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petitionist ~~respondent~~

OTTAWA, August 18, 1943.

MEMORANDUM FOR

THE MINISTER OF JUSTICE:

Fiats are sought on three petitions of right (test cases) filed respectively by (a) a Canadian-born Japanese, (b) a naturalized Japanese and (c) a Japanese national, seeking to prevent sale of Japanese property in Vancouver by the Custodian, who is offering all real property of the Japanese at Vancouver for sale.

Sec. 12 of O.C. of March 27, 1942, P.C. 2483, which relates to the British Columbia Security Commission, purports to vest Japanese property in the Custodian and to apply, mutatis mutandis, the Regulations Respecting Trading with the Enemy. The last paragraph of O.C. of January 19, 1943, P.C. 469, purports to authorize the Custodian to liquidate, sell or otherwise dispose of the Japanese property.

The suppliants allege in effect that the Custodian is without power to sell on the grounds that -

(1) the orders in council are invalid;

(2) the orders in council do not give the Custodian authority to sell;

(3) the Custodian is a trustee for the suppliants except in a case which would justify a trustee in selling.

The remedies sought by the suppliants are declarations that the Custodian is not empowered to sell and orders to compel him to carry out the trust and to restrain him from selling.

The following questions may be said to be raised by the petitions:-

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DWM/DC

January 18th, 43.

BY HAND

J.R. 7536-43

A letter, dated January 15th, from the Secretary of State to the Minister of Justice, enclosing a draft recommendation to Council relative to the disposition of property owned by persons of the Japanese race who have been evacuated from the protected areas of British Columbia and of certain fishing vessels and equipment, has been referred to me.

With reference to paragraph one of the proposed recommendation to Council, it appears that the reference to P.C. 6685 therein made should read 6885.

With reference to paragraph 2, I would suggest that the paragraph numbered (3) therein contained be redrafted to read as follows:

"(3) The Custodian may, where he considers it advisable so to do, liquidate, sell or otherwise dispose of any such vessels or equipment on such terms and conditions as he deems advisable; and any agreement entered into or document executed by the Custodian on or after August 1, 1942, and prior to (date of the present Order in Council to be inserted in Council) purporting to be an agreement for, or to be, a transfer, conveyance or other disposition of any such vessel or equipment or of any right, title or interest therein is hereby given full legal validity, force and effect as if the Custodian had full power to enter into such agreement or to execute such document, and as if such vessel or equipment or such right, title or interest therein, as the case may be, had been vested in the Custodian, at the time of the entry into such agreement or the execution of such document."

It is unnecessary, I think, to refer to any transactions which the Committee on the Disposal of

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The Under Secretary of State,
Department of State,
OTTAWA.

Mr. Varcoe

The attitude of the Japanese Vessels purported to enter into inasmuch as I understand that the purpose of this paragraph is merely to confirm subsequent steps taken by you as Custodian.

Otherwise I have no suggestions to make as to the form of the proposed recommendation.

To Council which will come up to-morrow, Jan. 19th. Council

F. P. Varcoe

Department of Justice
JAN 19 1942
REGISTRY

Deputy Minister.

(1) as to the effect and validity of the orders in council;

(2) as to whether or not a petition of right will lie, i.e., whether the Custodian is a public officer acting under a statute or simply the representative of His Majesty;

(3) as to whether or not, assuming that the Custodian is a Crown officer, the remedies sought (declaration of rights and injunction) are "relief" against the Crown within the meaning of the Petition of Right Act;

(4) as to whether an enemy alien is entitled to a fiat by reason of sec. 24 of the D.O.C.R., which provides that he shall "be allowed to con-"tinue to enjoy the protection of the law and "shall be accorded the respect and consideration "due to peaceful and law-abiding citizens".

The Under Secretary of State aske for "immediate "attention". I do not think of any grounds on which the fiats can be refused, but, if they are granted, the Custodian may feel that he should not proceed with the sales pending the outcome of the litigation. As both Dr. Coleman and Mr. McPherson are in Quebec, I have been unable to discuss the granting of the fiats with them. Forms of fiats herewith.

F. P. V.

TO HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL :

The undersigned, the Secretary of State of Canada, has the honour to report:

(1) That by Order of Your Excellency in Council approved on the 29th June, 1942, (P.C. 5523) amended by Order of Your Excellency in Council approved on the 4th August, 1942, (P.C. 6685) Regulations were made imposing certain duties and responsibilities on the Director of Soldier Settlement of Canada in relation to agricultural lands owned by persons of the Japanese race ordinarily resident in the protected areas of British Columbia;

(2) That the appraisals of lands contemplated by the said Order in Council as amended have been made and that it is the opinion of the Minister of Mines and Resources, to whom the Director of Soldier Settlement of Canada reports under the said Order in Council as amended, that the said Order in Council as amended should be revoked;

(3) That by Order of Your Excellency in Council, approved on the 20th July, 1942, (P.C. 6247) it was provided that on and after the 1st August, 1942, all unfinished business of the Committee under the Chairmanship of the Honourable Mr. Justice Sidney A. Smith of Vancouver, appointed by Order in Council of the 13th January, 1942, (P.C. 288) in respect of vessels or equipment vested in the Custodian under the said Order should be transferred to the Custodian, and the Custodian was vested with all vessels and equipment which had not been disposed of under the supervision of the said Committee;

(4) That since the transfer was effected, question has been raised as to the authority of the Custodian to deal with unfinished business of the said Committee in relation to vessels or equipment disposed of prior to the 1st August, 1942, and it is expedient to remove any doubts in this respect;

(5) That by Orders made by Your Excellency in Council relating to the property of persons of the Japanese race evacuated from the protected areas of British Columbia, the Custodian has been vested with the responsibility of controlling and managing property belonging to persons of the Japanese race who have been evacuated from the protected areas, except deposits of money, shares of stock, debentures, bonds or other securities or other property which the owner on being evacuated from the protected areas was able to take with him;

(6) That the evacuation of persons of the Japanese race from the protected areas has now been substantially completed and that it is necessary to provide facilities for liquidation of property in appropriate cases.

The undersigned, therefore, with the concurrence of the Minister of Mines and Resources, the Minister of Pensions and National Health, the Minister of Labour and the Minister of Fisheries, has the honour to recommend that an Order, under the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, be made by Your Excellency in Council, as follows:

1. That Order in Council approved on the 29th June, 1942, (P.C. 5523) and amending Order in Council approved on the 4th August, 1942, (P.C. 6685) be revoked.

2. That paragraphs numbered 3 and 4 in Order in Council of the 20th July, 1942, (P.C. 6247) be rescinded and the following substituted therefor:

> 3. All right, title and interest to or in any vessels or equipment purported to have been disposed of by the said Committee are hereby vested in the Custodian as on and from the 1st August, 1942, and the Custodian is vested as on and from the 1st August, 1942, with power to complete any such purported sales and to execute any conveyances or grants requisite to convey title to the purchasers.
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> 4. Without restricting the generality of the powers hereinbefore conferred, all unfinished business of the said Committee is hereby transferred to the Custodian and shall be deemed to have been so transferred as on and from the 1st August, 1942.

3. That wherever, under Orders made by Your Excellency in Council under the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, the Custodian has been vested with the power and responsibility of controlling and managing any property of persons of the Japanese race evacuated from the protected areas, such power and responsibility shall be deemed to include and to have included from the date of the vesting of such property in the Custodian, the power to liquidate, sell, or otherwise dispose of such property; and that for the purpose of such liquidation, sale or other disposition the Consolidated Regulations Respecting Trading with the Enemy (1939) shall apply mutatis mutandis as if the property belonged to an enemy within the meaning of the said Consolidated Regulations.

All of which is respectfully submitted.

Secretary of State.

Ottawa, January , 1943.

Discuss with Mr. Ilsley. T.A.M.

06/09/2016 12:58

THE SECRETARY OF STATE OF CANADA

LE SECRÉTAIRE D'ÉTAT DU CANADA

Ottawa, January 15, 1943.

My dear Colleague,-

On Monday of this week a meeting was held of a Sub-Committee of Cabinet dealing with matters affecting the evacuation of persons of the Japanese race from the protected areas of British Columbia. There were present at the meeting Mr. Crerar, Mr. Mitchell, Mr. Mackenzie and me.

The conclusion was reached that we should recommend to Council (1) the withdrawal of the Soldier Settlement Board from responsibilities in connection with agricultural lands; (2) a clarification in relation to the shipping vessels which were taken over by the Custodian from the Committee previously operating under Mr. Justice Smith; and (3) a power in the Custodian to liquidate Japanese property, the proceeds, of course, of each parcel or piece of property to be held in trust for the evacuated owner.

The situation in British Columbia concerning both urban and farm properties of Japanese who have been evacuated is exceedingly difficult and it was the unanimous view of the members of Council who looked into the problem that it would probably be necessary to take steps to liquidate, with appropriate safeguards for the protection of the interests of the owners of the Japanese race.

I was requested by my colleagues to draft a recommendation to Council setting out the necessary changes which might have to be made in various Orders in Council and Regulations affecting the property of these people. I enclose a copy of my draft submission for your information.

Yours sincerely,

Norman McLarty

Secretary of State.

The Honourable Louis S. St.Laurent,K.C.,LL.D.,
Minister of Justice,
Ottawa.

Minister of Mines and Resources, the Minister of Pensions and National Health, the Minister of Labour and the Minister of Fisheries, has the honour to recommend that an Order, under the War Measures Act, Chapter 206 of the Revised Statutes of Canada 1927, be made by Your Excellency in Council, as follows:

EPARTMENT OF JUSTICE

MEMORANDUM

To Mr Parcoe:
Who might also perhaps discuss it with Comm Wood or Mr Mead
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January 15, 1943.

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Yours sincerely,

The Honourable

DWM/DC

January 18, 1943.

MEMORANDUM FOR THE DEPUTY MINISTER OF JUSTICE:

J.R. 7536-43

With reference to the attached letter from the Honourable Mr. McLarty to the Minister of Justice, I have been unable to get in touch with Assistant Commissioner Mead to discuss this recommendation but have discussed it with Dr. Coleman who prepared it.

The present position with reference to Japanese property is set out in the recitals to the draft recommendation, the control of real property being under the Director of Soldier Settlement, the control and management of seized vessels and equipment being vested in the Custodian and all other property of persons of the Japanese race who have been evacuated from protected areas being vested in the Custodian.

It is proposed to establish a position whereby all property will be vested in the Custodian who will have power to sell and dispose of it and to realize all such property in money.

Paragraph one of the recommendation revokes the Orders in Council empowering the Director of Soldier Settlement in this connection. The only comment necessary appears to be that Order in Council dated August 4, 1942, with the number given as P.C. 6685 is, I believe, P.C. 6885.

The second paragraph of the recommendation relates to vessels and equipment owned by Japanese persons seized and detained pursuant to power conferred by Order in Council P.C. 9761 of December 16, 1941. Following the seizure of these vessels and equipment a Committee was established to arrange for their disposal. The powers of this committee did not extend to executing transfers of the vessels but merely to the negotiation of sales between the owners and purchasers. The affairs of this Committee were wound up on August 1st, 1942, and all vessels in its custody not then disposed of under it supervision were vested in the Custodian and all unfinished business relative to such vessels were also vested in the Custodian. I understand from Dr. Coleman that two matters were not taken care of in the Order in Council vesting such vessels or equipment in the Custodian; first, unfinished business relative to vessels already disposed of by the Committee was left to the Committee, and second, that the Order in Council may be interpreted to have conferred on the Custodian powers merely of control and management and not of disposition. Further, the Committee had, prior to the Custodian taking over this property, executed documents purporting to be transfers of vessels. The Registrar of Shipping refused to register these transfers but did register transfers by the Custodian. There is some doubt, because only the control and management of these vessels was vested in the Custodian, whether the transfers executed by the Custodian are valid.

Paragraph 2 of the recommendation submitted is designed to confirm the transfers executed by the Custodian and to make it clear that all unfinished business of the Committee on the Disposal of Japanese Vessels had been transferred to the Custodian. It is submitted that the

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subparagraph numbered (3) might be redrafted to read as follows:

> (3) The Custodian may, where he considers it advisable so to do, liquidate, sell or otherwise dispose of any such vessels or equipment on such terms and conditions as he deems advisable; and any agreement entered into or document executed by the Custodian on or after August 1, 1942, and prior (date of the present Order in Council to be inserted in ~~Order in~~ Council) purporting to be an agreement for, or to be, a transfer, conveyance or other disposition of any such vessel or equipment or of any right, title, or interest therein is hereby given full legal validity, force and effect as if the Custodian had full power to enter into such agreement or to execute such document, and as if such vessel or equipment or such right, title or interest therein, as the case may be, had been vested in the Custodian, at the time of the entry into such agreement or ~~to~~ the execution of such document.

Subparagraph (4) of paragraph 2 of the attached recommendation appears to be in order and is designed merely to ensure that all unfinished business of the Committee on the Disposal of Japanese Vessels is transferred to the Custodian. It is not clear what is meant by "unfinished business" but, inasmuch as the property and vessels undisposed of is vested in the Custodian and power to deal therewith is also given to him, it is satisfactory.

With reference to paragraph 3 of the recommendation, I would suggest adding after the word "property" in line 9 the words "on such terms and conditions as he deems advisable."

I am not sure that the word "liquidation" is properly used in this recommendation but, inasmuch as the recommendation is designed to be parallel to the Regulations Respecting Trading with the Enemy and the word is used in those Regulations, it is submitted that it may properly be used in the present case.

D.W.M.

I have no comments to make on the proposed policy

attached is a draft letter.

EPARTMENT OF JUSTICE

MEMORANDUM

Mr. Varcoe.

The attached memorandum and draft letter relate to a recommendation to Council which will come up to-morrow, Jan 19th in Council.

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