnomer and is meaningless in law without further definition, and such definition is absent in the Orders in Council aforesaid."

B-2027

IN THE EXCHEQUER COURT OF CANADA

THE EXCHEQUER COURT OF CANADA
FILED
MAR 18 1968
15
G.E.C.

BETWEEN:

TORAZO IWASAKI,

SUPPLIANT,

- and -

HER MAJESTY THE QUEEN,

RESPONDENT.

STATEMENT OF DEFENCE

Amended pursuant to Order dated the 15th day of February A.D. 1968.

Filed this 10th day of October A.D. 1967.

The Deputy Attorney General of Canada on behalf of Her Majesty in answer to the Petition of Right says as follows:

1. With regard to the Petition of Right as a whole he says:

(a) at all material times prior to the making of Order in Council P.C. 2483 dated the 27th day of March, 1942, hereinafter referred to, the Suppliant was the owner of the lands described in paragraph 2 of the Petition of Right, which said lands are situated in an area that had been declared by the Minister of National Defence, pursuant to the provisions of the Defence of Canada Regulations, to be a protected area;

(b) the Suppliant is a person of the Japanese Race and as such was, on the said 26th day of February, 1942, ordered by the Minister of Justice, pursuant to the said Defence of Canada Regulations, to leave the said protected area, and the Suppliant was evacuated therefrom;

AND TAKE NOTICE that in support of this motion will be read the pleadings and proceedings herein and such further and other material as Counsel may advise.

DATED at the City of Vancouver, in the Province of British Columbia, this 27TH day of August, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS NOTICE OF MOTION is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
18 DEC 1968
DEPOSE
VANCOUVER

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

BRITISH COLUMBIA
18 DEC '68
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149200
LAW STAMP

AMENDED REPLY AND JOINDER OF ISSUE, Pursuant to the Order of The Honourable Mr. F.A. Sheppard, pronounced the 30th day of August, A.D. 1968.

1. The Suppliant joins issue with the Respondent on Sub-paragraphs (b), (c), (e) and (f) of Paragraph 1 of the Amended Statement of Defence filed herein and in particular, with regard to Sub-paragraph (b), says that he was not a person of the Japanese race as alleged.

2. The Suppliant joins issue with the Respondent on Sub-paragraphs (a), (b) and (c) of Paragraph 2 of the Amended Statement of Defence filed herein and in particular, with regard to Sub-paragraph (a), says that the Release referred to therein was presented to the Suppliant as being a document that he was obliged to execute pursuant to the findings of the Japanese Property Claims Commission and the Suppliant says that the said Commission acted without jurisdiction and contrary to the provisions set out in the War Measures Act, Revised Statutes of Canada, 1952 and Amendments thereto, and further says that if he executed a Release, all of which is specifically denied, the Release was executed while the Suppliant was under duress and whilst he was led to believe that if the Release was not executed he would lose the property herein and would not

get the return of the property herein nor any compensation whatsoever.

4. And without limiting the generality of the foregoing, the Suppliant in further answer to the Statement of Defence herein says that Orders in Council No. PC 2483 referred to in Paragraph 1, sub-paragraphs (a) and (c) and No. PC 469 referred to therein are void ab initio for uncertainty because the said Orders in Council fail to define the term "Japanese Race" contained therein and further fail to stipulate the class or classes of individuals referred to thereby. And the term "Japanese Race" is a misnomer and is meaningless in law without further definition, and such definition is absent in the Orders in Council aforesaid.

DATED at the City of Vancouver, in the Province of British Columbia, this ~~17th~~ 18TH day of September, A.D. 1968.

J R MacLeod
Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS AMENDED REPLY AND JOINDER OF ISSUE is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

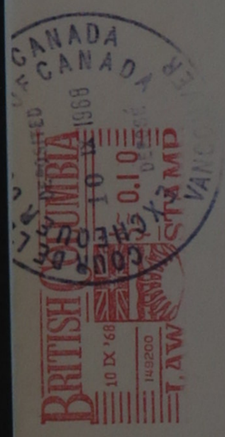
SUPPLIANT

28

AND:

HER MAJESTY THE QUEEN

RESPONDENT



NOTICE TO ADMIT DOCUMENTS

TAKE NOTICE that the Suppliant in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the Respondent, his solicitor or agent, upon request, and the Respondent is hereby required, within forty-eight hours of the aforesaid inspection, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this case.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of September, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

ORIGINALS

Registered letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	August 28, 1947
Registered letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	October 5, 1948

COPIES

Deed of Land - Pottinger to Iwasaki	December 10, 1943
Vesting Order No. 50930	March 31, 1943
Letter to the Registrar, Land Registry Office in Victoria, B.C., from the Department of the Secretary of State, File G/59	May 10, 1943
Deed of Land - Secretary of State of Canada to Salt Spring Lands Limited	March 1, 1945
Letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	July 29, 1942
Letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	April 20th, 1943
Letter from the Department of the Secretary of State, Office of the Custodian to Torazo Iwasaki, with Statement of Account attached thereto	May 23, 1945
Letter from the Department of the Secretary of State, Office of the Custodian, to R.C. Taylor, with a copy to Torazo Iwasaki	February 11, 1946
Letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	February 11, 1946
Letter from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki	November 8, 1950

THIS NOTICE TO ADMIT DOCUMENTS is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

COUR DE L'ECHIQUIER DU CANADA
COURT OF EXCHEQUER OF CANADA
DEPOSITED
10 IX 1968
DEPOSÉ
VANCOUVER
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BRITISH COLUMBIA
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LAW STAMP

NOTICE TO ADMIT FACTS

TAKE NOTICE that the Suppliant requires the Respondent, within six days from service of this notice, to admit, for the purposes of this cause only, the several facts respectively hereunder specified, saving all just exceptions to the admissibility of such facts as evidence in this case.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of September, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

The facts, the admission of which is required, are:

1. On or about the 27th day of March, A.D. 1942 one Gavin C. Mouat of Salt Spring Island was agent for the Custodian.

2. On or about the 6th day of April, A.D. 1945 the lands and premises which are the subject matter of this action were conveyed by the Secretary of State of Canada acting in his capacity as Custodian to the Secretary of

State of Canada and conveyed by the Secretary of State of Canada to Salt Spring Lands Limited, a body corporate within the Province of British Columbia and the Dominion of Canada.

3. At all times material to this action Torazo Iwasaki, the Suppliant, has been and is a citizen of Canada.

THIS NOTICE TO ADMIT FACTS is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

29

BEFORE THE HONOURABLE : FRIDAY, the 30th day
MR. F.A. SHEPPARD : of AUGUST, A.D. 1968

UPON this motion coming on for hearing on the day and date hereof in the presence of J. Raymond MacLeod, Esq. of Counsel for the Suppliant, Norman D. Mullins, Esq. and D.J. Borden Hrytsak, Esq. of Counsel for the Respondent; AND UPON reading the pleadings and proceedings herein; AND UPON hearing the submissions of Counsel aforesaid;

THIS COURT DOTH ORDER that the Suppliant have leave to amend the Reply and Joinder of Issue herein as follows:

(a) By adding to Paragraph 1 immediately after the letter "(b)" and before the letter "(e)", the letter "(c)";

(b) By adding thereto the following:

> "4. And without limiting the generality of the foregoing, the Suppliant in further answer to the Statement of Defence herein says that Orders in Councel No. PC 2483 referred to in Paragraph 1, sub-paragraphs (a) and (c) and No. PC 469 referred to therein are void ab initio for uncertainty because the said Orders in Council fail to define the term "Japanese Race" contained therein and further fail to stipulate the class or classes of individuals referred to thereby. And the term "Japanese Race"

is a misnomer and is meaningless in law without further definition, and such definition is absent in the Orders in Council aforesaid."

AND THIS COURT DOTH FURTHER ORDER that the costs of this application be costs to the Respondent in any event of the cause in the cause.

BY THE COURT

~~DISTRICT~~ REGISTRAR
Deputy.

Approved as to form:

Counsel for the Respondent.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
23 IX 1968

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

and

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE TO ADMIT DOCUMENTS

TAKE NOTICE that the Respondent in this cause proposes to adduce in evidence the several documents hereunder specified and that the same may be inspected by the Suppliant, his Solicitor, or agent, at the offices of the Department of Justice, 620-505 Burrard Street, Vancouver, British Columbia, on Tuesday, the 24th day of September, 1968, between the hourse of 2 o'clock and 5 o'clock in the afternoon, and the Respondent is hereby required within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

DATED at Vancouver, British Columbia, this 23rd day of September, 1968.

D.S. Maxwell
Deputy Attorney General of Canada

To: J.R. MacLeod, Esq.,
Solicitor for Suppliant

BRITISH COLUMBIA
23 IX '68
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STAMP

(c) by virtue of the said Order in Council P.C. 2483 dated the 27th day of March, 1942, made pursuant to the War Measures Act, the said lands became vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy (1939);

(d) on or about the 1st day of March, 1945, the said Custodian, pursuant to Order in Council P.C. 469 dated January 19, 1943, made pursuant to the War Measures Act, conveyed the said lands to Salt Spring Lands Limited;

(e) at no time material to the Petition of Right herein was the said Custodian an agent or servant of Her Majesty;

(f) the Petition of Right herein discloses no facts upon which it may be adjudged or declared that as against Her Majesty the Suppliant has any right whatever.

2. In the alternative he says that:

(a) on or about the 28th day of October, 1950, the Suppliant for good and valuable consideration executed a Release in writing thereby releasing His Majesty the King in right of Canada and the said Custodian from all actions, claims and demands whatsoever in respect of, inter alia, the said lands;

(b) by virtue of the facts hereinbefore set forth, the Suppliant is barred by his laches and acquiescence from maintaining any claim that the said sale and conveyance of the said land be declared invalid or that Her Majesty account to him further or at all in respect thereof;

Originals

	Description of Documents	Dates
1.	Order in Council P.C. 2512	September 5, 1939
2.	Order in Council P.C. 5295	July 15, 1941
3.	Order in Council P.C. 8862	October 13, 1942
4.	Catalogue of properties for sale	March 30, 1944

Copies

5.	Deed of Land, Bottinger to Iwasaki	December 10, 1940
6.	Application to register Bottinger Deed	December 13, 1940
7.	Proclamation of War, 75 Can. Gaz. 2071	December 8, 1941
8.	Order in Council, P.C. 9760	December 16, 1941
9.	Order in Council P.C. 288	January 13, 1942
10.	Order in Council P.C. 365	January 16, 1942
11.	Order of Minister of National Defence and Minister of Justice	January 29, 1942
12.	Order in Council P.C. 1486	February 24, 1942
13.	Order in Council P.C. 1542	February 26, 1942
14.	Order of Minister of Justice	February 26, 1942
15.	Order in Council P.C. 1665	March 4, 1942
16.	Order in Council P.C. 2483	March 27, 1942
17.	Iwasaki JP form	April 5, 1942
18.	Letter from Custodian to Iwasaki	July 4, 1942
19.	Letter from Custodian to Iwasaki	July 29, 1942
20.	Letter from Custodian to Iwasaki	August 27, 1942
21.	Letter from Harold A. Beckwith to Custodian September 17, 1942	September 17, 1942
22.	Letter from Custodian to Beckwith	September 19, 1942
23.	Order in Council P.C. 469	January 19, 1943
24.	Certificate of Vesting	March 31, 1943
25.	Letter from Custodian to Iwasaki	April 20, 1943
26.	Letter from Custodian to Registrar, Land Registry Office	May 10, 1943
27.	Letter from Custodian to Iwasaki	May 11, 1943
28.	Letter from Custodian to Iwasaki	June 10, 1943
29.	Letter from Custodian to Iwasaki	June 15, 1943
30.	Order in Council P.C. 8526	November 13, 1943
31.	Letter from Custodian to Capt. Smith	June 27, 1944
32.	Letter from Custodian to Salt Spring Lands Ltd.	June 27, 1944
33.	Letter from Custodian to G.W.T. Bush	July 5, 1944
34.	Letter from D. Keith Wilson to Custodian	August 5, 1944
35.	Letter from Custodian to Capt. Smith	August 8, 1944

36.	Letter from Custodian to Salt Spring Lands Ltd.	August 8, 1944
37.	Letter from Salt Spring Lands Ltd. to Custodian	August 14, 1944
38.	Letter from Custodian to Capt. Smith	August 23, 1944
39.	Letter from Custodian to Salt Spring Lands Ltd.	August 23, 1944
40.	Letter from Salt Spring Lands Ltd. to Custodian	August 28, 1944
41.	Letter from Custodian to Salt Spring Lands Ltd.	September 1, 1944
42.	Letter from Custodian to Salt Spring Lands Ltd.	January 27, 1945
43.	Letter from Iwasaki to Custodian	February 7, 1945
44.	Letter from Custodian to Iwasaki	February 15, 1945
45.	Letter from Custodian to Registrar, Land Registry Office	March 1, 1945
46.	Deed from Secretary ofState as Custodian to Salt Spring Lands Ltd.	March 1, 1945
47.	Letter ffom Salt Spring Lands Ltd. to Custodian	March 20, 1945
48.	Statement of Adjustments	April 16, 1945
49.	Letter from Salt Spring Lands Ltd. to Custodian	April 23, 1945
50.	Letter from Salt Spring Lands Ltd. to Custodian	May 22, 1945
51.	Statement of account	May 23, 1945
52.	Letter from Custodian to Iwasaki	May 23, 1945
53.	Letter from Custodian to Salt Spring Lands Ltd.	June 2, 1945
54.	Letter from Salt Spring Lands Ltd. to Custodian	June 14, 1945
55.	Letter from Custodian to G.C.Mouat	January 30, 1946
56.	Letter from Salt Spring Lands Ltd. to Custodian	February 4, 1946
57.	Letter from Custodian to Iwasaki	February 11, 1946
58.	Order in Council P.C. 1810	July 18, 1947
59.	Letter from Custodian to Iwasaki	August 15, 1947
60.	Letter Iwasaki to Custodian	August 19, 1947
61.	Letter Custodian to Iwasaki	August 28, 1947
62.	Letter from McMaster & Co. to Iwasaki	February 17, 1948
63.	Letter from Japanese Claims Commission to Iwasaki	undated
64.	Transcript of proceedings and Iwasaki evidence before Japanese Claims Commission	March 2, 1948

65.	Letter from Custodian to G.C. Mouat	May 7, 1948
66.	Letter from Salt Spring Lands Ltd. to Custodian	May 18, 1948
67.	Letter from Custodian to Iwasaki	October 5, 1948
68.	Cheque from Custodian to Iwasaki	October 5, 1948
69.	Agreement of counsel as to procedure before Commission	November 12, 1948
70.	Letter from H.M. Hall to McMaster & Co.	June 15, 1949
71.	Memorandum of conversation between Mr. Justice Bird and H.M. Hall	January 18, 1950
72.	Report of Royal Commission	April 6, 1950
73.	Conclusions of Royal Commission as to Iwasaki claim	April 6, 1950
74.	Appendix III to Royal Commission Report	April 6, 1950
75.	Release of Iwasaki	October 28, 1950
76.	Authority of Iwasaki to pay fees	October 28, 1950
77.	Cheque from Custodian to Co-operative Committee	November 8, 1950
78.	Statement of payments by Custodian to Claimants	undated
79.	Letter from Custodian to Iwasaki	November 8, 1950
80.	Cheque from Custodian to Iwasaki	November 8, 1950
81.	Proclamation of end of War 86 Can. Gaz. 1808	June 6, 1952
82.	Letter from MacLeod & Small to Secretary of State	May 18,1967
83.	Letter from Department of Justice to MacLeod & Small	July 7, 1967
84.	Letter from Department of Justice to MacLeod & Small	August 9, 1967
85.	Letter from Department of Justice to MacLeod & Small	November 9, 1967
86.	Letter from Department of Justice to MacLeod & Small	December 7, 1967

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
23 IX 1968
VANCOUVER

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

and

HER MAJESTY THE QUEEN

RESPONDENT

NOTE OF COUNSEL FOR RESPONDENT

BRITISH COLUMBIA
23 IX '68
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1. At the trial of this action the Respondent proposes to call two witnesses.

2. It is estimated the trial will take from three to five days.

3. The number of documents in the case will be approximately one hundred.

DATED at Vancouver, B.C., this 23rd day of September, 1968.

Norman D. Mullins
Counsel for the Respondent

To: The Registrar

And To: The Suppliant

And To: J.R. MacLeod, Esq.,
His Solicitor

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
Deposited / Déposé
23 IX 1968
VANCOUVER

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

32

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

and

HER MAJESTY THE QUEEN

RESPONDENT

DEMAND FOR FURTHER AND BETTER PARTICULARS

The Respondent hereby requests further and better particulars of the Suppliant's pleadings as follows:

(A) In respect of the Petition of Right:

1. In respect of paragraph 4, particulars of how and in what manner the Secretary of State acted in excess of his jurisdiction; what laws or rules of natural justice were contravened by him; which of the British North America Acts 1867-1943 and Amendments thereto and what sections thereof were contravened by him; and what Sections of the Land Registry Act, R.S.B.C. 1936 and Amendments thereto were contravened by him.

2. In respect of paragraph 5, how and in what respects the Secretary of State acting in his capacity as Custodian was in excess of his jurisdiction in transferring the lands to the Secretary of State; how and in what respects the Secretary of State acted in excess of his jurisdiction in conveying the said lands to Salt Spring Lands Ltd.; which rules or laws of natural justice were contravened by him; which of the British North America Acts 1867-1943 and Amendments thereto and what sections thereof were contravened by him; and which sections of the Land Registry Act, R.S.B.C. 1936 and Amendments thereto were contravened by him.

BRITISH COLUMBIA
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3. In respect of paragraph 5A, which statutes, regulations and orders-in-council and what sections thereof established the alleged trust.

(B) In respect of the amended Reply and Joinder of Issue:

1. By whom, where and when was the Release presented to the Suppliant as being a document he was obliged to execute; how and in what manner did the Japanese Property Claims Commission act without jurisdiction; which sections of the War Measures Act, R.S.C. 1952 and Amendments thereto were contravened by the said Commission; and by whom, where, when and in what manner was duress imposed upon the Suppliant to cause him to execute the Release.

AND TAKE NOTICE that if the particulars demanded are not delivered, application will be made to the Court for an Order for further and better particulars.

DATED at Vancouver, British Columbia, this 23rd day of September, 1968.

D.S. Maxwell
Deputy Attorney General of Canada

To: The Suppliant

And To: J.R. MacLeod, Esq.
His Solicitor

COUR DE L' échiquier DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
23 IX 1968
VANCOUVER

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

Suppliant

AND:

HER MAJESTY THE QUEEN

Respondent

BRITISH COLUMBIA
23 IX '68
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LAW STAMP

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved by Counsel on behalf of the Deputy Attorney General of Canada at the Exchequer Court, 900 West Hastings Street, in the City of Vancouver, Province of British Columbia, on THURS day, the 26th day of September, 1968, at the hour of 10:15 o'clock in the forenoon or so soon thereafter as Counsel can be heard for an Order by Consent that at the trial of this action all the rights of the parties on all issues of law and fact be determined by the Court, except the amount of damages, if any;

AND FURTHER TAKE NOTICE in support of the Motion will be read the Consent of Counsel for the parties hereto dated the 23rd day of September, 1968.

DATED at Vancouver, B.C., this 23rd day of September, 1968.

D.S. MAXWELL
Deputy Attorney General of Canada

To: The Registrar of this
Honourable Court

And To: The Suppliant

And To: J.R. MacLeod, Esq.,
the Suppliant's Solicitor

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
24 IX 1968
VANCOUVER

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

Suppliant

AND:

HER MAJESTY THE QUEEN

Respondent

BRITISH COLUMBIA
25 IX '68
$= 0.10
LAW STAMP

C O N S E N T

We, the undersigned Counsel for the Suppliant and Respondent, respectively HEREBY CONSENT to an Order of this Honourable Court that at the trial of this action commencing the 30th day of September, 1968, all the rights of the parties on all issues of law and fact be determined by the Court except the amount of damages, if any.

AND WE FURTHER HEREBY CONSENT to an Order that after the Judgment of the Court on such issues other than damages has become final and the Judgment of the Court is that the Suppliant is entitled to damages, the action may be set down for trial for determination as to the amount of the damages and such issue may be tried before any member of the Court, or in such manner as the Court may order.

DATED at Vancouver, B.C., this 23rd day of September, 1968.

Counsel for the Suppliant

Counsel for the Respondent

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

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REPLY TO DEMAND FOR
FURTHER AND BETTER PARTICULARS

1. In answer to Paragraph (A) 1. of the Demand for Further and Better Particulars filed herein, the Suppliant says that the Secretary of State acted in excess of his jurisdiction in filing or causing to be filed the said Vesting Order because his jurisdiction in relation to the said lands and premises was limited to possession thereof in trust for the Suppliant. The Suppliant says that the Secretary of State contravened the rules of natural justice by his said act by failing to give Notice of an Application for Vesting to the Suppliant, by failing to give the Suppliant an opportunity to be heard on any such Application, and by failing to pay compensation to the Suppliant for the use of the said lands and premises. The Suppliant says that the said acts of the Secretary of State contravene Section 92(13) of the British North America Act, 1867 and Amendments thereto. The Suppliant says that the Respondent is not entitled to have further particulars regarding the various sections of the Land Registry Act, R.S.B.C. 1936 and Amendments thereto which it alleges have been contravened.

2. In answer to Paragraph (A) 2. of the Demand for Further and Better Particulars filed herein, the Suppliant says that the Secretary of State acting in his capacity as

Custodian acted in excess of his jurisdiction in conveying lands to Salt Spring Lands Ltd. insomuch as he was in breach of trust, he was acting beyond the powers given to him under P.C. 2483, he was dealing in property in civil rights contrary to the British North America Act, 1867 and Amendments thereto, and that he was in breach of the rules of natural justice, i.e. he failed to give the Suppliant notice of the intended sale and he failed to give the Suppliant an opportunity to set any value on the property.

3. In answer to Paragraph (A) 3. of the Demand for Further and Better Particulars filed herein, the Suppliant says the statute referred to as the War Measures Act, P.C. 1665 established the alleged trust.

4. In answer to Paragraph (B) 1. of the Demand for Further and Better Particulars filed herein, the Suppliant says that he has forgotten by whom and when the Release was presented to the Suppliant as being a document he was obliged to execute; and says that the Japanese Property Claims Commission acted without jurisdiction insofar as Section 7 of the War Measures Act provided a means by which disputes over property were to be settled. The Japanese Property Claims Commission was a derogation from the aforementioned Section.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of September, A.D. 1968.

J. R. MacLeod
Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

(c) the Suppliant's claim is barred by the Statute of Limitations, Revised Statutes of British Columbia, 1960, chapter 370, section 16, and his right and title, if any, to the said land were extinguished by virtue of section 41 of the said Act.

3. Except as herein expressly admitted, he denies the allegations of fact contained in paragraphs 1 to 6 both inclusive of the Petition of Right.

4. He admits the allegations of fact contained in paragraph 7 of the Petition of Right.

On behalf of Her Majesty, the Deputy Attorney General of Canada prays that it be adjudged that the Suppliant is not entitled to the relief sought in his Petition of Right and that Her Majesty is entitled to costs.

DATED at Ottawa this 10th day of October A.D. 1967.

D.S. MAXWELL
Deputy Attorney General of Canada.

THIS REPLY TO DEMAND FOR FURTHER AND BETTER PARTICULARS is filed by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

B-2027

IN THE EXCHEQUER COURT OF CANADA

Thursday, the 26th day of September, 1968.

PRESENT:

The Honourable Mr. Justice Sheppard

BETWEEN:

TORAZO IWASAKI

Suppliant

- and -

HER MAJESTY THE QUEEN

Respondent

UPON the motion of the Respondent coming on this day; AND UPON READING the Notice of Motion dated the 23rd day of September, 1968, and the Consent of Counsel forthe Suppliant and the Respondent dated the 23rd day of September, 1968, both of which are filed; AND UPON HEARING Mr. Norman D. Mullins of Counsel for the Respondent;

THIS COURT DOTH ORDER that at the trial of this action commencing the 30th day of September, 1968, all the rights of the parties on all issues of law and fact be determined by the Court except the amount of damages, if any;

AND THIS COURT DOTH FURTHER ORDER that if the Judgment of the Court is that the Suppliant is entitled to damages after the Judgment of the Court on such issues other than damages has become final, the action may be set down for trial for determination as to the amount of the damages and such issue may be tried before any member of the Court, or in such manner as the Court may order;

AND THIS COURT DOTH FURTHER ORDER that the costs of this application be costs in the cause.

BY THE COURT

Deputy Registrar

Approved:

Counsel for the Suppliant

VANCOUVER
OCT 29 1968
REGISTRY

No. B-2027

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IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

REASONS FOR JUDGMENT OF THE HONOURABLE F.A. SHEPPARD DEPUTY JUDGE OF THE EXCHEQUER COURT OF CANADA

The Suppliant, Torazo Iwasaki, alleges by petition that the Custodian as Trustee for the Suppliant as Evacuee committed a breach of trust in selling land of the Suppliant without any power of sale, or by selling to the specific Grantee, Salt Spring Lands Limited, and for such acts of the Custodian the Crown is liable by respondeat superior.

The Crown in defence says:-

(1) That there was no trust;

(2) That there was no breach of trust in selling;

(3) That the Suppliant's claim is barred by limitation of action and by laches;

(4) That the Suppliant's claim is barred by release.

As the issue raises the effect of certain Orders-in-Council, it is convenient to recite the legislation in proper sequence. The War Measures Act, R.S.C. 1927, Cap. 206, Sec. 3 empowers the Governor-General-in-Council to enact such Orders-in-Council as he may deem necessary or advisable. That legislation has been held to be valid: Japanese Reference (1946) S.C.R. 248, affirmed (1947) 1 D.L.R. 577 (P.C.).

The first group of Orders-in-Council relates essentially to the person in declaring a protected area and by requiring any person of the Japanese race to leave that area. Those Orders-in-Council are Order-in-Council

Counsel for the Suppliant

5295, being the Defence of Canada Regulations (Consolidation) 1941 (Ex. 84) which by Section 4 conferred the power to declare a protected area and to control the movement of persons therein; Order-in-Council 365 (Ex. 5) amended Section 4 by allowing the Minister of National Defence and the Minister of Justice to declare the protected area and to require all or any enemy alien to leave; Order-in-Council 9760 (Ex. 6) declared a protected area in all land west of the Cascades, including Saltspring Island, where are situated the lands in question; Order-in-Council 1486 (Ex. 7) amended the Defence of Canada Regulations, 1941, by authorizing the Minister of Justice to require any or all persons to leave the protected area, and by Order of the Minister of Justice of the 26th February, 1942 (Ex. 9) every person of the Japanese race was to leave the protected area forthwith.

The second group of Orders-in-Council relates to the lands in question. Order-in-Council 1665 (Ex. 10) established a security Commission and Section 12 provided that all property situate in the protected area of British Columbia belonging to any person of the Japanese race and resident in such area should be vested in and subject to the control and management of the Custodian. Order-in-Council 2483 (Ex. 11) amended Order-in-Council 1665 by defining a person of the Japanese race as follows:

> " 'Person of the Japanese race' means any person of the Japanese race required to leave any protected area of British Columbia by Order of the Minister of Justice under Regulation 4, as amended, of the Defence of Canada Regulations (Consolidation) 1941."

and by repealing Section 12 and substituting therefor the following:

> "12 (1) Subject as hereinafter in this Regulation provided, as a protective measure only, all property situated in any protected area of British Columbia belonging to any person of the Japanese race

"(excepting fishing vessels subject to Order in Council P.C. 288 of January 13th, 1942, and deposits of money, shares of stock, debentures, bonds or other securities) delivered up to any person by the owner pursuant to an order of the Minister of Justice, or which is turned over to the Custodian by or on behalf of the owner, or which the owner, on being evacuated from the protected area, 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 Enemy, (1939); provided, however, that no commission shall be charged by the Custodian in respect of such control and management.

(2) The Custodian may, notwithstanding anything contained in this Regulation, 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 protecting the interests of the owner or any other person, be vested in the Custodian, and the Custodian shall have full power to administer such property for the benefit of all such interested persons, and shall release such property upon being satisfied that the interests aforesaid will not be prejudiced thereby.

(3) For the purposes of the control and management of such property by the Custodian, the Consolidated Regulations Respecting Trading with the Enemy, (1939) shall apply mutatis mutandis to the same extent as if the property belonged to an enemy within the meaning of the said Consolidated Regulations."

The Regulations Respecting Trading with the Enemy, (1939), (Ex. 83) which are incorporated by reference by Section 12 (3), defines Custodian by Section 23 (1), vests the property of the enemy in the Custodian, and by Section 24 (2) provides:

"This regulation shall be a vesting order and shall confer upon the Custodian all the rights of the original enemy holder, including the power of sale, management and otherwise dealing with such property rights and interests as he may in his sole discretion decide."

Additional powers of the Custodian are conferred by Sections 36 to 40 inclusive and 43 to 46 inclusive.

Order-in-Council 469 (Ex. 21) empowered the Custodian to sell property of persons of the Japanese race.

Section 12 (3) of Order-in-Council 2483 adopts by reference Regulations Respecting Trading with

the Enemy (1939). Consolidated Regulations under Order-in-Council 3959 (Ex. 95) were in force and applied initially to the Custodian. On 13th November, 1943 Revised Regulations Respecting Trading with the Enemy (1943), (Ex. 28) were substituted and the former Regulations were repealed.

The facts follow.

The Suppliant was born in Japan of parents who were also born in Japan (Examination for Discovery, Questions 5 to 10 inclusive) and was naturalized as shown by Certificate of Canada Citizenship dated 19th June, 1951 (Ex. 82). On the 5th April, 1942 (Ex. 12) the Suppliant, pursuant to the Notice (Ex. 9) did register as a person of the Japanese race. The Suppliant was subsequently evacuated and moved to Greenwood, British Columbia (letter of his solicitor of 17th September, 1942 (Ex. 19)), and on May 23, 1943, the Custodian filed in the Land Registry Office in the City of Victoria a Certificate of Vesting of the Suppliant's land (Ex. 24).

In 1944 the Custodian issued a catalogue (Ex. 29) of real properties for sale by public tender which included the lands of the Suppliant on Saltspring Island, and this catalogue states:

> "Persons interested in the purchase of any of the properties listed herein are asked to contact the agent whose name is set opposite each property. These agents will be pleased to supply additional information and to arrange for the inspection of the property."

Also the catalogue referred interested parties for property on Saltspring Island, B.C. to Gavin C. Mouat of Ganges, B.C., described as an Agent. The Custodian received offers from Captain Smith (Ex. 30) and Salt Spring Lands Limited (Ex. 31) to which the Custodian replied, saying that he required an independent valuation. The Custodian also received a third tender from one Bush (Ex. 32) which was refused as filed too late.

D.K. Wilson, the Evaluator of the Custodian, reported the value of the land at $5,000 (Ex. 33) and the Custodian thereupon wrote Smith (Ex. 34) and Salt Spring Lands Limited (Ex. 35) that he would not consider any offer of less than $5,000. Subsequently Salt Spring Lands Limited offered to purchase at $5,250 and that offer, being the highest, was ultimately accepted (Exhibits 36, 38, 39 and 40). By deed of the 1st March, 1945, the Custodian conveyed to Salt Spring Lands Limited (Exhibits 45 and 46). Having received the purchase money (Exhibits 47 and 48) the Custodian, on the 23rd May, 1945, accounted to the Suppliant (Ex. 51).

By Order-in-Council 1810 of the 14th July, 1947 (Ex. 58) it is recited that persons of the Japanese race were evacuated and claims have been made that they suffered pecuniary loss and therefore it was deemed advisable to appoint a Commissioner to investigate the claims and to make recommendations. H.I. Bird, then Justice of the Appeal Court, later the Chief Justice of British Columbia, was appointed Commissioner. By letter of the 23rd May, 1945 (Ex. 51) to the Suppliant, the Custodian reported the sale of the land at $5,250 and reported the balance of $4,838.54 standing to the Suppliant's credit. By letter of the 19th August, 1947 (Ex. 60) the Suppliant objected to the sale of his property, and by letter of the 28th August, 1947 (Ex. 61) the Custodian remitted the balance standing to the credit of the Suppliant and reported to him that Mr. Justice Bird had been appointed as Commissioner to investigate certain claims of persons of the Japanese race evacuated from British Columbia. Cheques were enclosed by letters of the 5th October, 1948 (Exhibits 66 and 67). Subsequently the Suppliant was notified of the date of the hearing before the Commissioner (Ex. 63), and the Suppliant gave evidence before the Commissioner (Ex. 86) and was there represented by Counsel (Ex. 62).

The Commissioner reported (Ex. 72) as follows:

" I have the honour to report upon the investigation into claims of persons of the Japanese race made by me pursuant to the terms of Order-in-Council P.C. 1810 of July 18th, 1947, as subsequently amended.

Subsequently a policy of liquidation of the property of these evacuated persons was laid down by Order-in-Council P.C. 469 of January 19th, 1943. This policy was put into operation soon after, and on March 8th, 1943, two Advisory Committees were set up by the Custodian to advise the Director upon the disposition or effective use of real and personal property of evacuated persons of the Japanese race then vested in the Custodian.

The first of these Committees was appointed for the Greater Vancouver area, the personnel of which comprised The Honourable Mr. Justice Sidney Smith, Justice of Appeal, British Columbia, as Chairman; Charles Jones, Esquire (then Alderman of the City of Vancouver and later Mayor); and K. Kimura, Esquire.

The other Advisory Committee, known as the Rural Property Committee, had jurisdiction over all vested property situate outside the Greater Vancouver area, including Prince Rupert and the vicinity, Victoria and elsewhere on Vancouver Island, as well as the Fraser Valley. This Committee was composed of His Honour the late Judge David Whiteside, deceased, as Chairman; D.E. McKenzie, Esquire, New Westminster; Hal Menzies, Esquire, Haney, B.C., and J.J. McLellan, Esquire. Mr. McLellan resigned soon after his appointment and was replaced by William Mott, Esquire, Mayor of New Westminster.

The personnel of these Advisory Committees was such as to provide complete assurance that the administration and liquidation of the property of evacuated persons under their auspices would be performed with competence and just consideration for the interests of the owners.

I am satisfied on the evidence adduced before me that the very onerous task imposed upon the Director of the Custodian's office at Vancouver, under the guidance and with the assistance of the Advisory Committees, was competently performed, with due regard to the interest of the owners of such property, notwithstanding that the task had to be performed in an atmosphere of public hysteria induced by war. The fact that I have found that in certain respects fair market value was not realized on sales made by the Custodian in no sense reflects upon the work of the Custodian's organization. On the contrary, the evidence brought out on this Inquiry strongly supports the conclusion that this organization, in spite of the magnitude of the responsibilities imposed upon it, has substantially succeeded in administering and subsequently selling property of evacuated persons with due regard to the owner's interest.

" These Committees advised the Director in respect to all matters arising in connection with the administration and sale of real and personal property under their jurisdiction, including the disposal of all property vested in the Custodian under the Orders-in-Council before mentioned, the methods to be adopted in appraisal of such property, the offering of the same for sale, the prices which should be realized, and the terms of contracts for sale, as well as the leasing of lands the immediate sale of which was considered inadvisable by the Committees.

Dealing now with Group 2 above, being real property situate in rural areas other than those included in numbers 1 and 3: The parcels included in this group, as before noted, were widely distributed throughout the Province of British Columbia. Consequently, the Director of the Custodian's office in many instances was unable to obtain the assistance of appraisers with such outstanding qualifications as those who were retained to act in the urban area of Greater Vancouver, nor does it appear that the appraisers employed had the intimate knowledge of the properties appraised which was enjoyed by those retained in the urban area. Moreover, the Rural Advisory Committee, drawn largely from residents of the Fraser Valley, could not bring to their deliberations the same intimate knowledge of properties dealt with by them as was possible in the case of the Urban Committee. I have directed attention earlier to the fact that the Rural Advisory Committee found it necessary to adopt in all circumstances the price fixed by the appraisers. Furthermore, the market for real properties passed upon by the Rural Advisory Committee was a much more limited market than that available in the Greater Vancouver area.

The evidence satisfies me that all reasonable efforts were made by the Director of the Custodian's office, as well as the Rural Advisory Committee, to realize the fair market value on the sale of those properties. However, it is my conclusion that the circumstances before outlined did not permit of that realization to the same degree as in the case of properties in the Greater Vancouver area."

and further reported his conclusions (Ex. 74):

" Counsel for the claimant caused an appraisal to be made in June, 1949, by R.M. Hall, of Pemberton Homes, Ltd., Victoria, B.C. This appraisal shows that a cruise of the timber on this parcel was made in 1921 by Ryan, Hibbertson, Ltd., who estimated the timber stand to comprise 4,335,000 ft. Claimant sold part of this timber on a stumpage contract made in 1939, at $2.00 per M.

The logging contractors took out, in the period 1940 to 1944, approximately 1,250,000 ft. Hall estimates that from 3,000,000 to 3,500,000 ft. remained on the property at the date of sale, which then had a stumpage value of about $4.00 per M., i.e., that there was a value in timber alone of from $12,000 to $14,000.

Hall describes the sea frontage to a depth

"of approximately 300 ft. as being exceptionally valuable for building sites. He considers that this part of the land, comprising approximately 100 acres, could have been sold, if subdivided and road connection furnished, at about $5,000, i.e., minimum $50.00 per acre. He appraises the property as at March, 1945 (the date of sale) at $12,000.00."

Mr. Hall's estimate of the value of 100 acres having waterfrontage, i.e., about $5,000, taken into consideration along with the value of timber as well as the remaining 400 acres of wild land lying back of the water frontage mentioned, in my opinion supports the conclusion that the property at the date of sale had a fair market value of not less than $12,000.00.

Since the property was sold by the Custodian at $5,250.00 I recommend payment to the claimant of the sum of $6,750.00, to which should be added any charges deducted by the Custodian from the purchase price paid to the claimant."

The Commissioner found that although the land had been valued at $5,000, yet the fair market value was $12,000, and therefore he recommended that payment of the excess of $6,750 be made. That amount was eventually paid to the Suppliant pursuant to his release under seal dated 28th October, 1950, whereby the Suppliant purported to release His Majesty the King and the Custodian from all actions, claims and demands; the additional sum was paid to the Suppliant or to his order (Exhibits 78, 79 and 80). Subsequently these proceedings were commenced by Petition of Right.

The Suppliant alleges in the Petition of Right:

I. A Trust - The Secretaty of State, the Custodian, took custody in trust for and in the interest of the Suppliant;

II. A Breach - The lands were vested in the Custodian and sold and conveyed by him to Salt Spring Lands Ltd.

III. That such breach imposed liability on the Crown.

The Prayer for Relief (Clause G) asks:

VANCOUVER
MAR 26 1968
REGISTRY

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
26 1968
DEPOSE
VANC

AND:

HER MAJESTY THE QUEEN

RESPONDENT

SUPPLEMENTARY AFFIDAVIT
AS TO DOCUMENTS

I, TORAZO IWASAKI, of 4493 West 12th Avenue, in the City and County of Vancouver, in the Province of British Columbia, the above-named Suppliant, MAKE OATH AND SAY as follows:

1. THAT I have the following documents in my possession which I do not object to produce:

(a) Photocopy of letter dated July 29th, 1942 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

(b) Photocopy of letter dated April 20th, 1943 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

(c) Photocopy of letter dated May 23rd, 1945 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki, with Statement of Account attached thereto;

(d) Photocopy of letter dated February 11th, 1946 from the Department of the Secretary of State, Office of the Custodian, to R.C. Taylor, with a copy to Torazo Iwasaki;

(e) Photocopy of letter dated February 11th, 1946 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

(f) Registered letter dated August 28th, 1947 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

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(a) That the Crown return the lands or

(b) Alternatively, pay damages of $1,500,000.

The declarations preceding Clause G are merely ancillary to the allegations and relief in Clause G.

As to the Prayer for return of the lands the Suppliant cannot succeed on the Suppliant's own pleading. The return of the lands involves more than a simple action in ejectment, but involves also rescission of the title issued to the Custodian and any subsequent title, also, the Certificate of Vesting (Ex. 24) and the deed from the Custodian to Salt Spring Lands Ltd. The remedy of rescission is a remedy to be obtained in equity (Richards v. Collins (1912) 27 O.L.R. 390 at p. 398, excepting the Ontario Statutes not here applicable) and in equity a decree will not be made in the absence of a person who will be affected thereby. In Tryon v. Peer (1867) 13 Gr. 311, Van Koughnet, C. at p. 316 stated: "It is a general rule that all parties interested in the subject matter of a suit should be before the Court...." In Best v. Beatty; Calvert v. Beatty (1920) 47 O.L.R. 265, Masten, J. at p. 273 stated:

> "Upon this ground it is that in all actions by persons claiming under a trust, the trustee or other person in whom the legal estate is vested is required to be a party to the proceeding; and the rule is the same whether the trust be expressed or implied."

(quoting from Daniells Chancery Practice (8th Ed.) pp. 151-2). Moreover, under the rule audi alteram partem, all such parties must be given an opportunity to plead and to present their case: Manning v. Greschen (1965) 56 W.W.R. 124; DeSmith on Judicial Review of Administrative Action, p. 103. In the absence of such necessary parties as the Salt Spring Lands Ltd. and the present holder of the legal title, no decree for rescission can be made. It cannot be assumed that such persons could have no answer to this remedy, by election to affirm as in Clough v. London and North Western Railway

(1871) L.R. 7 Ex. 26 at p. 34; Barron v. Kelly (1918) 56 S.C.R. 455, or by laches as in Lagunas Nitrate Co. Ltd. v. Lagunas Syndicate (1899) 2 Ch. 392.

The alternative remedy to rescission is account. The obligation to account depends upon a trust. Where there is a trust there is the obligation to account; where no trust, there is no obligation to account. In Civilian War Claimants Association v. The King (1932) A.C. 14, Lord Buckmaster at p. 24 stated:

> "Finally when the moneys were received, it is said that from and after that moment the Crown became a trustee. I have pointed out in the course of the argument, and I repeat, that if that were the case, unless you are going to limit the rights which the beneficiaries enjoy, those rights must include, among other things, a claim for an account of the moneys that were received, of the expenses incurred, and the way in which the moneys have been distributed. Such a claim presented against the Crown in circumstances such as these would certainly have no precedent, and would, as it appears to me, invade an area which is properly that belonging to the House of Commons."

In Barnes v. Addy (1874) L.R. 9 Ch.A. 244 and in Mara v. Browne (1896) 1 Ch.D. 199, the evidence was not sufficient to make the defendants trustees, therefore the suit was dismissed. In Barnes v. Addy, supra, Lord Selborne, L.C. at p. 251 stated:

> " Now in this case we have to deal with certain persons who are trustees, and with certain other persons who are not trustees. That is a distinction to be borne in mind throughout the case. Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing on him a corresponding responsibility. That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees de son tort, or actually participating in any fraudulent conduct of the trustee to the injury of the cestui que trust. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a Court of Equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees. Those are the principles, as it seems to me, which we must bear in mind in dealing with the facts of this case.

"If those principles were disregarded, I know not how any one could, in transactions admitting of doubt as to the view which a Court of Equity might take of them, safely discharge the office of solicitor, of banker, or of agent of any sort to trustees."

Equity does not give damages: Erlanger v. New Sombrero Phosphate Co. Ltd. (1878) 3 A.C. 1218, except where provided by Lord Cairns Act (21 & 22 Vict. Cap. 27, Sec. 2), in lieu of injunction or specific performance and that is not this case. However, this Suppliant alleges a trust and breach thereof as the basis of his petition, hence the claim for damages may be read as a claim for the personal remedy of account as the remedy arising out of a trust. The pleadings may be taken to allege:

I. A trust in the Custodian to the Suppliant under Orders-in-Council 1665 and 2483.

II. The breach thereof in part by reason that Order-in-Council 469 authorizing a sale is alleged ultra vires, therefore there was a breach in the trustee having sold and conveyed to Salt Spring Lands Ltd.

III. For such breach the Crown is responsible in account.

Those allegations have not been made good.

I. The Suppliant contends that the lands vested in the Custodian as trustee and that trust is inferred under the following circumstances:

The Suppliant contends that the trust arises because any vesting under Orders-in-Council 1665 and 2483 is subject to the provisions of Sec. 12 (O/C 2483) (Ex. 11) which provide that the vesting is "as a protective measure only" and limited to "the control and management of the Custodian" and "for the purpose of protecting the interests of the owner or other person"

(Sec. 12 (2)) and to administer "for the benefit of all such interested persons and shall release such property upon being satisfied that the interests aforesaid will not be prejudiced thereby" (Sec. 12 (2)). "For the purpose of control and management" the Consolidated Regulations are made applicable (Sec. 12 (3)).

In Nakashima v. The King (1947) Ex.C.R. 486, Thorson, P. at p. 494 points out the discretionary powers given to the Custodian under the Consolidated Regulations Respecting Trading with the Enemy (1939) (Order-in-Council 3959) (Ex. 95). By Sec. 21 (2) he may deal with the interest of the enemy; by Sec. 23 he may have the property transferred to his name; by Sec. 38 he may liquidate; by Sec. 40 he may dispose of the property publicly or privately. Further by Sec. 40 the property is free from attachment or execution; by Sec. 50 the Custodian is not liable for any charge; by Sections 42 to 44 he may set up an office and engage a staff, have full control over his funds and may deposit in any bank and may pay office expenses therefrom. Those powers, and particularly the discretionary powers of the Custodian, are inconsistent with any trust.

Again, in referring to the alleged limitations, "as a protective measure only" and "to the control and management of the Custodian", which the Suppliant alleges limit the application of the Consolidated Regulations, Thorson, P. in the Nakashima case states at p. 496:

> "In my opinion even if this were conceded, it would not alter the character of the Custodian's powers and duties. His discretionary powers might be more limited in scope than in the case of alien enemy property but the difference would be one of degree rather than of kind. He would still have very wide, free discretionary powers in the field of control and management. And if Order-in-Council P.C.

> "469 of January 19, 1943 is valid there would be no difference at all in the scope of the Custodian's discretionary powers as between alien enemy property on the one hand and Japanese evacuee property on the other."

and Thorson, P. thereafter stated that Order-in-Council 469 was valid, in the following words (p. 504):

> "It was, therefore, within the power of the Governor-in-Council to pass Order-in-Council P.C. 469 of January 19, 1943, embodying the terms against which the Suppliants protest and they were validly enacted. The Custodian has, therefore, the lawful right to liquidate, sell, or otherwise dispose of the property vested in him, the properties of the Suppliants."

It therefore follows that the Custodian is under no trust in favour of an alien enemy, but all the rights and powers of the alien enemy in the property are vested in the Custodian, and the Custodian is in the same position with reference to evacuee property;

The Nakashima case refers to Consolidated Regulations Repsecting Trading with the Enemy (1939) contained in Order-in-Council P.C. 3959 of 27 August, 1940 (Ex. 95). Those Regulations were cancelled on 13th November, 1943 and Revised Regulations Respecting Trading with the Enemy (1943) were substituted therefor (Ex. 28), but these Revised Regulations (1943) have not lessened the powers of the Custodian in that the equivalent sections are included sometimes under different numbers. The Custodian is vested with the property (Sec. 21 (1)) and all the rights of the enemy (here evacuee)(Sec. 21 (2) and Sec. 22), with power of sale (Secs. 38, 40 (1)), with discretion to release (Sec. 39) and to deal with property (Secs. 21(2), 38, 39); vested property is excepted from attachment (Sec. 49); the Custodian is not liable for charge or tax (Sec. 50) and may deduct his charges (Sec. 44). There appears to be no material lessening of the powers of the Custodian by the Revised Regulations (1943) and hence it is immaterial whether there is applicable to the Custodian the Consolidated Regulations P.C. 3959 referred to in the Nakashima case or the

Revised Regulations (1943). Both depend upon the War Measures Act, R.S.C. 1927, Cap. 206, Sec. 3 (2) and hence are conditioned that once the Governor-in-Council has considered "that the order is necessary or advisable for any of the purposes mentioned that is the end of the matter" Nakashima case, p. 504.

The Suppliant contends that the Orders-in-Council 1665, 2483 and 469 are void in that the words "any person of the Japanese race", are so vague and indefinite as to be without clear meaning, and as such race is the basis of application of orders-in-council, therefore the orders-in-council are void. If that contention were sound, the contention would put the Suppliant out of Court in that the suit would be for the Custodian's wrongful taking of the lands and the remedy would be by rescission as in Richards v. Collins, supra, but not for trust as alleged in the petition; in this proceeding there could be no rescission for want of necessary parties such as Salt Spring Lands Ltd.

In support of his contention the Suppliant has cited Noble and Wolfe v. Alley (1951) 1 D.L.R. 321; in that judgment others words excluding sale to designated races appeared in a restrictive covenant which covenant the Court was asked to enforce specifically by way of injunction, and this the Court refused to do because a restrictive covenant to be enforced must have the same clarity as the Court requires in a condition subsequent to a grant. As a condition subsequent is subsequent to and in derogation of an

absolute grant, the condition subsequent must be clearly expressed else it is defeated by the preceding intention to grant. Hence, that case is distinguishable as different words are there used in other circumstances, that is, in a restrictive covenant. Here the words "any person of the Japanese race" appear in Orders-in-Council, which Orders-in-Council have been held valid in the Nakashima case. Also, in Reference re Validity of Orders-in-Council 7355, 7356 and 7357, the words "persons of the Japanese race" appear in Order-in-Council 7355 and in the recitals of Order-in-Council 7357, and the words "of the Japanese race" appear in Section 2 of Order-in-Council 7355 and in Sections 2 and 4 of Order-in-Council 7357; and all Orders-in-Council were held valid in the Supreme Court of Canada ((1946) S.C.R. 248) and in the Judicial Committee of the Privy Council ((1947) 1 D.L.R. 577). Under such judgments the words must be taken to be not vague or indefinite and not affecting the validity of the Orders-in-Council.

Further, no statute has been declared void because the words thereof are indefinite. In Fawcett Properties Ltd. v. Buckingham County Council (1960) 3 All E.R. 503, Lord Denning at p. 516 stated:

> " My Lords, it is a bold suggestion to make that these words, taken as they are from a statute, are void for uncertainty. Counsel for the appellants was unable to point to any case where a statute had ever been held void for uncertainty. There are a few cases where a statute has been held void because it is meaningless but none because it is uncertain.... But when a statute has some meaning even though it is obscure, or several meanings, even though there is little to choose between them, the Courts have to say what meaning the statute is to bear rather than reject it as a nullity."

It follows that the words "any person of the Japanese race" are not vague or indefinite and they do not invalidate the Orders-in-Council.

The Suppliant contends that there is no evidence that he is of the Japanese race and therefore no evidence that he comes within the Orders-in-Council 1668, 2483 or 469. On the contrary, there is ample evidence. In the Suppliant's examination for discovery (Q. 1 & 2) he gave his name as Iwasaki Torazo, or, in English, Torazo Iwasaki. That is not an English name. Questions 5 - 10 - he was born in Japan of Japanese parents who were born there.

Order-in-Council 9760 (Ex. 3) required every person of the Japanese race to register with a Justice of the Peace or the R.C.M.P. There was an order to leave the protected area (Ex. 9). The Suppliant registered to leave (Ex. 12) and was evacuated (Ex. 19) as shown by letter of the 17th September, 1942, by the Suppliant's solicitor. The Suppliant's lands were vested in the Custodian because he was of the Japanese race (Ex. 22). Finally, under Order-in-Council 1810, a Commission was set up to hear claims of persons of the Japanese race (Ex. 58) of which the Suppliant was notified (Ex. 63). The Suppliant then appeared as a person of the Japanese race with counsel before the Commissioner and there gave evidence (Ex. 86). Following the hearing the lands were valued by the Commissioner at $12,000.00 (Ex. 73) and the excess over the previous selling price was paid to the Suppliant or on his order (Exhibits 77, 78 and 80) and he gave a release (Ex. 75). The Suppliant was of the Japanese race; that is more

readily found than the alternative, that he received money under false pretences.

II. The Suppliant further contends that there was a breach of trust: the Suppliant contends that Order-in-Council 469 is void as in derogation of the War Measures Act, R.S.C. 1960, Cap. 209, Sec. 3 (2), which reads:

> "2. All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation."

The Suppliant has cited Reference re Regulations (Chemicals) under War Measures Act (1943) 1 D.L.R. 248, where Duff, C.J.C. said at p. 263:

> "Section 7 of the War Measures Act must prevail over paragraph 4 of the Order-in-Council since it is not open to the Governor-in-Council to derogate from the provisions of the War Measures Act except ...."

The Suppliant's contention is that Orders-in-Council 1665 and 2483 set up a trust of the Custodian to the Suppliant to keep the lands for the Suppliant, and Sec. 3 (2)of the War Measures Act preserved that right of cestui que trust in the Suppliant, therefore Order-in-Council 469 in authorizing a sale was in derogation of the rights of the Suppliant as cestui que trust, which rights were preserved by Sec. 3 (2) of the Act, hence Order-in-Council 469 was in derogation of the statute and was invalid. That contention fails for the following reasons:

(1) The contention depends upon the Custodian holding as trustee but the Custodian did not hold under any trust but held absolutely.

(2) The Order-in-Council 469 was held valid by the Nakashima case, p. 504, and that finding concludes the matter.

(3) The contention is based on the misconstruing of Sec. 3 (2) of the War Measures Act. The purpose of Sec. 3 (2) is seen in Maxwell on Interpretation of Statutes (11th Ed.) p. 390, namely, that at common law a statute when repealed was deemed never to have existed except as to completed transactions, hence if a person committed an offence against a statute and the statute was repealed before conviction therefore he went free although an information had been laid. The purpose of Sec. 3 (2) was to prevent such results following the varying, extending or repealing of an Order-in-Council. Hence the section (3 (2)) means that the validity of anything done is determined by the law including Orders-in-Council then existing, notwithstanding an Order-in-Council be subsequently varied, extended or revoked. But the subsequent varying, extending or revoking is valid because that power is expressly conferred by Sec. 3 (2).

No trust was created for the Suppliant under Orders-in-Council 1665 and 2483; that was excluded by the Nakashima case, supra. Further, Order-in-Council 469 is valid as held in the Nakashima case, being within the express power of Sec. 3 (2) to vary, extend or revoke.

The Suppliant also contends that the

(g) Registered letter dated October 5th, 1948 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki;

(h) Photocopy of letter dated November 8th, 1950 from the Department of the Secretary of State, Office of the Custodian, to Torazo Iwasaki.

2. THAT according to the best of my knowledge, information and belief, I have not now in my own possession, custody or power any deed, account, book of account, voucher, receipt, letter, memorandum, paper of writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in Paragraph 1 hereof and in Paragraphs 1 and 2 of the Affidavit as to Documents sworn by me on the 7th day of March, A.D. 1968, and filed.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 26th day of March, A.D. 1968.

A Commissioner for taking Affidavits within British Columbia.

Torazo Iwasaki

TORAZO IWASAKI

breach of trust occurred by the Custodian selling to Salt Spring Lands Ltd., in that G.C. Mouat was an agent of the Custodian and had also a 20% interest in the company, therefore the Custodian's duty and interest were in conflict.

The Custodian did sell to Salt Spring Lands Ltd. by deed of 1st March, 1945 (Ex. 46) and G.C. Mouat did have an interest in Salt Spring Lands Ltd. to the extent of 20% and was also a director at all material times.

Further, the catalogue of properties for sale (Ex. 29) issued by the Custodian referred to G.C. Mouat as an agent, and referred prospective purchasers to G.C. Mouat, and it has been held that when a trustee or fiduciary puts himself in a position where his duty to his principal and his interest are in conflict, the trustee or fiduciary may be held a trustee of any secret profit or advantage.

In Parker v. McKenna (1874) 10 Ch.A. 96, the director of a company took an assignment by the purchaser of an executory agreement by such purchaser with the company, and the directors were held liable to account for their profit on the transaction, as the conflict arose by reason of the duty being in the directors to enforce the agreement for the company and it was their interest as assignees to relax the enforcement.

In Boston Deep Sea Fishing & Ice Co. v. Ansell (1888) 39 Ch.D. 339, the defendant shareholder of another company received a commission on business he introduced to that other company and he, an officer of the plaintiff, had induced the plaintiff to contract with the other company.

The difficulty in the case at Bar is in seeing what is the conflict, that is, between what interest and what duty. The Custodian sold to Salt Spring Lands Ltd. but the Custodian had no interest in that company and was not selling to himself. Hence there was no conflict on the part of the Custodian. G.C. Mouat was not selling. There is no evidence that Mouat's duty as agent was in any wise inconsistent with his purchasing in person the lands in question or that his minority interest in the company was inconsistent with that company buying, because Mouat was not selling, and his being agent may have had nothing to do with buying or with selling. The selling was by the Custodian with the advice of a committee consisting of Judge Whiteside and two other persons who were all above reproach. In the report of the Commissioner (Bird, J.A., later C.J.B.C.) (Ex. 72) he commends the Custodian for making records available (p. 150), approves the advisory committees (p. 153); states that the work of the Custodian was well performed (p. 155) and that real efforts had been made to get fair value for the real property (p. 164).

In Appendix III (Ex. 73) the Commissioner found that the real value of the lands formerly owned by the suppliant was $12,000 and not $5,000 as had been reported by the Custodian's real estate agent (Wilson). The selling was by the Custodian with the help of the advisory committee.

The position of this Custodian is stronger than that of the Bank Manager in The Bank of Upper Canada v. Bradshaw (1867) L.R. 1 P.C. 479. There a Bank Manager was alleged to be liable for the deficiency of a loan which he as Bank Manager

had made for the Bank to a company in which he had an interest. Lord Cairns at pp. 489-90 stated:

" It is said, either that he should have given no accommodation to the Company, or, at all events, that before doing so he should have told the Bank that he was interested in the Company, a fact which it is alleged the Bank did not know. And it is contended that he should be made liable for the deficiency upon this account. Their Lordships are desirous in no way to qualify or to abridge the doctrine of law prevailing in almost all systems of jurisprudence, that any one standing in the position of an Agent cannot be allowed to put his duty in conflict with his interests, and they are certainly not prepared to rest the application of the doctrine on the amount of the interest, adverse to that of his employer, which the Agent may be supposed to have. But it is to be observed that in the present case the dealings between the Bank and their customer were dealings in which the customer was not Bradshaw, but an incorporated Company, Bradshaw being a shareholder in that Company, distinct in point of law from the Company itself. It is also to be observed that Bradshaw had been appointed to manage the business of the Bank in the midst of a community consisting of individuals and of incorporated trading companies similar to the Telegraph Company, in which companies Bradshaw might or might not hold shares. Now their Lordships entertain no doubt, that if any case of bad faith or fraud were shewn to occur in dealings between the Manager and corporations in which he was a shareholder, dealings of that kind could not be supported. But their Lordships think that the just conclusion to be drawn from the facts, and from the course of business in the present case, is, that it was within the power of Bradshaw, as Manager of this Bank, to deal in the ordinary and proper course of banking business, not merely with the individuals, but also with the trading corporations of the place in which he was placed as Manager, and to deal in that way with the trading corporations, even although he himself might hold shares in any one of them. And if that be the true view of the position and authority of Bradshaw, it cannot, their Lordships think, be denied that the advance made to the Telegraph Company upon the account that I have described, was entirely a legitimate act in the course of the ordinary business of the Bank. Their Lordships, therefore, preserving entirely intact the general rule as to the conduct and duty of Agents, are not prepared to hold that Bradshaw exceeded his power or authority in dealing with the Telegraph Company in the way that has been described."

There is neither alleged nor proved any bad faith by the Custodian in the case at Bar and the finding of the Commissioner, Bird, J.A. precludes any bad faith in selling the property. Hence as there was no trust there could be no breach and assuming a trust, there was no breach proven in this instance.

Defences:

The Crown as Respondent relies upon the limitation that any action for the recovery of land must be commenced within twenty years: Statute of Limitations, R.S.B.C. 1960, Cap. 370, Sec. 16. Here no land may be recovered because of the absence of necessary parties, and it has not been argued whether or not the remedy in personam has been barred by analogy after some shorter period, as in Knox v. Gye (1871) L.R. 5 H.L. 656. Hence the defence by limitation need not be decided.

The Crown has also contended that the claim of the Suppliant is released by the release of 28th October, 1950 given by the Suppliant under Seal to the Crown and the Custodian (Ex. 75), whereby the Suppliant has released all his rights. Such a "release under Seal" would divest an obligation to account: DeBrussche v. Alt (1878) 8 Ch.D. 286 at p. 314.

The Suppliant contends that the Order-in-Council 469 authorizing the sale is ultra vires of the Governor-in-Council and is therefore a nullity, therefore the rlease (Ex. 75) having been given pursuant to such Order-in-Council releases a nullity and is ineffective: Great North-West Central Railway v. Charlebois (P.C.) (1899) A.C. 114. The doctrine of ultra vires applies to statutory companies and where such company purports

to enter into a transaction beyond its powers, there it is no person and the transaction is a nullity as in Sinclair v. Brougham (1914) A.C. 398, but that doctrine of ultra vires has no application to a natural person, which is stated in Bonanza Creek Gold Mining Co. Ltd. v. The King (1916) 1 A.C. 566 by Viscount Haldane at p. 584:

> "In the case of a company the legal existence of which is wholly derived from the words of a statute, the company does not possess the general capacity of a natural person and the doctrine of ultra vires applies."

and at p. 577:

> "For the company it is said, is a pure creature of statute existing only for objects prescribed by the Legislature within the area of its authority, and is therefore restricted, so far as legal capacity is concerned, on the principle laid down in Ashbury Railway Carriage and Iron Co. v. Riche, L.R. 7 H.L. 653.

and at p. 584 Viscount Haldane referred to a prerogative company having "A general capacity analagous to that of a natural person."

The release (Ex. 75) was given under Seal by the Suppliant, a natural person, and the doctrine of ultra vires cannot apply thereto.

In any event, this contention fails in that Order-in-Council 469 is not ultra vires: Nakashima case, supra, at p. 504.

The basis of the Suppliant's complaint is without foundation. The complaint is that Orders-in-Council 1665 and 2483 set up a trust to return the lands to the Suppliant, wherefore the lands vested in the Custodian as trustee under duty to manage and return, and that Order-in-Council 469 in authorizing a sale, was void. That was in error; there was no trust: Nakashima v. The King, supra, and the vesting in the Custodian was absolute; nor was there any breach of trust.

Nov. 19

No. B-2027

Further, the Suppliant contended before the Commissioner that the lands were of greater value than that realized by the Custodian; and the Commissioner reported the additional value of the lands and that value so found was paid to the Suppliant under a release under Seal of all his claims. That release still stands.

In conclusion, there is no merit in the Suppliant's petition of right, therefore the proceeding is dismissed with costs payable by the Suppliant to the Crown as Respondent.

Vancouver, B.C.
October 29th, 1968

F.A. Sheppard

Deputy Judge of the Exchequer Court of Canada

Dates of Hearing:

September 30, 1968
October 1, 2, 3, 1968

Counsel for Suppliant: J.R. MacLeod
B.W. Small

Counsel for Respondent: N.D.Mullins
R. W. Law

No. 19

No. B-2027

IN THE EXCHEQUER COURT OF CANADA

Tuesday, the 29th day of October, 1968.

38

PRESENT: The Honourable Mr. Justice Sheppard

IN THE MATTER OF THE PETITION OF RIGHT OF:

TORAZO IWASAKI

Suppliant

and

HER MAJESTY THE QUEEN

Respondent

The Petition of Right of the above named Suppliant coming on for trial at the City of Vancouver, in the Province of British Columbia, the 30th day of September, and the 1st, 2nd and 3rd days of October, 1968, before this Court in the presence of J. Raymond MacLeod and Daniel W. Small of Counsel for the Suppliant and Norman D. Mullins and R.W. Law of Counsel for the Respondent; UPON HEARING READ the pleadings herein AND UPON HEARING the evidence adduced at trial and what was alleged by Counsel aforesaid; THIS COURT WAS PLEASED TO DIRECT that this action should stand over for Judgment and the same coming on this day for Judgment;

THIS COURT DOTH ORDER AND ADJUDGE that the said Suppliant is not entitled to the relief sought by his Petition of Right herein, and that Her Majesty the Queen recover from the said Suppliant Her costs herein, to be taxed.

BY THE COURT

Deputy Registrar

Approved as to form

Counsel for the Suppliant

B-2027

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

THE EXCHEQUER COURT OF CANADA
FILED
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BETWEEN:

TORAZO IWASAKI

SUPPLIANT
(Appellant)

AND:

HER MAJESTY THE QUEEN

RESPONDENT
(Respondent)

NOTICE OF APPEAL

TAKE NOTICE that the above-named Suppliant (Appellant) intends to appeal and doth hereby appeal to the Supreme Court of Canada from the Judgment of the Honourable Mr. Justice Sheppard pronounced the 29th day of October, A.D. 1968 and entered on the 19th day of November, A.D. 1968 and dismissing the action of the Suppliant (Appellant) against the Respondent (Respondent).

DATED at the City of Ottawa, in the Province of Ontario, this 24th day of December, A.D. 1968.

Solicitor for the Suppliant
(Appellant)

THE EXCHEQUER COURT OF CANADA
COUR DE L'ÉCHIQUIER DU CANADA
LAW STAMP
TIMBRE DE LOI

TO: The Registrar of the
Supreme Court of Canada

AND TO: The Respondent (Respondent)

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent

THIS NOTICE OF APPEAL is filed and delivered by Mr. J. Raymond MacLeod, of the firm of Messrs. MacLeod & Small, Solicitor for the Suppliant (Appellant), whose place of business is at 201 - 535 Thurlow Street, Vancouver 5, B.C. and whose address for service is C/o Messrs. Smart & Biggar, 70 Gloucester Street, Ottawa 4, Ontario.

Agreement as to Case

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
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IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

APPELLANT
(Suppliant)

AND:

HER MAJESTY THE QUEEN

RESPONDENT
(Respondent)

AGREEMENT AS TO CASE

WE HEREBY AGREE THAT the following shall constitute the printed Case upon this Appeal from the Judgment of the Exchequer Court of Canada to the Supreme Court of Canada:

1. Amended Petition of Right, Amended Statement of Defence, and Amended Reply and Joinder of Issue;

2. Exhibits at Trial numbered 1 to 95;

3. Reasons for Judgment of the Honourable Mr. Justice Sheppard, Deputy Judge of the Exchequer Court of Canada;

4. Formal Judgment of the Exchequer Court of Canada;

5. Agreement as to Contents of Case;

6. Certificate of Appellant's Solicitors as to accuracy of transcript of the Proceedings at Trial;

7. Certificate of Registrar of the Exchequer Court of Canada as to Case.

DATED at Vancouver, British Columbia this 4th day of July, A.D.1969.

"J. R. MacLEOD"
J. R. MacLeod.
Solicitor for Appellant.

"Norman D. Mullins"
N. D. Mullins for
Solicitor for the Respondent.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
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BRITISH COLUMBIA
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LAW STAMP

A F F I D A V I T

I, J. RAYMOND MacLEOD, of 1022 Groveland Place, in the Municipality of West Vancouver, in the County of Vancouver, in the Province of British Columbia, Barrister and Solicitor, MAKE OATH AND SAY as follows:

1. THAT I am Solicitor for the Suppliant, and as such have knowledge of the matters hereinafter deposed to, save those stated to be on information and belief.

2. THAT I am informed by Torazo Iwasaki and verily believe that he has been a Canadian citizen since the 11th day of October, A.D. 1907.

3. THAT hereunto annexed and marked Exhibit "A" to this my Affidavit is a copy of the Certificate of Canadian Citizenship of the Suppliant, Torazo Iwasaki.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia this 2nd day of February, A.D. 1968.

James Baird

A Commissioner for taking Affidavits within British Columbia.

J. R. MacLeod

COUR DE L'ECHIQUIER DU CANADA
EXCHEQUER COURT OF CANADA
DEPOSITED
27 MAR 1968
DEPOSÉ
VANCOUVER

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

17

AND:

HER MAJESTY THE QUEEN

RESPONDENT

BEFORE THE HONOURABLE :
: FRIDAY, the 8th day of
MR. JUSTICE SHEPPARD, :
: MARCH, A.D. 1968.
IN CHAMBERS :

COLUMBIA
$2.10
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BRITISH
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LAW

UPON this motion on behalf of the Suppliant coming on for hearing on the 8th day of March, A.D. 1968, in the presence of Margaret C. Desrosses, Esq., of Counsel for the Suppliant, and Norman D. Mullins, Esq., of Counsel for the Respondent; AND UPON reading the Affidavit of J. Raymond MacLeod, Esq., sworn the 4th day of March, A.D. 1968, and filed; AND UPON reading the pleadings and proceedings herein; AND UPON hearing the submissions of Counsel aforesaid;

IT IS ORDERED that the Suppliant be at liberty to issue herein, in the form provided for by the Rules of this Court in that behalf, a Commission for the examination of the said Suppliant at the City of Vancouver, in the Province of British Columbia;

AND IT IS FURTHER ORDERED that the said Commission may issue only after the pleadings herein have been closed and the said Suppliant has provided discovery of documents and has been examined for discovery;

AND IT IS FURTHER ORDERED that the said Commission

CANADA

NUMBER
123256

SERIES A

CERTIFICATE OF CANADIAN CITIZENSHIP

ISSUED UNDER THE CANADIAN CITIZENSHIP ACT

I, the undersigned, Minister of Citizenship and Immigration, do hereby certify and declare that TORAZO IWASAKI whose particulars are endorsed hereon, is a Canadian citizen and that he/she is entitled to all rights, powers and privileges and subject to all obligations, duties and liabilities to which a natural-born Canadian citizen is entitled or subject.

In testimony whereof I have hereunto subscribed my name and affixed the Seal of the Department of Citizenship and Immigration, this NINETEENTH day of JUNE 1952

THIS CERTIFICATE SHALL BE EFFECTIVE ON AND FROM

NINETEENTH day of JUNE 1952

Laval Fortier.

DEPUTY MINISTER OF CITIZENSHIP AND IMMIGRATION

N. E. Harris

MINISTER OF CITIZENSHIP AND IMMIGRATION

BRITISH AMERICAN BANK NOTE COMPANY LIMITED

PRINTED IN CANADA

This is Exhibit "A" referred to in the Affidavit of J. RAYMOND MacLEOD sworn before me at VAN B.C. this 2ND day of FEBRUARY 1968

A Commissioner for taking Affidavits for British Columbia

CERTIFICATE OF CANADIAN CITIZENSHIP

Particulars of Description

FULL NAME TORAZO IWASAKI

ADDRESS GREENWOOD, BRITISH COLUMBIA, CANADA

TRADE OR OCCUPATION RETIRED

PLACE AND DATE OF BIRTH GANUDO, NUMAZUSHI, SHIZUOKA-KEN, JAPAN

15TH APRIL, 1879

SUBJECT CITIZEN OF CANADIAN CITIZEN THROUGH NATURALIZATION, 11TH OCTOBER, 1907

MARRIED OR SINGLE WIDOWER (WIDOW) NAME OF WIFE HUSBAND MARRIED

PARENTS SUBJECTS CITIZENS OF JAPAN

AGE 73 YEARS, HEIGHT 5 FEET 2 INCHES

COLOUR YELLOW COMPLEXION DARK

COLOUR OF EYES BROWN COLOUR OF HAIR BLACK

VISIBLE DISTINGUISHING MARKS STIFF JOINT IN LEFT THIRD FINGER

(COUNTERSIGNED)

REGISTRAR OF CANADIAN CITIZENSHIP

This is Exhibit "A" referred to in the AFFIDAVIT ~~statutory~~ of J. RAYMOND MacLEOD sworn before me at VAN, B.C this 2ND day of FEBRUARY, 1968.

A Commissioner for taking Affidavits for British Columbia

VANCOUVER OCT 29 1968 REGISTRY

In the Exchequer Court of Canada

B 2027

Iwasaki

and

The Queen

Reasons for Judgment.

Required $5.00

BRITISH COLUMBIA $5.00 REVENUE STAMP 1920

Dated this 29th day
of Oct A.D. 1968

Dept. of Justice

J-EC-36.

B2027.

In the Exchequer Court of Canada

VANCOUVER
OCT 29 1968
REGISTRY

BRITISH COLUMBIA
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$5.00
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Iwasaki

and

The Queen

Required Reasons for Judgment
$5.00

Dated this 29th day
of Oct A.D., 1968

Messrs. Macleod & Small

J-EC-36.

B-2027

In the Exchequer Court of Canada

BETWEEN:

TORAZO IWASAKI,

Suppliant,

-and-

HER MAJESTY THE QUEEN,

Respondent.

RECEIVED FROM THE REGISTRAR OF THE EXCHEQUER COURT OF CANADA THE ORIGINAL RECORD IN THE ABOVE CAUSE, FOR THE PURPOSES OF THE APPEAL TO THE SUPREME COURT OF CANADA, CONSISTING OF THE FOLLOWING DOCUMENTS:

1. PETITION OF RIGHT
2. STATEMENT OF DEFENCE
3. DEMAND FOR DISCOVERY
4. AFFIDAVIT AS TO ~~EXX~~ DOCUMENTS
5. NOTICE OF MOTION DATED NOVEMBER 24, 1967
6. ORDER FILED DECEMBER 4, 1967
7. NOTICE OF MOTION DATED JANUARY 15, 1968
8. AFFIDAVIT OF J.R. MACLEOD
9. NOTICE OF MOTION DATED FEBRUARY 5, 1968
10. AMENDED PETITION OF RIGHT
11. ORDER FILED FEBRUARY 28, 1968
12. NOTICE OF MOTION DATED MARCH 4, 1968
13. AFFIDAVIT OF J.R. MACLEOD
14. AFFIDAVIT OF T. IWASAKI
15. AMENDED STATEMENT OF DEFENCE
16. SUPPLEMENTARY AFFIDAVIT OF T. IWASAKI
17. ORDER FILED MARCH 27, 1968
18. REPLY AND JOINDER OF ISSUE

.....2

OTTAWA

19. NOTICE OF MOTION DATED MAY 1, 1968
20. ORDER FILED MAY 31, 1968
21. SUPPLEMENTARY AFFIDAVIT OF T. IWASAKI
22. NOTICE OF MOTION DATED AUGUST 7, 1968
23. NOTE
24. NOTICE OF MOTION DATED AUGUST 27, 1968
25. AMENDED REPLY AND JOINDER OF ISSUE
26. NOTICE TO ADMIT DOCUMENTS
27. NOTICE TO ADMIT FACTS
28. ORDER FILED SEPTEMBER 18, 1968
29. NOTICE TO ADMIT DOCUMENTS
30. NOTE OF COUNSEL FOR RESPONDENT
31. DEMAND FOR FURTHER AND BETTER PARTICULARS
32. NOTICE OF MOTION DATED SEPTEMBER 23, 1968
33. CONSENT DATED SEPTEMBER ~~XXX~~ 23, 1968
34. REPLY TO DEMAND FOR FURTHER AND BETTER PARTICULARS
35. ORDER FILED OCTOBER 1, 1968
36. REASONS FOR JUDGMENT
37. JUDGMENT
38. EXAMINATION OF T. IWASAKI (2 vol) (RED FOLDER)
39. CERTIFIED RECORD & JUDGE'S RECORD & JUDGE'S PRONOUNCEMENT (RED FOLDER)
40. EXHIBITS 1 TO 95 (RED FOLDER)
41. NOTICE OF APPEAL TO THE SUPREME COURT OF CANADA
42. AGREEMENT AS TO CASE

DATED AT OTTAWA THE 19TH DAY OF JANUARY A.D. 1970.

P. Boudreau

DEPUTY CLERK OF PROCESS.

OTTAWA

Thursday, September 26th, 1968
Before The Honourable F. A. Sheppard.

File # B2027.

Tozazo Iwasaki — Suppliant

The Queen — Respondent.

Motion:- All issues be determined by the Court at trial, except damages.

For Respondent: - N. T. Mullins

Called: 10:34.

Mr. Mullins opens - 10:35
we are appearing for suppliant but application is by consent.

Order.

PRAECIPE

No. B 2027

EXCHEQUER

IN THE ~~SUPREME~~ COURT OF CANADA

TORAZO IWASAKI

~~Plaintiff~~ Suppliant

AND

HER MAJESTY THE QUEEN

~~Defendant~~ Respondent

EXCHEQUER DU CANADA COURT OF CANADA DEPOSITED 9 VIII 1968 DEPOSÉ VANCOUVER

REQUIRED Set action down for trial on September 30th, A.D. 1968.

24

BRITISH COLUMBIA $= 2.00 -9VIII'68 193209 TAX PAID

Dated this 9th day of August, A.D. , 1968.

J.R. MacLeod Solicitor for the Suppliant.

VOL. II—No. 12 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, JUNE 26, 1944

Order in Council amending Defence of Canada Regulations re International Bible Students Association

P.C. 4476

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 13th day of June, 1944.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to amend sub-paragraph (*a*) of paragraph (1) of regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, and it is hereby amended by deleting therefrom the name "International Bible Students Association".

His Excellency the Governor General in Council, on the same recommendation and under the authority above cited, is further pleased to order and it is hereby ordered that all property, rights and interests in Canada, or the proceeds thereof, vested in, and subject to, the control and management of the Custodian pursuant to the provisions of paragraph (4) of regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, received from the International Bible Students Association be released to that organization.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.
12826

VOL. II—No. 8 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MAY 29, 1944

Order in Council amending the Defence of Canada Regulations

P.C. 3797

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 19th day of May, 1944.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that representations have been made by the Attorney General of British Columbia and others to the effect that, notwithstanding the provisions of regulation 39E of the Defence of Canada Regulations, property is from time to time being transferred to persons to be held by them on behalf of persons of the Japanese race;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under the authority of the War Measures Act, chapter 206 of the Revised Statutes of Canada, 1927, is pleased to amend regulation 39E of the Defence of Canada Regulations and it is hereby amended by inserting immediately after paragraph (5) thereof the following:—

"(5A) Every person who acquires or holds land or growing crops for the benefit of any person known to him to be of the Japanese race or a company known to him to be a Japanese company shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months."

A. D. P. HEENEY,
Clerk of the Privy Council,

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.
9281

may issue directed to the Registrar of this Honourable Court for the examination viva voce on oath, affirmation or otherwise of the said Suppliant on behalf of both parties hereto;

AND IT IS FURTHER ORDERED that the use at trial of the Suppliant's evidence taken pursuant to the said Commission shall be subject to its admission by the trial Judge upon evidence satisfactory to him that the Suppliant is deceased or unable by reason of ill-health or advanced age, to attend the trial of this action to give evidence;

AND IT IS FURTHER ORDERED that the costs of and incidental to this Order and of the Commission to be issued by virtue thereof, and the depositions and affirmation to be taken thereunder be and the same are hereby declared costs in the cause.

Approved as to form:

Counsel for the Respondent

VOL. I—No. 10

EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MARCH 13, 1944

Order in Council amending Defence of Canada Regulations (Consolidation) 1942

P.C. 1308

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 4th day of March, 1944.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Commissioner of the Royal Canadian Mounted Police and other officers have power to release from internment an enemy alien detained under Regulation 24 of the Defence of Canada Regulations (Consolidation) 1942 upon the said enemy alien giving an undertaking in terms therein set forth;

And whereas by Regulation 25 certain other enemy aliens are allowed to remain at large upon giving an undertaking in the said form prescribed in Regulation 24;

And whereas the provisions of Regulations 24 and 25 of the said Regulations are made applicable to certain other persons specified in Regulation 26A;

And whereas the Minister of Justice reports that it is deemed advisable to prescribe that failure to abide by the terms of any such undertaking shall constitute an offence.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend Regulation 25 of the Defence of Canada Regulations (Consolidation) 1942 and it is hereby amended by adding thereto as paragraph (11) the following:—

"(11) Any enemy alien who, having signed or given an undertaking in the form prescribed in Regulation 24, fails to abide by its terms shall be guilty of an offence against this Regulation."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.
8894

VOL. I—No. 7 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, FEBRUARY 21, 1944

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942.

P.C. 826

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 11th day of February, 1944.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that it is deemed advisable to make provision for the punishment of civilians who assist or conceal members of the armed forces who have deserted or absented themselves without leave, and for the punishment of civilians who wilfully injure members of the forces with a view to enabling such members to avoid service;

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and pursuant to the War Measures Act, is pleased to amend the Defence of Canada Regulations (Consolidation), 1942, and they are hereby amended by adding thereto the following regulation as Regulation 31A thereof:—

"31A. (1) Any person who by any means whatsoever

(*a*) procures or persuades any member of His Majesty's forces to desert or absent himself without leave, or attempts to procure or persuade any such member to desert or absent himself without leave;

(*b*) knowing that such member is about to desert or absent himself without leave, aids or assists such member in deserting or absenting himself without leave; or

(*c*) knowing any such member to be a deserter or absentee without leave, conceals such member, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be guilty of an offence and shall be liable upon summary conviction to imprisonment for a term not exceeding six months.

(2) Any person who

(*a*) wilfully produces any disease or infirmity in, or maims or injures, any person whom he knows to be a member of His Majesty's forces with a view to enabling such person to avoid service; or

(*b*) with the intent of enabling a member of His Majesty's forces to render himself, or induce the belief that he is, permanently or temporarily unfit for service, supplies to or for such member any drug or preparation

calculated or likely to render him or lead to the belief that he is permanently or temporarily unfit for service;

shall be guilty of an offence and shall be liable upon summary conviction to imprisonment for a term not exceeding six months.

(3) In any prosecution for an offence against this Regulation, production of a certificate signed by a Naval Officer in Charge, General Officer Commanding, District Officer Commanding, or Air Officer Commanding, in which it is stated that a member of His Majesty's forces named therein was tried before a duly constituted Court Martial and convicted of the offence of being a deserter or absent without leave on a date or dates mentioned in the certificate shall, without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof, be *prima facie* evidence that such member was a deserter or absentee without leave on the said date or dates."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.

VOL. I—No. 6 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, FEBRUARY 14, 1944

Order in Council amending Defence of Canada Regulations (Consolidation) 1942

P.C. 622

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 3rd day of February, 1944.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas subsections (4) and (5) of regulations 18A of the Defence of Canada Regulations provide as follows:—

"(4) Except as hereinafter provided no report by an inspector on his inspection of any such property, or copy of such report shall be sent to any point outside of Canada.

(5) If any such insurer, agency or broker has no Canadian branch or office in which final action can be taken on any such report, or if for any other reason the report is required to be sent to any point outside of Canada, such report shall be submitted first to the said Commissioner, who, after examination, shall either forward it to the address indicated by the sender, or return it to the Canadian office of the sender with appropriate instructions."

And whereas the Minister of Justice reports that the entering of the United States into the war has rendered the precautionary measures therein set forth no longer necessary for the safety of the State;

That the Commissioner of the Royal Canadian Mounted Police has recommended that the said subsections be revoked; and

That the Superintendent of Insurance has signified his concurrence;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and pursuant to the provisions of the War Measures Act, chapter 206 of the Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended by revoking subsections (4) and (5) of Regulation 18A thereof.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.

VOL. IV—No. 13 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, JANUARY 3, 1944

Order in Council amending Defence of Canada Regulations (Consolidation) 1942

P.C. 9702

AT THE GOVERNMENT HOUSE AT OTTAWA

MONDAY, the 20th day of December, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation), 1942, and they are hereby amended by revoking clause (*b*) of paragraph 3 of Regulation 39E thereof and substituting therefor the following:

"(*b*) Nothing in this Regulation shall deprive a person of the Japanese race of capacity to lease any building or part of a building for a term not exceeding one year or from month to month or for some lesser periodic tenancy."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1944.
97506

VOL. IV—No. 3 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, OCTOBER 25, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942

P. C. 8022

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 14th day of October, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, is pleased to amend sub-paragraph (*a*) of Paragraph (1) of Regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, and it is hereby amended by deleting therefrom, the names of the following organizations,—

The Ukrainian Labour Farmer Temple Association,
The Finnish Organization of Canada,
The Finnish Society of Toronto,
The Finnish Society,
Technocracy Inc.,
Jehovah's Witnesses.

His Excellency in Council, on the same recommendation and under the authority above cited, is further pleased to order and doth hereby order that all property, rights and interests in Canada, or the proceeds thereof, vested in and subject to the control and management of the Custodian pursuant to the provisions of paragraph (4) of Regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, be released to the organization or person from whom it was received where the name of the organization has been deleted from sub-paragraph (*a*) of paragraph (1) of the said Regulation 39C.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty. 1943.
92170

VOL. IV—No. 3

EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, OCTOBER 25, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942

P. C. 8022

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 14th day of October, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, is pleased to amend sub-paragraph (*a*) of Paragraph (1) of Regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, and it is hereby amended by deleting therefrom, the names of the following organizations,—

The Ukrainian Labour Farmer Temple Association,
The Finnish Organization of Canada,
The Finnish Society of Toronto,
The Finnish Society,
Technocracy Inc.,
Jehovah's Witnesses.

His Excellency in Council, on the same recommendation and under the authority above cited, is further pleased to order and doth hereby order that all property, rights and interests in Canada, or the proceeds thereof, vested in and subject to the control and management of the Custodian pursuant to the provisions of paragraph (4) of Regulation 39C of the Defence of Canada Regulations (Consolidation) 1942, be released to the organization or person from whom it was received where the name of the organization has been deleted from sub-paragraph (*a*) of paragraph (1) of the said Regulation 39C.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty. 1943.
92170

VOL. III—No. 7 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, AUGUST 23, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—forfeiture of explosives in convictions under the Explosives Act.

P.C. 6266

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 6th day of August, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that while the Explosives Act (R.S.C., 1927, chapter 62), makes it an offence for any person to have in his possession or to import, store, use or manufacture any explosive not declared by the Minister to be an authorized explosive (section 6), or to have in his possession, sell, offer for sale, manufacture or import any unauthorized explosive (section 23), and while there is provision for the imposition of fine and imprisonment for offences against the Explosives Act, there is no provision for the forfeiture of the explosives in the event of a conviction under the Act;

And whereas the Minister reports further that a case has been brought to his attention of a very large quantity of unauthorized ammunition which, in the opinion of the officers of the Department of Mines and Resources, should be forfeited to His Majesty as a measure necessary or advisable for the security, defence, peace, order or welfare of Canada, and is of opinion that the law should now be amended to provide for such forfeiture.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended by adding thereto immediately after regulation 37A, the following regulation:—

37AA. Where a person is convicted of an offence for having in possession, selling, offering for sale, storing, using, manufacturing or importing any explosive the manufacture or importation of which has not been authorized under the Explosives Act, the court or judge, in addition to any other penalty which may be imposed, shall declare that the explosive by means of, or in relation to which, the offence was committed, be forfeited to the Crown, and thereupon the explosive may be seized and may be destroyed or otherwise disposed of by such persons or persons in such manner and at such time and place as the Minister of Mines and Resources may direct, but no such explosive shall be destroyed or otherwise disposed of pending any appeal against such conviction or before the time within which such appeal may be taken has expired.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.
59408

VOL. II—No. 11 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, JUNE 21, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—prohibiting possession of matches or other fire-producing devices on board any vessel lightering or stowing explosives

P.C. 4760

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 10th day of June, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas it is deemed advisable to amend the Defence of Canada Regulations (Consolidation), 1942, so as to prohibit the possession of matches or other fire-producing devices on board any vessel in Canada used for lightering or stowing explosives and also to prohibit smoking on board any such vessel.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, chapter 206, Revised Statutes of Canada, 1927 is pleased to amend the Defence of Canada Regulations (Consolidation), 1942, and they are hereby amended by adding immediately after Regulation 38A thereof the following Regulation:—

38AA (1) Every person who has in his possession a match or other fire-producing device on board any vessel in Canada while such vessel is being used for lightering or stowing any explosive shall be guilty of an offence and liable on summary conviction to a fine of not less than fifty dollars and not more than one hundred dollars, and in default of payment of such fine to imprisonment for a term not exceeding one month.

(2) Every person who smokes on board any vessel in Canada while such vessel is being used as provided in paragraph (1) of this Regulation shall be guilty of an offence and liable on summary conviction to imprisonment for a term of not less than three months and not exceeding twelve months.

(3) Any constable may search without warrant any person going or seeking to go on board or being on board any vessel in Canada while such vessel is being used as provided in paragraph (1) of this Regulation.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.
83274

VOL. II—No. 9 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, JUNE 7, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—Detention and Questioning of Persons Acting in a Suspicious Manner

P.C. 4179

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 25th day of May, 1943

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that it is deemed advisable that authority be created to detain for questioning any person acting in a suspicious manner or who may be deemed likely to act in a manner prejudicial to the safety of the State or the efficient prosecution of the war in any area which may by order be designated;

Now, therefore, His Excellency the Governor General in Council on the recommendation of the Minister of Justice concurred in by the Minister of National Defence and under the authority of the War Measures Act, being Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend regulation 5 of the Defence of Canada Regulations (Consolidation) 1942 and it is hereby amended by adding thereto as regulation 5A the following:—

"5A (1) In any area designated by the Minister of National Defence under this regulation, any constable or any member of His Majesty's Forces in uniform acting in the course of his duty may detain any person found therein who fails to satisfy such a constable or member of His Majesty's Forces as to his identity or the purposes for which he is in such area, or who has not a lawful purpose for being therein, or who is acting in a suspicious manner therein, or who is suspected on reasonable grounds by a constable or member of His Majesty's Forces of having acted or being about to act or being likely to act in any manner prejudicial to the safety of the State or the efficient prosecution of the war.

"(2) A member of His Majesty's Forces shall forthwith deliver any person so detained by him into the custody of a constable or a senior police officer, and a constable shall, as soon as practicable, deliver any person detained by him pursuant to this regulation or delivered into his custody by a member of His Majesty's Forces into the custody of a senior police officer to be dealt with as hereinafter provided.

"(3) If such senior police officer is satisfied that there are no reasonable grounds for further detention of such person, he may order the release of such person, and such person shall thereupon be released and discharged from custody.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

REPLY AND JOINDER OF ISSUE

1. The Suppliant joins issue with the Respondent on Sub-paragraphs (b), (e) and (f) of Paragraph 1 of the Amended Statement of Defence filed herein and in particular, with regard to Sub-paragraph (b), says that he was not a person of the Japanese race as alleged.

2. The Suppliant joins issue with the Respondent on Sub-paragraphs (a), (b) and (c) of Paragraph 2 of the Amended Statement of Defence filed herein and in particular, with regard to Sub-paragraph (a), says that the Release referred to therein was presented to the Suppliant as being a document that he was obliged to execute pursuant to the findings of the Japanese Property Claims Commission and the Suppliant says that the said Commission acted without jurisdiction and contrary to the provisions set out in the War Measures Act, Revised Statutes of Canada, 1952 and Amendments thereto, and further says that if he executed a Release, all of which is specifically denied, the Release was executed while the Suppliant was under duress and whilst he was led to believe that if the Release was not executed he would lose the property herein and would not get the return of the property herein nor any compensation whatsoever.

Vol. II—No. 6 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MAY 17, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—Control of postal communications

P.C. 3761

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 7th day of MAY, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that it is deemed expedient that authority be given to search any person arriving in or leaving Canada who may be suspected of having in his possession any article which the Postmaster General may have made an Order in respect of under section 14 of the Defence of Canada Regulations and that the appropriate officer be given power to go on board ship or other conveyance so to do;

That it is further deemed expedient that the appropriate officer be given power to examine any goods being exported from or imported into Canada and to seize such article if found therein; and

That it is further deemed expedient that the Minister of Justice be empowered to make Orders detaining any person entering or leaving Canada who fails to provide satisfactory evidence that he is leaving or entering for a lawful purpose;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and pursuant to the powers conferred by the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended as follows,—

A. Section 14 is repealed and the following is substituted therefor:

"14. (1) The Postmaster General may make provision by order for securing that mailable matter of any such description as may be specified in the order shall not be despatched by post from Canada to destinations outside Canada, except in accordance with the order.

(2) The Postmaster General may make provision by order for securing that, subject to any exemptions for which provision may be made by the order, and except in accordance with such conditions as may be contained therein, no document, pictorial representation or photograph or other article whatsoever recording information shall be sent or conveyed from Canada to any destination outside Canada otherwise than by post, or conveyed into Canada otherwise than by post.

No person shall have any article in his possession for the purpose of sending or conveying it in contravention of an order made under this paragraph.

(3) Any person who is about to leave Canada or arrives in Canada, which person is hereafter referred to as the 'traveller' shall, if requested so to do by the appropriate officer,

(*a*) declare whether or not the traveller has with him any such article as is mentioned in paragraph (2) of this Regulation;

(*b*) produce any such article as aforesaid which he has with him;

and the appropriate officer, and any person acting under his directions, may examine or search any article which the traveller has with him, for the purpose of ascertaining whether he is conveying or has in his possession any article in contravention of paragraph (2) of this Regulation, and if the appropriate officer has reasonable ground for suspecting that the traveller has any article about his person in contravention of that paragraph, he may search him, and may seize any article produced as aforesaid or found upon such examination or search as aforesaid, being an article as to which the appropriate officer has reasonable ground for suspecting that it is being sent or conveyed in contravention of the said paragraph or is in the traveller's possession in contravention of that paragraph:

Provided that no woman shall be searched in pursuance of this paragraph except by a woman.

(4) Where any person is about to leave Canada, or where any person arrives in Canada, in any ship, the appropriate officer, or any person acting under his direction, may go on board the ship for the purpose of exercising the powers conferred on them by the last preceding paragraph, and may also examine or search the ship for the purpose of ascertaining whether there is on board the ship any such article as is mentioned in paragraph (2) of this Regulation, and may seize any article found upon such examination or search, being an article as to which the appropriate officer has reasonable ground for suspecting that it is an article mentioned in the said paragraph (2). This paragraph shall apply in relation to any means of conveyance as it applies in relation to ships.

(5) Where any person is found on any occasion in circumstances in which it is reasonable to suppose that he is communicating with or intends to communicate with a traveller, the provisions of paragraph (3) of this Regulation shall apply in relation to the person so found as they apply in relation to the traveller; and where any person is on any occasion found travelling to or from any place in such circumstances as aforesaid, the said provisions shall apply in relation to him as they would apply if he on being so found had been a traveller.

(6) The Minister of National War Services may by order make provision for the censorship of all mailable matter as defined in the Post Office Act, Chapter 161 of the Revised Statutes of Canada, 1927, or of any class or classes of such mailable matter as may pass through or be dealt with in any way in the mails of Canada.

(7) Where there is declared or produced to the appropriate officer in compliance with this Regulation, or discovered by the appropriate officer in circumstances in which it ought to have been so declared or produced, any plate, film or other article which he suspects to have been exposed in a camera but not developed, he may cause to be taken, or require the person by whom it is declared or produced or in whose possession it is discovered to take such steps (including subjection of the article to the process of development) as may be reasonably necessary for enabling the appropriate officer to ascertain whether or not it has been so exposed.

(8) As respects any goods, being goods consigned from Canada to a destination outside Canada, or from a place outside Canada to a destination in Canada, the appropriate officer, or any person acting under his directions, may examine or search the goods for the purpose of ascertaining whether any such article as is mentioned in paragraph (2) of this Regulation is being sent or conveyed, and may seize any article found upon such examination or search as aforesaid, being an article as to which the appropriate officer has reasonable grounds for suspecting that it is such an article as is mentioned in the said paragraph.

The appropriate officer, or any person acting under his direction, may go on board any ship or other means of conveyance for the purpose of exercising the powers conferred on them by this paragraph in relation to any goods on board the ship or other means of conveyance.

(9) Where any article is seized under this Regulation, it may be retained for such period and dealt with in such manner as may be directed by or on behalf of the Postmaster General, and in particular but without prejudice to the generality of the foregoing words may be subjected to any process and may be wholly or partly destroyed or obliterated.

(10) In this Regulation—

(*a*) the expression "mailable matter" has the same meaning as in the Post Office Act, Chapter 161, Revised Statutes of Canada, 1927;

(*b*) the expression "photographs" includes any photographic plates, photographic films or other sensitized articles which have been exposed in a camera, whether they have been developed or not; and

(*c*) the expression "the appropriate officer" means any officer of the Post Office or Customs and Excise, any immigration officer or any constable or any person authorized in that behalf by the Postmaster General."

B. Section 31 is amended by adding thereto the following:

"(2) The Minister of Justice may make provision by order for securing that, subject to any examinations for which provision may be made by the order, any person landing in or entering, or who has entered the Dominion of Canada, or any person leaving or about to leave the Dominion of Canada, may, if he is unable to satisfy the Minister of Justice, or any person authorized by the Minister of Justice in that behalf, as to his identity, or that the purpose for which he is landing in or entering or has entered or is leaving or about to leave the Dominion of Canada, is lawful, be detained pending inquiries, or in the case of a person landing in or entering or who has entered, be required pending inquiries to notify his movements in such manner and at such times and to such authority or person as may be specified in the order."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MAY 3, 1943

Order in Council amending the Defence of Canada Regulations—regulations respecting pigeon service

P.C. 3294

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 22nd day of April, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of National Defence for Air reports that the Royal Canadian Air Force is instituting a substantial pigeon service on both the East and West Coasts of Canada;

And whereas Regulation 18B of the Defence of Canada Regulations provides that no person shall, except under the authority of a written permit granted by the Minister of National Revenue, bring, take or send any live pigeon into or out of Canada, and that any officer of the Department of National Revenue may seize and detain any pigeon so brought, taken or sent. No provision is made by the said Regulation 18 B for the control of pigeons within Canada or the protection of pigeons belonging to the Armed Forces of Canada;

And whereas it is considered that in the interests of national security and for the protection of any pigeon service established by the Armed Forces, regulations should be made prohibiting the keeping or flying of racing or homing pigeons, the sending of messages thereby, the killing or capturing of pigeons and the removal of or interference with any article attached thereto without authority.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of National Defence for Air, concurred in by the Minister of Justice and the Minister of National Revenue and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, and notwithstanding the provisions of any other statute, law or regulation, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942 and they are hereby amended by deleting Paragraph (2) of Regulation 18 B and adding the following paragraphs to the said Regulation:—

(2) Subject as hereinafter provided, no person shall, in Canada

(*a*) have under his control, or liberate, any racing pigeon or homing pigeon except under the authority of a written permit granted by or on behalf of a competent authority, or unless a member of a pigeon club or association affiliated or associated with the Canadian Homing Union;

(*b*) send, by means of any such pigeon, any document, pictorial representation or photograph, except under the authority of a written permit granted by or on behalf of a competent authority;

(*c*) kill, wound or take any such pigeon, or

(*d*) remove or tamper with any article attached to such a pigeon, being an article which he has reasonable cause to believe to be a means of identifying the pigeon or of communicating information;

Provided that—

(i) the preceding provisions of this paragraph shall not apply to anything done by, or with the permission or under the direction of, any member of His Majesty's Forces being on duty, servant of His Majesty or constable acting in the course of his duty as such;

(ii) nothing in sub-paragraphs (*c*) and (*d*) of this paragraph shall apply to anything done in relation to a pigeon by the person entitled to possession thereof or by any person acting on his behalf;

(iii) in any proceedings which, by virtue of sub-paragraph (*c*) of this paragraph, are taken against any person in respect of the killing or wounding of any such pigeon, it shall be a defence for the defendant to prove that he acted under the reasonable belief that the pigeon was not a racing or homing pigeon, and that (in a case where he subsequently took possession of the pigeon) he forthwith caused the pigeon, together with any article attached thereto which he had reasonable cause to believe to be a means of identifying the pigeon or communicating information, to be delivered to a member of His Majesty's Forces being on duty or to a constable at a police station.

(3) With a view to the enforcement of this Regulation, any constable may liberate any pigeons found by him at any place, and may enter any premises for the purpose of exercising his powers under this paragraph.

(4) Whenever any person in Canada finds dead or unable to fly a racing pigeon or homing pigeon to which there is attached any article which he has reasonable cause to believe to be a means of identifying the pigeon or of communicating information, he shall forthwith cause the pigeon to be delivered to a member of His Majesty's forces being on duty or to a constable at a police station.

Provided that nothing in this paragraph shall impose any obligation in respect of a pigeon upon any person, or the servant or agent of any person, who is entitled to have that pigeon in his possession or under his control by virtue of a permit granted under Paragraph (2) of this Regulation.

(5) A competent authority may by order provide that in any area specified in the order, being an area through which, in the opinion of such authority, homing pigeons carrying messages to or from members of His Majesty's forces or other persons in His Majesty's service are likely to fly, it shall be lawful for any person authorized by or on behalf of the said authority to take or destroy at any time any birds who habitually prey upon pigeons or the eggs of such birds.

(6) A "competent authority" shall mean the Minister of National Revenue for the purposes of paragraph (1) hereof in respect of importation and the Minister of Trade and Commerce in respect of exportation, and the Minister of National Defence for Air in respect of paragraphs (2) to (5) hereof inclusive.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

VOL. I—No. 12 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MARCH 29, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—inspectors or adjusters *re* War Risk Insurance

P.C. 2299

AT THE GOVERNMENT HOUSE AT OTTAWA

MONDAY, the 22nd day of MARCH, 1943.

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas provision is made in the Defence of Canada Regulations (Consolidation), 1942, for the making of orders prohibiting or restricting entry into or activities in defined areas, places or premises in Canada or authorizing persons to prohibit or restrict entry into or activities in such areas, places or premises;

And whereas provision is made by the War Risk Insurance Act, 1942, for the entry into contracts of insurance on behalf of His Majesty of property in Canada against the risk of war damage and for the payment, in certain circumstances, of compensation in respect of loss caused by war damage to property;

And whereas the Minister of Finance reports that, for the order and welfare of Canada, it is advisable for the proper administration of the provisions of the said Act, that authorized inspectors or adjusters be permitted to enter the areas, places and premises aforesaid for the purpose of inspecting property which is or may be insured thereunder or in respect of which insurance moneys or compensation may be payable thereunder or adjusting any loss caused by war damage thereto;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, concurred in by the Minister of Justice, and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation), 1942, and they are hereby amended by adding thereto, immediately after Regulation 56A, the following Regulation as Regulation 56B:—

"56B. Notwithstanding anything contained in the Regulations hereinafter mentioned or in any order made pursuant thereto, any person shall be permitted, on the production of a card of identification purporting to be signed by the Supervisor of War Damage Insurance certifying that he is authorized to act as an inspector or adjuster under the War Risk Insurance Act, 1942, to enter any area, place or premises designated as a prohibited or restricted area, place or premises pursuant to Regulations three, four, five, six, seven, eight, thirty-two, thirty-two A, thirty-four or thirty-six of these Regulations, for the purpose of carrying out his duties as inspector or adjuster under the said Act."

A. D. P. HEENEY,
Clerk of the Privy Council.

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VOL. I—No. 12 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MARCH 29, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—Regulation 15

P.C. 2107

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 18th day of March, 1943.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that his attention has been called to a discrepancy between the French version and the English version of Regulation 15 of the Defence of Canada Regulations (Consolidation) 1942, which discrepancy requires to be removed;

And whereas the Minister further reports that a doubt has been expressed whether the Regulation aforesaid extends to theatrical performances on the stage by means of radio or by reproduction by means of gramophone records;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice is pleased to order that paragraphs 1 and 2 of Regulation 15 of the Defence of Canada Regulations (Consolidation) 1942, be and they are hereby revoked and the following paragraphs are hereby substituted therefor in the French and English versions respectively:

(1) Le ministre des Services nationaux de guerre peut, au moyen d'une ordonnance, prohiber ou restreindre la publication, au Canada, de matières dont, à son avis, la publication ou la publication illimitée, selon le cas, nuirait ou pourrait nuire à la sécurité de l'Etat ou à la poursuite efficace de la guerre, et une ordonnance édictée sous l'empire du présent paragraphe pourra contenir les dispositions accessoires et supplémentaires que le ministre des Services nationaux de guerre jugera nécessaires ou opportunes aux fins de l'ordonnance, y compris des dispositions exigeant que certains documents, illustrations, photographies ou pellicules cinématographiques ou des matières à être publiées par représentation théâtrale publique sur la scène, à la radio ou par reproduction au moyen de disques de gramophone soient soumis ou montrés, avant leur publication, à l'autorité ou à la personne mentionnée dans cette ordonnance.

(2) Dans le présent article, l'expression—

(*a*) "pellicule cinématographique" comprend une bande photophonique et tout autre objet ayant servi à enregistrer les sons afin de pouvoir les reproduire en rapport avec la présentation du film;

(*b*) "publication" comprend toute représentation théâtrale publique, sur la scène ou à la radio, et en ce qui concerne une pellicule cinématographique, signifie la présentation publique du film et comprend la reproduction mécanique ou électrique des sons en rapport avec cette présentation du film.

(1) The Minister of National War Services may make provision by order for preventing or restricting the publication in Canada of matters as to which he is satisfied that the publication, or, as the case may be, the unrestricted publication, thereof would or might be prejudicial to the safety of the State or the efficient prosecution of the war, and an order under this paragraph may contain such incidental and supplementary provisions as may appear to the Minister of National War Services to be necessary or expedient for the purposes of the order including provisions for securing that documents pictorial representations, photographs or cinematograph films or matters to be published by public theatrical performance on the stage, by radio or by reproduction by means of gramophone records shall, before publication, be submitted or exhibited to such authority or person as may be specified in such order.

(2) In this Regulation—

(*a*) the expression "cinematograph film" includes a sound tract and any other article on which sounds have been recorded for the purpose of their being reproduced in connection with the exhibition of such a film;

(*b*) the expression "publication" includes any public theatrical performance on the stage or over the radio, and in relation to a cinematograph film, means the exhibition of the film to the public, and includes the mechanical or electrical reproduction of any sounds, in connection with the exhibition of the film as aforesaid.

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

VOL. I—No. 8 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, MARCH 1, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942—registration of enemy aliens 16 years and over; members of an illegal organization; attendance at meetings for the purpose of religious worship or instruction

P.C. 1266

AT THE GOVERNMENT HOUSE AT OTTAWA

MONDAY, the 15th day of February, 1943

PRESENT:

HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that in his opinion it is now advisable,—

To amend paragraph four of Regulation 25 of the Defence of Canada Regulations (Consolidation) 1942 to restrict the provision for the registration of enemy aliens to those who are sixteen years of age or over; and

To amend paragraphs two and three of Regulation 39C so as to make them applicable only to a person who acts as an officer or member of an illegal organization rather than as at present to everyone who is an officer or member of same; and

To amend Regulation 39C by adding a paragraph which would remove any doubt as to it being an offence to attend meetings for the purpose of religious worship or instruction; and

To amend paragraph four of Regulation 62 so that the provisions thereof shall apply to an offence against Regulation 15A.

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, chapter 206 of the Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942 and they are hereby amended as follows:

1. By revoking paragraph four of Regulation 25 and substituting therefor the following:

"(4) Every enemy alien of sixteen years of age or over who has not already done so on the date of the coming into force of this subsection shall, on or before the first day of March, 1943, or within seven days after he reaches the age of sixteen or becomes an enemy alien, attend before the Registrar or one of the Registrars in the city, town or place within or nearest to which he is or resides and truly answer such questions with regard to the matter referred to in paragraph five of this regulation as such Registrar may put to him."

2. By revoking paragraphs two and three of Regulation 39C and substituting therefor the following:

"(2) Every person who acts as an officer or member of an illegal organization or who advocates or defends the acts, principles or policies of such illegal organization shall be guilty of an offence against this regulation."

"(3) In any prosecution under this regulation for the offence of acting as an officer or member of an illegal organization, if it be proved that the person charged has—

(a) attended any meeting of an illegal organization;

(b) spoken publicly in advocacy of an illegal organization; or

(c) distributed literature of an illegal organization by circulation through the Post Office mails of Canada, or otherwise

it shall be presumed, in the absence of proof to the contrary, that he acted as an officer or member of such illegal organization."

3. By adding to Regulation 39C, immediately after paragraph three, the following:

"(3A) No person shall be guilty of an offence against this regulation by reason only of his attending a meeting the sole purpose of which is religious worship or instruction."

4. By revoking paragraph four of Regulation 62 and substituting therefor the following:

"(4) Where any act is committed by or on behalf of or in the name of any association, organization or society which if committed by an individual person would constitute an offence against the provisions of Regulation 15A, 39 or 39A of these Regulations, each officer, or person acting or professing to act or holding himself out as an officer or otherwise performing or purporting to perform any executive or official work or duty for or on behalf of any such association, organization or society shall be deemed to have committed such act and be guilty of such offence unless he proves that the act constituting the offence took place without his knowledge or consent or that he exercised all due diligence to prevent the commission of such act."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

VOL. I—No. 6 EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS

OTTAWA, CANADA, FEBRUARY 15, 1943

Order in Council amending the Defence of Canada Regulations (Consolidation) 1942: evacuation of areas under Regulations 32 and 32A

P.C. 911

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 5th day of FEBRUARY, 1943

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Justice reports that it is deemed advisable to amend the Defence of Canada Regulations (Consolidation) 1942, so as to confer upon the Minister of Pensions and National Health certain powers with respect to the evacuation of areas pursuant to Regulations 32 and 32A of the said Defence of Canada Regulations (Consolidation) 1942;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, chapter 206, of the Revised Statutes of Canada 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1942, and they are hereby amended by inserting immediately after paragraph (2) of Regulation 32B thereof the following paragraph:

"(3). The Minister of Pensions and National Health may take or authorize any person or persons to take such steps as such Minister may deem necessary for the purpose of effecting or facilitating the transference of persons from one area to another pursuant to any order made under Regulation 32 or 32A of these Regulations."

A. D. P. HEENEY,
Clerk of the Privy Council.

OTTAWA: Printed by EDMOND CLOUTIER, Printer to the King's Most Excellent Majesty, 1943.

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