JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Byers. chief 249-277
cross 278-355

Vancouver, B.C.
November 18th, 1948.

IN THE MATTER OF THE CLAIM OF

DEEP BAY LOGGING COMPANY.

CASE No. 1388.

(Pages 249 to 355)

COPY.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

Vancouver, B. C.

November 18th, 1948 , 10.00 A.M.

MR. BALDWIN: I was directed by your lordship to supply my learned friend with the break-down of the figure of the cut.

THE COMMISSIONER: Do you want to go on with Mr. Kagetsu this morning?

MR. McPHERSON: No, I will reserve that until I have a chance to consider.

THE COMMISSIONER: Then who is your next witness, Mr. Baldwin?

MR. BALDWIN: Mr. William Byers.

WILLIAM BYERS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Byers?

A 4055 West 12th.

Q What is your occupation?

A I am a consulting forester and timber broker.

Q What societies are you a member of in your occupation?

A I am a member of the registered foresters of British Columbia, the Canadian Society of Forest Engineers, the Empire Forestry Association and for several years, from 1933 to 1946 inclusive, I was lecturing on forestry in the University of British Columbia.

Q What was your prior experience in your occupation?

A I was for 29 years with the B.C.Forest Service, prior

to entering into my present business; first in the capacity of assistant forest ranger, then ranger, forest supervisor, and finally supervisor of scalers.

Q As Forest ranger, Mr. Byers, what would your duties be? A. We had general supervision over logging operations which involved timber cruising, forest protection, land classification, fire prevention, scaling, numerous other duties.

Q I am afraid I didn't hear the last?

A Log scaling.

Q Where did you carry out those duties; in British Columbia? A. Yes, on the Coast of British Columbia. The first seven years I spent on Vancouver Island and five of those years I spent on the east coast of Vancouver Island in the vicinity of Rock Bay, Campbell River, Comox, Nanaimo, Duncan, Victoria, Cowichan Lake and other places.

Q What would you say as to the general nature of the timber stands on the east coast of Vancouver Island?

A I would say that the stands on the east coast of Vancouver Island are superior to most stands in the coastal area.

Q What reason would you give for that opinion?

A Due largely to their accessibility to the water, good topographical conditions for logging, sheltered booming facilities, short towing distances to market. and safe -- comparative safe towing, being mostly in sheltered waters. In many cases where long tows are involved they are subject to exposed waters and

the losses can be very great.

Q Now there is a difference in the value of different species of timber, is there not?

A Yes, there is. Fir is generally considered to be one of the most desirable to have. It not always the case, but it is the high priced timber. Spruce during the war was a higher price than fir. Cedar is next, and hemlock and balsam and other minor species.

Q How does the percentage of fir in the stands on the east coast of Vancouver Island compare with the percentage on stands in other parts of British Columbia?

THE COMMISSIONER: Would it not be as well to bring it down to the E. & N. lands with which we are concerned.

MR. BALDWIN: Very well.

THE COMMISSIONER: Inasmuch as unless you have some purpose in dealing with it in general terms.

MR. BALDWIN: Q; In the course of your duties as forest ranger, Mr. Byers with the government and on the East coast of Vancouver Island, did you become familiar with the area in the neighborhood of Deep Bay with which we are concerned in this Commission, those blocks -- the Fanny Bay operation?

A Yes, I was quite familiar with them.

Q What do you say as to the general nature of those limits?

A. They were very good stands of timber, easily accessible with a high percentage of fir.

Q I show you a ledger sheet, Mr. Byers. It looks like a ledger sheet -- will you tell the Commissioner what this is? A. That is a summary of the logs that were scaled officially by the B. C. Forest service, taken from the areas in question.

Q Which areas in question?

A I cannot remember the block numbers offhand. I would have to refer to the block numbers.

Q What timber was it?

A Those blocks were covered by timber mark 2-K-9 Crescent.

Q That is the mark of the Deep Bay area?

A That timber mark was applied for by Alpine Timber Company in whose name it was registered and those logs were logged by the Sable River Logging Company for Alpine Timber Company.

MR. BALDWIN: Might I have Exhibit 2, Mr. Secretary.

Q Where did you obtain this information, Mr. Byers?

A From the records of the B.C.Forest Service in the Forest Service Office in Vancouver.

Q Mr. Byers, I show you Exhibit 2, at this hearing. Do you recognize it. A: Those are the areas which are covered by this timber mark.

Q Are there any other areas covered by this timber mark? A. No.

MR. McPHERSON: Will you just have the areas identified as to the exact blocks covered by the timber because there are other areas there that belong to Deep Bay.

THE WITNESS: May I look at my notes.

MR.BALDWIN: Certainly.

THE WITNESS: Timber mark 2-9-K Crescent--

THE COMMISSIONER: What is that mark ?

A 2-K-9 Crescent covers blocks 198, 234, 256, 263 , 267 , 274,276, 504,566 and 617. Also that part of lot 88 Newcastle district which lies east of the western boundary of Lot 48 extended south to the north boundary of 198 except plan 293 right-of-way.

MR. BALDWIN: Q; On Exhibit 2, Mr. Byers, there are marked certain areas with dotted lines around them. (indicating) -- 48 for example, 46, 39. Will you tell the Commissioner what those marks mean?

A Those marks indicate the years in which those areas were logged.

THE COMMISSIONER: Does it indicate where it is marked. I have not a copy of that.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Have you another copy.

MR. BALDWIN: I have one here.

Q Mr. Byers, perhaps you can stand up here. Here in block 504 there is in the northern portion there a slight overlap of block 263 roughly rectangular marked F and B, 1948. That stands for felled and bucked? A. That indicates timber which was felled and bucked during the year 1948.

Q Then if you follow down to the south-east there, through that area, you find another irregularly shaped area in which appear three circles each horizontally divided/marked 48 . What is that

What does that area represent?

Q Those circles with the bar in the centre indicate the year in which that particular area was logged.

Q And the outline shows the area which was logged?

A Yes.

Q The dotted line? A. That is right.

MR. McPHERSON: My lord, may I ask if the witness prepared this map which was filed as an exhibit, or is somebody going to prove it is a correct map.

MR. BALDWIN: Q; Will you tell the Commissioner.

A This map is taken from the official records of the B.C.Forest Service, my lord.

THE COMMISSIONER: Q; It is a copy?

A It is a copy of the area, of their operating map which they had in their office.

Q MR. BALDWIN: Further down in 504 carrying into the south-east there is another marked 46?

A That indicates that area was logged in 1946.

Q Now are there any areas other than those that are indicated on this Exhibit 2, as having been logged in the way you have described. Are there any other areas which have been logged under 2-K-9 Crescent?

A Not to my knowledge, not according to the records of the Forest Servic e.

Q Not according to the records of the Forest Service?

A No.

MR. BLADWIN: My learned friend was supplied with this last exhibit, my lord, sometime ago.

THE COMMISSIONER: Yes.

MR. BALDWIN: We have also the October scale for the same

area which we have just received and which I have given him a copy of.

THE COMMISSIONER: Q; O ctober of the current year?

MR. BLADWIN: Yes, my lord.

Q Will you tell his lordship the dates between which-- the dates covered by this last exhibit?

A This timber mark was issued I believe on March 26th -- no, pardon me. This timber mark was issued before that date, but the first logging under this timber mark occurred in 1946 with the exception of 2,349 Christmas trees which were removed from this area in 1945. The remainder of the timber shows that this sheet was logged between March 1946 and September 1948.

THE COMMISSIONER: I see one circle with a 40 above it and a 39 to the right -- that is to the right of 274.

A That my lord was logged under another timber mark. That indicates that area was logged in 1939 and slashed burned in 1940.

MR. BALDWIN: I would like to put this in my lord, as an exhibit, this October scale.

THE COMMISSIONER: Make it one exhibit.

THE SECRETARY: Exhibit 22.

THE COMMISSIONER: Wait a minute, what is 21? Is that the memo showing the E. & N. cruises?

THE SECRETARY: Yes, E. & N. cruise and estimates of timber. Exhibit 22.

(OCTOBER SCALE SHEETS MARKED EXHIBIT 1388/22)

THE COMMISSIONER: I take it the evidence you are now

adducing is particularly relating to Exhibit -- what is this document?

MR. BALDWIN: Exhibit 2, I think, my lord.

THE COMMISSIONER: Exhibit 2 -- is adduced to support your evidence as to the timber contents of these various blocks.

MR. BALDWIN: Ye, my lord.

THE COMMISSIONER: By showing that so much was cut.

MR. BALDWIN: So much was cut and so much remains by our cruise.

THE COMMISSIONER: I see.

MR. BALDWIN: Q; What is the second part of Exhibit 22, this small sheet? A. That is the official log scale for the month of October which was not available when I extracted the figures -- the previous figures.

Q This exhibit shows the break down by species, doesn't it? A. By species and grades.

Q Would you read in the first half of it what your species percentage is?

A The percentage of fir was 49.71 percent.

THE COMMISSIONER: Where do you find that?

A At the bottom of the sheet, my lord.

THE COMMISSIONER: I see it.

THE WITNESS: 49.71 percent and the cedar was 24.39, the hemlock was 16.34 percent, the balsam 7.94 percent; the spruce was .013 percent; the cotton-wood was .003 percent, the cyppess was .090 percent, the white pine was 1006 percent.

Q And in the species themselves, would you just read

the grades of one and two -- the percentage of grades?

A The percentage of grades in fir was No. 1, 9.47%. Grade No. 2 was 63.63%, and grade No. 3 was 26.90%. Cedar was 5.76 %, No. 1 grade. No. 2 was 49.54%, No. 3 grade was 44.70%. Hemlock No. 1 grade was 4.59%. No. 2 grade was 35.82%. No. 3 grade 60.13%.

MR. BALDWIN: Q: Well those percentages are very low, I don't think you need bother.

A No, the remainder of the species are minor quantities, and we only have total percentages of those. The grades in fir were very much about the average. The grades in cedar were about average and Hemlock was also about average. But the fir was of a superior quality.

THE COMMISSIONER: Q; You say that fir does not normally run as high in No. 2 as this timber does?

A Well my lord, the average for the last ten years I believe is somewhere around 5% No. 1 of fir, and about 40% No. 3.

MR. BALDWIN: Q; Will you tell the Commissioner how you know that, Mr. Byers?

A I know that from figures that I took from the 1947 annual report of the B.C.Forest Service.

Q What would you say as to the percentages of the species shown in this October scale, the second half of Exhibit 22. A. Comparing it with the previous figures which I have just read it would look as if the grade of fir was improving very considerably. The percentage of fir there is No. 1, 16.76%; No. 2 62.1 %, No 3 is down to

21.10%.

Q What is the value of cypress relative to fir -- compared with fir? A. It is considerably higher. It runs around $12.00, $10.00 to $12.00 perthousand higher for the No. 1 and 2 grades. That is in the log.

Q That is in the log, I suppose?

A Yes, in the log.

Q Will you just tell the Commissioner the percentages of species, the grades percentages, the totals of that? A. Fir for the month of October, 1948, amounted to 66.55%. Cedar was almost nil. It was .009% of cedar. Hemlock was 13.39%, Balsam was 3.82%, Spruce .17%. Cyppess was 14.3%. White Pine was 1.32%.

THE COMMISSIONER: Excuse me. Is there means of ascertaining what percentage of this timber was cut from areas other than the areas which were the property of the Deep Bay Company of Kagetsu.

MR. BALDWIN: My lord, none of it was cut from the other blocks.

THE COMMISSIONER: I understood from a remark made by counsel there was some part of it, that this 2-K-9 Crescent also included some other blocks of timber that belonged to the claimants. Am I wrong in that?

THE WITNESS: My lord, the records of the timber mark book shows that mark was only issued to cover those particular areas.

THE COMMISSIONER: Then I misunderstood.

MR. McPHERSON: I don't think you really misunderstood the evidence. Mr. Byers has not said that was covering only this timber. All he says is, it was issued for this timber, but that is not evidence. There was no timber cut under that same mark.

THE COMMISSIONER: Perhaps Mr. Byers can help me with that. Is there any possibility that the timber marked 2-K-9 Creseent could have been cut on areas other than the areas for which the mark was issued?

A I don't think so, my lord. If that timber mark was used on any other areas, then it was improperly used, and I do not think that would happen. It could, but those operations are under constant inspection and supervision by the rangers whose business it is to see that they are keeping their operation on the areas indicated by the timber marks.

Q Obviously if it had been used on other timber it was used in contravention of the provisions of the Forest Act? A. Quite so, my lord.

Q That must follow, must it not?

A Yes, my lord.

THE COMMISSIONER: All right.

MR. BALDWIN: Q: Mr. Byers, did you extract from the records of the Forest Service, similar information with regard to any other timber mark?

A Yes, I supervised compiling the information from block 95, Cowichan District.

Q Block -- A. 195.

Q Did that timber mark cover 195 alone?

A No, it covered 195 and part of block 403. That is

timber mark 1-C-6 Crescent.

MR. BALDWIN: My learned friend has supplied me with a copy of this, my lord, which I propose to put in.

THE COMMISSIONER: Better have it marked now, then we can refer to it as Exhibit 23.

(EXTRACT FROM FOREST SERVICE MARKED EXHIBIT No. 1388/23

MR. BALDWIN:Q: Is Exhibit 23 a copy of the figures you extracted with regard to timber mark 1-C-6 Crescent?

A Yes.

Q Will you tell his lordship.how we are interested so much in the amounts?

A In this case, my lord, it covers more than a block.

Q My question is what does it indicate. Will you tell his lordship what the figures you have extracted indicate as to the species, the percentage of species and the percentage of grades in this general area?

A The total percentage is fir in the area covered by timber mark 1-C-6 Crescent, was No. 1 fir 11.53%; No. 2 fir, 62.89%; No. 3 fir, 25.48%, a total of 36.94% of the total cut, the total species. Cedar -- No. 1 cedar, -- No. 1 grade cedar was 7.23%, No. 2 grade cedar was 51.55%, No. 3 grade cedar was 41.20%. The total percentage of cedar in that stand was 13.02. The percentage of hemlock logs, No. 1 grade, 2.38%; No. 2 grade 13.11% ; No. 3, 44.22%. I might state there, my lord, that hemelock was not graded previous to the middle of 1947 and there was an ungraded percentage there of 49.2%. The total percentage of hemlock, including both graded and

ungraded was 28.57%. Balsam was 18.43%. Cypress No.1, was 9.43%. No. 2 grade Cypress was 40.48%. No. 3 grade Cypress was 55.09%. The total percentage of the stand 1.57.

THE COMMISSIONER:

Q That is 1.57% of the whole?

A Of the whole, yes. Cottonwood there was no No. 1 grade. The No. 2 grade was 48.44, the No. 3 grade was 51.56%, the total percentage of .01%.

Q Have you any means of determining what percentage of this timber was cut from 403 and what percentage from 195 ? A. We have a rough --

Q I appreciate it must be rough.

A A rough estimate my lord, by computing the acreage logged on the two areas and dividing that into the body which was cut, which in my opinion does not give a very fair estimate of the amount in the cut from block 195, because the topographical map shows that the area block 403 was high and it ran heavy to hemlock and balsam and not so much fir.

MR. BALDWIN: My lord, Exhibit 1, is the plan of the operations of the Stutz Lumber Company (?) and under timber mark 1-C-6 Crescent. It shows the areas with respect to which this is the scale and the cut. 195 has been largely logged off?

A Yes, except down in the southeast corner and a certain amount in felled and bucked.

THE COMMISSIONER: What were your percentages, the rough percentage as between 403 and 195?

A I am afraid, my lord, I don't quite remember. I

remember making them but I didn't make a record of them. I think if I remember rightly there was something between 500 and 600 acres logged of 403 and the balance there was on 195 and I don't remember what the figures were on 195, but they were larger than the figures on 403.

MR. BALDWIN: Your lordship will recall at the outset of the case Mr. Norris indicated that we were handling this only for the outlying of the block. We were not agreeing to the accuracy of these lines which purport to indicate the line of the cut

THE COMMISSIONER: You see, with no information whatever, Mr. Baldwin, as to what percentage was taken from each block, even the evidence you are now adducing as to grade cannot be very helpful.

MR. BALDWIN: It is of some help, my lord.

THE COMMISSIONER: Suppose 90% was taken from 403, it would not mean anything in terms of this claim .

MR. BALDWIN: Yes, my lord, but as your lordship can see roughly the area taken from the amount shown here by the plan to be cut from 195 is if anything, greater than the other.

MR. McPHERSON: My lord, is my learned friend now admitting that the lines on that plan are now correct because if he is going to use it he must admit it as Mr. Norris admitted it. If he is going to use those lines till --

THE COMMISSIONER: I don't see 403, where are the boundaries of 403?

MR. BALDWIN: Perhaps I can assist your lordship.

THE COMMISSIONER: Is this 403 running down here?

MR. BALDWIN: No, that is another block altogether.

THE COMMISSIONER: There is nothing here to show the amount he cut on 403.

MR. BALDWIN: Up here. If my learned friend objects to that --

THE COMMISSIONER: It is not a question of your learned friend's objection. I want to know how much weight can be attached to this evidence, even as to grade. It appears to me, subject to what you have to say, you cannot attach very much to the evidence in view of the fact we do not know how much of it was taken from 403 and how much from 195.

MR. BALDWIN: No, my lord, but the timber that was taken in this area was uniform, it was not a case that it might have been of pieces here and there where the uniformity of the stand might differ very much. It is all taken from one thing and it is just tendered for what it is worth as to the percentage of grades, the species and the grades in that area.

THE COMMISSIONER: I hoped that Mr. Byers might be able to say roughly what percentage of this timber shown in 23 was taken from 405. If that had been so, I would have been able to evaluate the evidence, but as he cannot help me at all in that regard I do not see how I can place very much weight on it.

MR. BALDWIN: All right, my lord. We will adduce it in another fashion.

THE COMMISSIONER: Don't let me stop you leading this evidence; if you can get any information as to the approximate percentages between the two blocks, it will be helpful to me. That is all I am trying to indicate to you.

MR. BALDWIN: I think my lord, we will not seek to prove it in this manner. We will proving this through our cruise which is already in for identification. It has not been proved yet, as the cruiser is out on other limits.

THE COMMISSIONER: Very well.

MR. BALDWIN: Q: In any event, Mr. Byers, what do you say as to the percentages shown in this Exhibit 23 of fir and -- A. Well, I am familiar with the areas in the Cowichan Valley and adjacent country but I never to my knowledge was on Block 195 or 403 but my general knowledge is that the timber there is very uniform, fairly uniform, and that the percentages here would be a pretty fair indication of what was taken off Block 195 and also from block 403; I don't think they would be-- that is in the grading situation -- I don't think there would be a great variation.

THE COMMISSIONER: Q: As between the timber on 403 and 195, they are comparatively uniform?

A That is the grading situation with the exception that 403 in my opinion from the records I have seen runs heavier to hemlock than 195.

MR. BALDWIN: Q: What do you say as to the percentage of fir? A. Well, it is about average, considerably above average. A very desirable type of timber I

would say. As I

Q Go ahead? A. As I mentioned before the average for the past ten years for No. 1 is approximately 5% with 40% No. 3. Here we have 11.53% No. 1 and only 25.48% No 3.

Q Mr. Byers, you mentioned earlier that you were familiar, or that you knew the general grades percentage of Grades 1, 2, 3 throughout the province and took it from the 1947 report of the Forest Service?

A That is so.

Q Did you make a memorandum from that?

A Yes, I did.

Q Do you have it with you. We will put in that report. I don't have the 1947 report from which Mr. Byers took these figures. I thought it would be just as well to put in his evidence now.

A I am sorry, I don't appear to have that record with me.

Q No matter. Now in the course of your duties as supervisor of scalers, Mr. Byers, did you have any occasion, or was it necessary for you to know anything about log prices? A. Yes, it was part of my duty to get in touch with log prices because we had to use them frequently in settling values of log booms and settling rescales and so on.

Q What was the trend at the time that you were employed, will you say, from 1930 on?

A Well, during the 1930's up to 1936 it was a period of depression and logs were a very low price at that time, but in the latter half of 1935 there was an

indication of improvement and in '36 it was very definite and there has been no retrogression in the logging prices since that time. Prices have continued to increase from 1936 until today when they are at the highest that we have ever known int he history of logging in British Columbia.

Q In the course of your duties with the government and the Forest Service, did you have any occasion or was it part of your duties to assess the efficiency of various logging operations?

A Yes, during my term as forest ranger and forest supervisor it was part of my duty to see that logging operations were carried on efficiently without any undue waste, and to see that various protection regulations were carried out and as far as possible to prevent forest fires.

Q To prewent? A. Forest fires and waste of any kind in the woods.

Q Are you familiar with the Deep Bay operation of the Deep Bay Logging Company Limited?

A Yes, I am.

Q What do you say as to the manner of operation at Deep Bay? A. In my opinion it was very efficiently managed and as far as Forest protection and utilization was concerned it was as good as any others.

Q Would you say it was superior to some that you had seen?

THE COMMISSIONER: Am I concerned with that feature of the operation?

MR. BALDWIN: I think your lordship is, because it will later be argued that the fair market value of the thing is the thing as a going concern; the whole operations that have been sold that way and if it is an efficient operation it goes to the matter of its value.

THE COMMISSIONER: All right.

THE WITNESS: Will you repeat that question again, please?

THE COMMISSIONER: Well, the suggestion in the question was, compare the efficiency of this operation with others from the point of view of determining whether it was a more efficient operation than others?

A Well I would not say that it was more efficient. There were other operators that were more efficient than the Deep Bay Company.

Q But above average? A. It was what we consider one of the better managed operations.

Q What would you say about the utilization of timber by the Deep Bay Company?

A As far as my recollection goes they were doing a very good job with utilization. We never had occasion to discuss the matter with them because our own experience taught us they were taking everything which there was a possible chance of getting a market for.

MR. BALDWIN:

Q What would you say as to utilization in the past, Mr. Byers, say in the twenties?

A Well, there is no doubt that utilization has improved vastly over utizilation in the twenties, but that improvement began a good many years ago.

The Forest Service to my knowledge has carried on a campaign of better utilization for the past 30 years. Finally public opinion got behind the efforts of the Forest Service of having better utilization, and other factors tended to impress this matter on every one, logging operators and everybody else with the result that when the war came along operators were cutting more timber and in fact were utilizing timber of a very low grade which I question very much would have been logged even today if it had not been for the demands imposed on the industry by war conditions. The through the insistence of the Minister of Lands and and the F orest Service particularly, the Sloan Commission was brought about and I think it served to intensify utilization more than anything else .

Q Be a little more specific, Mr. Byers, what would you say was good utilization in 1942, to what diameter? A. Well, take on your larger operations, the larger logging operations they were cutting their stumps a great deal lower than they had been previously and they were taking out smaller timber which in many cases was down to 12 inches D.B.H. then on many of the smaller operations they were taking it much lower than that. Some of the small mills who were logging on the Coast here were taking anything they could cut a two by four out of, the demand for lumber was so great.

THE COMMISSIONER: When did that change occur, Mr. Byers?

A Well, my lord, I think that in 1938 when it was obvious that there was a second world war about to start a very heavy demand for lumber from British Columbia was created, and in the fall of '38 the sawmills had to shut down for lack of logs, and with the unprecedented demand for logs, anybody who could get a horse or a donkey engine, or a donkey tractor that would haul logs going to work and they got any kind of lumber which they could get hold of.

Q I do not want a long description of the conditions. I asked you about what time this change took place. I have had evidence before me from responsible men that logs 12 inches at the butt became marketable in the period 1942 to 1944, for the first time. Do you agree with that?

A No, my lord, I do not.

Q When did the change occur then?

A I would say that the change occurred around '35 and '36. They were taking out logs of that diameter. And I think that can be proved the scale and by the tally sheets and the royalty accounts on which you will see there logs taken down of 8, 9 and 10 inches in diameter.

MR. BALDWIN:Q: Is it good logging practice, Mr. Byers, to log down to that diameter I described, 10 inches, D.B.H.? A. Yes, I would say it is good logging practice to utilize as much as can of the stand of timber that is there, because

if you don't take out the smaller stuff when taking out the big stuff it will either get broken by logging operations or it will be blown down by wind storms or it will probably be burned up by fire. And the practice in years gone by when they really began to get alarmed about the supply of timber in British Columbia, was to try to relog some of the logged off areas but they found that to be too expensive, after carrying out very large experiments and the tendency today is, or the prattice today is, the log that timber with the big stuff and take all that they can possibly get.

THE COMMISSIONER: Q: This change that you refer to, you say, took place early in 1936?

A That is my opinion, my lord.

MR. BALDWIN: Q; You are familiar with the Swedish gang saw, Mr. Byers?

A Yes, I have seen several operating in the province.

Q What was the first one you ever saw operating in the province or knew of?

A Well, if I remember correctly the first one was installed by Hillcrest Lumber Company near Duncan.

Q What year was that?

A Well, my memory does not serve me well enough exactly, but it seems to me that it was in 1928, but if it was not in 1928 it certainly was in the early thirties.

Q Do you know how many there are operating in the province now? A. Well, I made an effort to find out. I know from my personal knowledge of

several mills that are operating , and as far as my investigations went, I could only find six operating at the present time out of a total of over 1600 sawmills in the Province of British Columbia, and one of these was not a Swedish gangsaw, it was a W icks gangsaw, but neverthele ss it was a round-logged gang, which is practically the same thing.

Q What is present day utilization, down to what diameter D.B.H.? A. They are taking it down for various purpose to 10 and 12 inches D.B.H. for posts, piling and even saw timber.

Q There are other methods of sawing those small logs other than by those Swedish gangsaws?

A Oh yes, small logs have been sawn in British Columbia for 30 or 40 years to my knowledge. Many of the large mills in the province before the Swedish saw was brought into this country and even today are operating what they call the pony rig. The Canadian Western Lumber Company, Thurston & Flavelle have a pony saw as well as a main headsaw. The logs go up the jack ladder and the smaller size go to the one saw and the big logs to the other. And they are just as efficient as the Swedish gangs. They have a double way of sawing; that is when the carriage goes along one way the saw saws off a board and when the saw comes back it saws off a board. There is no waste motion. This is found very satisfactory, then in the small mills cutting anything from three to 15,000 feet per day they

are working on very small timber on this coast.

Q In any stand of timber, I suppose some of it has fallen? A. Oh yes, there is generally some blowdown or trees that have become over mature and fallen over or somethinf of that kind.

Q What disposition does the Forest Branch recommend for fallen timber?

A Well, they expect the operator will take it out if it is sound.

Q What fallen timber would not be sound?

A Timber that was broken in falling or timber that had rotted during the time it had been lying on the ground.

Q What percentage of fallen is unsound through having broken in its fall?

THE COMMISSIONER: Q: It would depend on the species?

A Very little, my lord. As a rule when those trees fall they are generally in a thick stand of timber and the fall is eased down by the limbs of the other trees. The breakage is very small.

MR. BALDWIN: Q: What about rot with this fallen timber. Does it vary? A. It varies in species, in different species. Cedar of course, has more resistance. It practically lasts indefinitely, fir will remain good, remain without deterioration up to three years, and in some cases over that time. Hemlock and balsam will remain good for two years, sometimes longer, especially if they are in the northern aspect where the sun

does not get them. If they remain continually damp they will stay sound much longer.

Q In the preparation of this case you had occasion to make certain extracts from timber sales contracts, is that a copy of the extract you made?

THE COMMISSIONER: Does this relate to this timber. Do those figures relate to the timber with which we are concerned.

MR. BALDWIN: No, my lord. They are timber sale contracts by the government. This evidence has relevance on the stumpage value.

THE WITNESS: Yes, I extracted this from the records of the Forest Service.

MR. BALDWIN: I will file that, Exhibit 24.

(SALE CONTRACTS EXTRACTED MARKED EXHIBIT No.1388/24)

MR. McPHERSON: Has my learned friend got the original file from which this information was taken. Has he brought them into court.

MR. BALDWIN: No, you have them.

MR. McPHERSON: I gave them back to my learned friend. I might suggest that my learned friend has the originals here for the purpose of cross examination on this document.

MR. BALDWIN: Very well, my lord, I will get them. The original records from the Forest Branch were taken out and we had them and prepared this abstract. I gave them to my learned friend and he has just returned them apparently. I will produce them for cross examination.

Q Now will you look at that, Mr. Byers, and indicate to the Commissioner which of those contracts we have listed would more closely approximate the value the timber limit at Deep Bay and block 198.

THE COMMISSIONER: Just a moment. Are we not concerned more with approximating the species and type of timber rather than the value? Or is that what you mean by your utterance today?

MR. BALDWIN: No, the price, my lord. The price at which those various small parcels were sold.

THE COMMISSIONER: Yes, but supposing they were a wholly different price of timber to that with which we are concerned. If they were wholly different, then the comparison would not be worth anything.

MR. BALDWIN: Not if the thing was wholly different.

THE COMMISSIONER: That is why I put the question to you. Should you not be making your comparison with something that is comparable in type of timber, condition of ground and so forth.

MR. BALDWIN: Well, my lord, it is merely a matter of mathematics. For example if we take a stand that was wholly hemlock and find that it was $2.50 stumpage that was paid to the government for that, them we can assume that had the stand been fir it would have been a good deal more, because hemlock is a cheaper grade. This is just an over-all picture of stumpage prices.

THE COMMISSIONER: I do not see how the comparison of values is going to be very helpful. Go ahead.

THE WITNESS: Well, my lord, all those timber sales which

have been extracted from the record, are in my opinion, of a similar nature the stands of timber on Vancouver Island. The species is much the same and the topography and the logging condition are much the same, but I do not think that the stumpage prices shown on those records is a fair sample of that the stumpage prices were at that particular time.

MR. BALDWIN: Q; What do you mean by fair?

A Well I don't think they are as high as the stumpage prices which were generally obtained at that time for private timber, for the simple reason that the majority of those sales were small areas adjacent to current logging operations, which were of no value to the operator of that particular area .

THE COMMISSIONER: Q; Therefore there would be no competition? A. Therefore there was no competition, but there was competition in a few of them, and I think in other cases where there was competition, the upset price was raised. There are two examples here. One is where there was competition and that is on page 1 of the record. No. 2; it is No. 2 timber sale. The official number is X-3378 and its location is north-east of Myrtle Point. It was sold in May 1943, carries fir, cedar, white pine, cypress, hemlock and balsam. The upset price for fir was $2.75 per thousand. Cedar was $3.00 per thousand, white pine was $3.25 per thousand, cypress $3.00 per thousand, hemlock $1.50 per thousand and and balsam $1.50 per thousand. The selling

price, the actual selling price was, fir $3.70; Cedar, $3.90; white pine $3.85; cypress -- .
We have another sale there No. 4. The official number is X-2883 at Jervis Inlet, which was practically the same types of timber, a very good timber.
It is on Jervis Inlet where there was no competition. The upset price was $3.00 for fir, $2.75 for cedar, $1.50 for hemlock and $3.00 for any other species at which prices it was sold.

Q The COMMISSIONER: Where is Myrtle Point by the way?

A It is just this side of Powell River, my lord.

Q It would be a little longer tow than in the case of Island timber? A. Very similar my lord.

Powell River as youknow is practically opposite Comox on Vancouver Island and Myrtle Point would be just about opposite Union Bay.

MR. BALDWIN: Q: What are the dates of these contracts that you refer to.

THE COMMISSIONER: The dates are all shown, are they not?

MR. BALDWIN: Yes.

THE WITNESS: May 1943 and July 1943.

MR. BALDWIN: Q: Have you any other comment as to the reasons for no competition in those cases, in the majority of those cases?

A Nothing beyond the fact that they were only accessible to that particular location and consequently no one else was interested.

THE COMMISSIONER: Q: The loggers who would be interested in such small parcels would be the smaller loggers, would they not? A. That is right,

my lord, but some of those smaller sales were not contiguous to current logging operations, and in those particular cases why, there may be competition, and there may be not.

MR. BALDWIN: Q: What do you say as to the acreage in most of those cases?

A As a rule they are comparatively small. This one here I quoted was one of the largest sales that has been made in recent years, 4,707 acres. There have been larger ones, but not --

THE COMMISSIONER: Q: Would timber on such small areas be likely to sell at a higher or lower price than a larger area of comparable timber?

A Well, due to the fact that there was no competition, I think it would sell at a lower price.

THE COMMISSIONER: Is there anything further, Mr. Baldwin?

MR. BALDWIN: No, my lord.

THE COMMISSIONER: I think we might recess now and take the cross examination subsequently.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. BALDWIN: My lord, there is just one question I would like to ask in direct examination.

Q Those timber sales contracts of which you made an abstract, Exhibit 24 -- did the timber with which those contracts were concerned -- was it free of royalty or was royalty payable with respect to that?

A It was all subject to royalty.

Q All subject to royalty. Is the royalty included in this stumpage -- it is shown right here -- what does

the crescent mark mean underneath that timber mark.

THE COMMISSIONER: We have had that already.

MR. BALDWIN: That is all, my lord, thank you.

CROSS EXAMINATION BY MR. McPHERSON:

Q Mr. Byers, when were you last on the Deep Bay property?

A I think it was in 1945.

Q 1945? A. As near as I remember.

Q When were you last on the property before that date?

A Well, I don't know whether I can answer that definitely, but I can say that I was frequently on the property during my trips to the Island.

THE COMMISSIONER: Q; Within what period of time prior to 1945? A. From 1928 to 1947 my lord.

MR. McPHERSON: Q: W hen you say frequently on the property, you mean you were right up on the camp site or walked around the timber?

A Sometimes I would not go in the area at all; sometimes I would go down to the booming grounds and up into the timber and up as far as the camp site.

Q When would you say was the last time you were in the Deep Bay timber before 1945?

A Well, I cannot definitely remember, but it would be probably -- it would not be more than a year at the outside.

Q That is you say you were in the Deep Bay timber in 1944. Would you have been in it in 1943?

A I may have been. I cannot say for sure.

Q When you were there in '44 and '45, the timber was

already being logged was it not?

A Yes.

Q Did you see the timber in the Deep Bay area, the Deep Bay Logging Company's, including Mr. Kagetsu's timber, anytime in 1942?

A That I could not say definitely. I might have.

Q Were you ever on block 617?

A I don't recall ever being on block 617.

Q When you went up into the timber, would I be correct what you did was go upon the railway and look at the timber as you went in. Did you go past the end of the steel?

A No, I did not.

Q You never went on past the end of the steel?

A No.

Q So if I say that the steel was not yet in 617, it follows you were not in block 617?

A It is possible.

Q So you don't know what timber was in 617 except by hearsay?

A Correct.

Q What would you say about the timbers that were remaining on the Deep Bay property between 1942. Do you think it was accessible timber?

A Yes, there was a large area of timber there accessible. In fact there was very little timber that was not accessible there.

Q Would you say it was readily accessible to a railway operation? A. Well, I think it could be handled by a railway operation,

probably in conjunction with some truck logging or skylining.

Q And if you used trucks in conjunction with railways, does that not greatly increase your cost of logging? A. To a certain extent, not greatly.

Q Does it not mean handling your logs twice?

A In transferring them from the truck to the railroad cars they lift a load at a time.

Q You think the timber in Deep Bay -- do you suggest the timber in Deep Bay was readily accessible to the railway that was there at the time you saw it last? A. Well I am not prepared to make that statement because I cannot say that I have been all over that area to find out whether it could be logged by railway or otherwise.

Q Did you base your evidence before on the value of the timber on its accessibility. That was one of the features as I recall it? You said it was accessible, topographical conditions were good, sheltered booming, short tows and so on. And you were comparing Vancouver Island timber with other B. C. timber and saying it was superior to most stands of B.C. timber, and in comparing the Deep Bay Timber logged areas you didn't really know whether the Deep Bay timber was accessible or not? A. There is no question in my mind about that, but I am not prepared to say it was accessible by railway.

Q There was a railway in there. That evidence has been given? A. Exactly.

Q If you were going to log the Deep Bay timber and you have been here several days and know those exhibits, Exhibit 13, -- if you were going to log this timber shown in green and you had no timber back here -- you had no other timber, would you have logged it with the railroad or converted it into trucks?

A That is an engineering problem which I would have gone into very carefully. I don't know. Possibly I would have decided to log it by road. I might have decided to log it by truck. It is impossible to say just how you are going to log a particular area especially when you are going to take into consideration the volume of timber you are going to take out.

Q But you would not like to express any definite opinion whether it was more economical to log it by truck? A. Absolutely not.

Q Would you agree with me that generally speaking today, logging in this province is by truck with the exception of a few large companies?

A There are a few large companies that are operating railroads, but the tendency today is to log by trucks, but not because the railroad operation is not economical. The reason the trucks came into being was, because they can negotiate steeper grades than railroad can. That is why truck logging

has become so general.

Q When you say steeper grades, is that not a question of economics too. If the truck can take a steeper grade in going into the timber -- for the purpose of argument,--one mile into the timber,while because of the grades the railway has to go two miles, is there not an economic problem in building a railroad two miles as against a truckload of one mile? A. It depends where the timber is located.

Q But you made the statement they converted to trucks not because it was cheaper but you could get to the higher timbers easier. I suggest that the loggers did not convert the trucks merely to get to the higher timber, but it is cheaper to get to the higher timber?

A I am not prepared to admit that.

Q Did you make this map Exhibit 2?

THE COMMISSIONER: Q; Let me carry that a little further. It was a matter of economics that prompted the change-over to truck logging, was it not?

A Y es, my lord, it was, but one of the reasons, the compelling reason for the change-over to truck logging was they could reach timber which was inaccessible by railroad.

MR. McPHERSON: My lord, I think the witness said it was not a question of economics previously.

THE COMMISSIONER: He tells me it is.

MR. McPHERSON: I realize that.

Q Mr. Byers, did you make this map?

A No, I did not.

Q This map was taken from the government records?

A Correct.

THE COMMISSIONER: What map is this?

MR. McPHERSON: Exhibit 2, my lord.

Q Now would the government have made that map?

A I presume that it was made by the department in their draughting office.

Q Well, on Exhibit 2 can you tell me why anybody would build two roads running parallel like that, over all that distance, if that is a correct map?

A I have not any idea why that was done.

Q You were there in 1945?

A Yes, I was in that vicinity and on that operation.

Q Did you go up into the timber?

A I cannot recall.

Q Did you go up in the timber in 1944?

A I was up in the timber on several occasions in the last three years.

Q Would you recall having seen two roads running parallel like that? A. I don't even recollect that.

Q Do you agree with me that if there is only one road, that this map is not correct?

A I don't know whether the map is correct or not.

Q Mr. Byers, with respect to Exhibit 22, which is the timber shown, scaled as coming off the operations of the Sable River Logging Company, that report does not indicate from what blocks

the timber comes from?

A It only indicates it came from some or all of those blocks. It didn't come from any other block except those indicated -- those covered by the timber mark.

Q I suggest to you that you don't know whether it came from any other timber blocks or not. You may know that it should not have, but you cannot say that it did not.

A I cannot say that it did not.

Q And you cannot tell from this report as to how much timber was taken off Blcosk 198, 234, 256 and 263 and 267, can you?

A Offhand I cannot tell you. If I had the maps to refer to I could, but I can probably go this far that all that timber came off those areas -- I don't know They are indicated by the years they are logged and we know when the timber mark was issued.

Q Are you presuming that the numbers I have just read to you are the numbers that you read out earlier?

A I don't know.

Q Becau se that is not what I have done. I suggest that you look at your figures to find out what this timber mark covers. Will you look at the paper you had this morning.

THE COMMISSIONER: Here.

MR. McPHERSON: No, my lord, he had a paper. He said timber mark 2-K-9 covered -- I don't think it was filed.

THE COMMISSIONER: Perhaps the witness might have Exhibit 2 before him at the same time.

THE WITNESS: Timber mark 2-K-9-crescent, covers block 198.

MR. McPHERSON: Q: Yes it covers 198, 234, 256, 263 and 267? A Correct.

Q And it covers other blocks?

A It covers other blocks.

Q There is nothing in this report to indicate whether any timber came off the blocks I have just mentioned?

A Not in that report there is not.

Q Is there any way you can tell from that whether any timber came from off those blocks?

A Yes, block 198 -- there does not appear to be any taken from that; 234 there does not appear to be any taken from that; 256, there does not appear to be any taken from that; 263 part of that has been felled and bucked according to this map this year.

THE COMMISSIONER:

Q That is just a small portion in the south-west corner of 263? A. Correct, my lord. 267 there does not appear to be any timber logged from that area? either, under this timber mark.

Q MR. McPHERSON: If there was any timber logged from those areas , or any of those areas in the years set out in Exhibit 22 that you have filed, they could be included under that mark, could they not?

A Quite right.

Q Do you know when that map was prepared, what year?

A It would be prepared, I presume when the timber mark was issued.

Q When was the timber mark issued. Did you give evidence of that? A. I think that was in March, sometime in the fall of 1945, if I remember rightly.

Q Well, '48, you were referring to some '48 figure in the map. I have assumed that the map was prepard sometime in 1948?

A You mean this particular map or plan?

Q That particular map?

A This I presume is taken from the logging operation plan of the Forest Service?

Q That would probably be in '48 in view of the figures?

A Undoubtedly it would have to be. That was brought up to date, up to 1948.

Q Now there is nothing in either of these two reports for ~~either~~ block 195 -- Exhibits 22 -- and 23~~4~~ -- to indicate the size of the timber being cut?

A No.

Q Is it customary in scaling timber to put the small timber as No. 3? A. Well, with certain species it must of necessity go into No. 3.

Q Would that be hemlock?

A Yes hemlock has a minimum diameter for No. 3, as has fir and cedar.

Q What is the minimum diameter for hemlock?

A The maximum -- there is not a minimum diameter for hemlock. There is a maximum diameter for No. 3.

Q What is the maximum there?

A Well, I don't recall offhand, although I should know.

I have helped to draw up those grades myself, but I just can't recall the diameter at the moment.

Q Do you know what the maximum diameter for fir is?

A Yes, fir --

Q There is a minimum diameter for fir?

A The maximum for No. 3 logs is 12 inches for logs 24 feet long or over.

Q That is 12 inches at the top or bottom.

A 12 inches at the top, and 14 inches if it is less than 24 feet long.

Q Now 12 inches at the top -- now the butt would be larger than that?

A Oh yes.

Q Where do you put your trees in this scale that are below 12 inches?

A Well, that 12 inches is the maximum diameter -- the minimum diameter under which a log can be put into the No. 2 grade. Smaller logs 12 inches and under and 14 inches and under, can go into No. 3.

Q Then looking at Exhibit 22 and 23, would you say -- I will show you the percentage of hemlock on Exhibit 23; No. 3 hemlock is 60%?

A Yes.

Q Would that be due to either or both, the fact it is a poor grade of hemlock or there is a lot of small hemlock?

A. It could be either, but 60% in hemlock is a very -- is not a high percentage of No. 3. Hemlock does not grade No. 1 and 2 very high.

Q And you will notice in the Deep Bay -- block 195, Exhibit 23, that the percentage of hemlock is 44, a little over 44 No. 3 grade?

A That is No. 3 grade, yes. That indicates a pretty good type of timber.

Q No. 3 grade is not good hemlock?

A No, but 44% would indicate that the stand of hemlock is pretty good.

Q Do you think that 60.13% indicates a good stand of hemlock? A. No, it is about average.

Q Now with respect to loggers cutting Crown grant timber, would you agree with me, Mr. Byers, that if a logger has Crown grant timber under a certain mark, and he has some adjacent Crown grant timber which he has not marked yet, or has not got a mark for, or it may have a mark, that the department was not too fussy whether they did actually stick to the actual block, in Crown granted timber?

A I assure you that the Forest Branch was very particular about no trespass being made of areas indicated by the timber mark in question.

Q As between Crown grant timber?

A It made no difference whether it was Crown grant or in any other respect.

Q Now with respect to block 195, you stated you were never on that timber?

A No.

Q So you cannot give his lordship any information as to the amount of timber except from those figures or the size of the timber, whether small or large

timber? A. Well, I could tell you that it was large timber. No, comparatively -- well, it was average timber. That was indicated from the records in the Forest Service which shows the lengths and diameters under which the timber was cut. It was not small timber.

Q Would you say that if it had not been for the war and conditions arising out of the war that hemlock running 60% No. 3 would have been cut in 1938?

A Yes, it would.

Q You think it would, 60% No. 3?

A Undoubtedly.

Q You started to tell his lordship about some figures with respect to the acreage of 403 and the acreage of 195. Am I correct the figures you worked on was as to show how much timber you estimated was on 403 and 195 because of the stumpage?

A It was to give the general picture.

Q Have you any recollection at all as to what your figures showed as to the amount of timber on 403?

A I don't recollect correctly the acreage on every block, but we did -- I did not personally compute or try to compute the amount of timber taken from 403 and the amount taken from the other area, because in my opinion the difference in the topography, the difference in the stands, would not give you a fair picture. In my opinion the majority of the -- the bigger proportion of the timber or the bigger proportion per acre came off Lot 195, not off 403.

Q What do you base that statement on?

A Simply by the topography and the cruise map to which I had access.

Q But you have never been on either of those blocks?

A No, I am forming my opinions from the records I was able to get.

THE COMMISSIONER: Q; Those are records of the Forest Branch? A. All except the cruise, my lord, which was a cruise made by someone-- I don't remember who, who showed this area on #03 as being sparsley timbered and heavy to hemlock and balsam.

MR. McPHERSON: Q: When you were making your estimate, did you base the amount of your estimate of the amount of timber on the elevation of the land?

A I didn't make an estimate. I quit because I could see that the estimate was not going to be of any value to me.

Q Of value to you or of value to the fact generally?

A Of value to the fact generally.

Q It was not a question of finding there was more timber on 403 than on 195?

A It left me with the impression that there was more of that timber came off 195 than came off 403.

Q More came off 195? A. Yes, more per acre came off 195 than off 403.

Q Do you know anything about this map; who made it or when it was made. This is Exhibit 1, my lord. Do you know when it was made and who made it?

A Well, I think that is a tracing taken from a

Forest Branch operating map of that area, as near as I can establish.

Q With respect to the cutting of timber down to 12 inches D.B.H. diameter, will you give his lordship any idea at all as to the approximate increase in production when you start to cut below 18 inches? What do you think that the percentage increase would be of timber on Vancouver Island; if you started cutting 16 inch timber as well as 18. What would be the percentage?

A Well, that is a very difficult question to answer. I can probably best answer that in a cruise which I made myself, which cruise was taken down to 18 inches D.B.H.

Q When was that cruise made?

A Oh, that was a cruise I made somewhere in the twenties.

Q Yes? A. I recruised the area and took it down to 12 inch diameter and the difference between the two cruises was 12,000 feet per acre.

Q Well, can you tell his lordship how many acres there were so we can get some comparison between the two cruises in quantity?

A Well, if I remember rightly the 18 inch D.B.H. cruise ran 32,000 feet per acre -- no, pardon me, 52,000 feet per acre, and when I finished the second cruise, I had 56,000 feet per acre. There were 80 acres in that particular lot.

THE COMMISSIONER: Q; What difference in time was there between the two cruises?

A One was made directly after the other, my lord.

MR. McPHERSON: Q: But you would not say that the 52,000 cruise was comparable to Deep Bay operation?

A 52,000 per acre?

Q 52,000 per acre? A. I would say it was fairly comparable.

Q You think that was comparable?

A Yes.

Q That seems like a very small percentage of increase from cruising all the way from 18 to 12 inches? A. Yes, in that particular instance it is, but I am not assuming for a moment that would apply on all operations in all areas.

Q That would indicate that was a fairly big stand of timber? A. It was a good stand of timber. It was thrifty.

Q You said that the present policy in British Columbia in logging was to utilize down to 10 to 12 inches?

A Yes.

Q And indicating there was a new trend to do that?

A No, I would not say it was a new trend because it has been done for years, to my knowledge; for the last fifteen or twenty years they have been relogging areas in the Fraser River Valley and sawing timber down to 10 inches D.B.H..

THE COMMISSIONER: I understood you to say earlier it was 1936 when the change took place?

A My lord, I am not indicating that the change took place then, but that practice was in vogue long before 1936, but since 1936 the tendency has been for closer utilization as we go along. That was brought on by various factors.

MR. McPHERSON: Q: You referred to the rising cost of log prices, the rise of log prices?

A Yes.

Q Over the period of the last few years and my recollection is you stated that today they are at the highest they have ever been in the history of British Columbia logging?

A Yes.

Q Would I be correct if I said that the cost of logging is the highest it has ever been at?

A I think you would.

Q Would it be correct if I said the cost of standing timber did not rise proportionately?

THE COMMISSIONER: With what?

MR. McPHERSON. With the cost of logs.

THE WITNESS: The cost of standing timber started to rise before the price of logs.

Q But would you say that the cost of standing timber today is proportionately higher than it was in the year 1942 -- the same proportion as the cost of logs today, in 1942?

A I would not like to say the same proportion. I would say it was higher. I would not like to say it was the same proportion.

Q Is it not a fact that the cost of logs has skyrocketed

since the controls were lifted in 1945?

A Quite so.

Q Is it not a fact that the price of standing timber has never since the outbreak of war really skyrocketed to the same extent?

A Yes, but the price of standing timber started to skyrocket before controls were taken off logs.

THE COMMISSIONER: There being no control on the price of standing timber?

A That is right, my lord.

MR. McPHERSON: Q: What year would you say the price of standing timber started to rise?

A The price of timber definitely started to rise around 1938. If you will recall , if I may explain, about that time and for the next one or two years after that, there were large mergers of logging companies in this province, and that created a condition of alarm amongst the smaller operators, and they say that if they did not get into the timber business themselves and purchase standing timber, that they would not be able to purchase logs to keep their mills running, and from then on the race for timber was on, and stumpage prices started to skyrocket and they skyrocketed long before the price of logs, when the controls were taken off.

THE COMMISSIONER: Q: I am concerned more with the E. & N. timber than with any other in this case. Have you any information as to the increase in price imposed

BY THE E. & N. Railway company for its standing timber in the period say from 1940 to 1944?

A No, my lord, I have no knowledge of any particular jump of prices during that period. I think that the E.&.N. Railway pursued the policy that they had to my knowledge been pursuing previously, inas much as they were more concerned to get reliable operators into their timber, and depended more on the freight that they got from hauling the lumber or hauling the logs than they did from the actual stumpage price.

Q Then the general rise you speak of in standing timber does not apply to the E & N timber?

A I don't think it does, to my knowledge.

MR. McPHERSON: Mr. Byers, on this question his lordship raised, you expressed the opinion that the government upset price shown in exhibit 24, was low. You don't know what the E. & N. timber was selling for, do you?

A Only by hearsay.

Q Have you any idea what the E. & N. timber was selling for in 1941?

A You mean specific cases?

Q Yes. A. I have not specific cases.

Q Have you any idea what it was selling for in 1942?

A No.

Q Or '43? A. Only rumours.

Q Have you any idea what private sales were made from '41 to '43 and what the price was?

THE COMMISSIONER: On E. & N. timber?

MR. McPHERSON: No, private sales, my lord, private timber.

THE COMMISSIONER: Outside the E. & N.?

MR. McPHERSON: Well, not owned by the E. & N. Company.

THE COMMISSIONER: Let us understand one another. The E. & N. Railway belt has been to a considerable degree alienated?

MR. McPHERSON: Yes.

THE COMMISSIONER: Outside the E. & N. belt there is a large quantity of standing timber in the province. Are you referring to the timber in the E. & N. belt or outside of it?

MR. McPHERSON: I am referring to the timber in the E. & N. belt which would be comparable to the Deep Bay.

THE COMMISSIONER: And which has been alienated.

MR. McPHERSON: Yes, and was a private deal.

THE WITNESS: Well, I was working for the government during that time. Now I am in that business myself, and I cannot speak authentically of any sale that was made during the period that you mention.

Q When did you leave the government?

A In 1947.

Q You made the statement this morning those prices were low, when those prices are all in '43 and '44 and you say you cannot compare them to anything? A. I made the statement there was no competition and the

government was anxious -- just as anxious to get rid of the timber as the operator was to get it, because it was going to be a total loss if it was not taken out. That is why the government stumpage prices are lower than the private stumpage prices.

Q I am intrigued by your suggestion that there was no competition. You prepared this sheet?

A I did.

Q In 1943, which is the year that the timber was sold we are talking about, I notice from your own statement that there were eight sales?

A Out of a total of how many?

Q I have no idea. You extracted this information and you put eight sales down here, four of which had competition?

A Eight sales, and I think there were 38 sales altogether and I didn't say there was not any competition, what I say is there was very little competition.

Q Well, take your whole report. In your report there are 26 sales listed and out of the 26 there was competition in the case of six of those sales?

A Yes, six out of 26.

Q Do you think that was reasonable?

A About 25%.

Q Would that be reasonable?

A No, I don't think that would be reasonable. I don't think there was competition in that percentage of sales, of the sales made by the department. It just happens there was in that

particular abstract we made but I don't think it would stand up to that percentage all the way through.

Q But you have told us that the upset price there was in your opinion low as compared to the private and E.& N. sales.

A That is right.

Q But you don't know what the private and E & N. sales were?

A Well, I know, but then I can't prove it. There is no use my trying to tell you something I cannot prove. No one can be in the timber industry as I was and not know what those -private sales were made at.

Q That is right. I would not mind hearing what they were made at, although you cannot prove it? A. I would not like to quote them.

Q Would you not quote them to sell them?

A No, I could not do that. I can give you a specific instance of timber which I have been dealing with in the last year.

Q That would be no use to his lordship because we are discussing 1941, '42 and '43.

THE COMMISSIONER: Perhaps we may have some information already. Mr. Kagetsu told us he bought 504 in 1939 for the price of $14,000. And on that stand there was a little over nine million feet. Now with those figures before you, what does

that work out at, Mr. Byers; nine million feet in 1939; the E. & N. price was $14,000.

MR. McPHERSON: It works out at $1.50 per thousand.

MR. BALDWIN: That is from the E. & N.

THE COMMISSIONER: That is right.

THE WITNESS: Well, I would say that is about correct, according to my knowledge.

MR. McPHERSON: When you were in the government, did you have anything to do with the sale of timber?

A No, I did not.

Q You had nothing to do with the setting of this upset price? A. Referring back to the time when I was ranger, Forest Ranger and Forest Supervisor, yes, I was the one who made recommendations on the upset price in the cases I was dealing with during my particular time. During the time I was supervisor of scalers, I did not. That was not part of my duty.

THE COMMISSIONER: I suppose you will be some time longer?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: We will adjourn now to two o'clock.

(PROCEEDINGS ADJOURNED TO 2.30 P.M.)

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

Deputy Official Stenographer

Vancouver, B. C.,

November 18th, 1948. 2:00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

WILLIAM BYERS, resumed the stand:

CROSS-EXAMINATION BY MR. McPHERSON, RESUMED:

Q Mr. Byers, when we adjourned I had just asked you if, in your duties as a forestry man, you had

a anything to do with setting the upset price for Provincial timber, and I think you were just on the point of telling his Lordship you did have something to do with the setting of the price. A: Yes.

Q And I presume that being an employee of the Province, a Civil Servant, you used your best judgment and set what you thought was a reasonable price? A: Quite so.

Q So you would say that your up-set prices were the fair prices at that time?

A Based on the cost of logging and the difficulties of getting the timber out.

Q So that as a Civil Servant knowing upset prices that might be used to dispose of lands owned by the people of British Columbia, I take it you felt considerable responsibility and were sure your price was a fair price?

A Quite so.

Q Why do you suggest that other rangers and other people working for the Province of British Columbia set low prices and were, in effect, giving

away something that belonged to the people of British Columbia?

A I am not suggesting that.

Q You said these prices were low.

A I still say the prices are low.

Q You just said you set what you thought was a fair price? A: But they were based on the cost of getting it out and have no relation to the selling price.

Q But isn't it true that anybody selling and buying timber would take into account the cost of logging, the accessibility, and all the features you mentioned?

A Yes, and the fact they want as much as they can get for it.

Q But doesn't the Province want as much as they can get for it?

A It is not their policy to boost their prices.

Q But are you suggesting to his Lordship that the Province of British Columbia is selling assets belonging to the people of British Columbia below what they could get for their assets? A: If that particular timber was in private hands, I haven't any hesitation in saying a bigger price could be obtained.

Q But I am asking if you have suggested that the Province of British Columbia is selling timber below what it is worth?

A I wouldn't like to suggest that because they

base it on the cost, but I still maintain if that timber was in private hands it would sell for more.

Q. Mr. Byers, would you agree with me that a scattered stand of timber would have more small trees than an old matured stand of timber?

A No, I couldn't agree to that because the conditions vary. In some cases where scattered timber is standing there is very often large trees, and in other cases it may be young growth and small trees.

Q Let's take the standing timber you cruised yourself at 52,000 feet to the acre at 18 inch D.V.H., and considering again it went down to 12 inches and got an overrun of 4,000 feet per acre. A: Yes.

Q Am I correct that the reason why there was such a small overrun of little timber was because there was a lot of mature heavy timber which would crowd out the little timber?

A I would say there was a lot of timber which was over 18 inches D.V.H., but I wouldn't say it was all large, mature timber. Certainly there was a predominance of timber over 18 inches D.V.H.

Q Would you agree with me that a logger would be willing to pay more for a heavy stand of timber per acre than for a light stand of timber per acre? A: Absolutely.

Q In these figures in Exhibit 24 which you have

filed, would the acreage listed there be more than the acreage of timber or would there be timber on all the acreage, generally speaking?

A: That I can't say, but I think from what little knowledge I have, and which has been gained through discussing the matter with other people and from records which I have had access to, that the timber was fairly uniform.

Q Well, Mr. Byers, you said this morning that you thought that the timber that you cruised was comparable timber to the Deep Bay timber, is that right?

A Yes.

Q That is, the timber you cruised at 52,000 to the acre was comparable to the Deep Bay timber?

A Yes.

Q On the other hand, you had never been on Block 1617 but you had information about the timber?

A Yes. I might state that I have flown over this country on many different occasions. I have also fought fire in that country. I know that country probably as well as any man in British Columbia.

Q Therefore, your opinion that 52,000 to the acre in the case you give is comparable to Deep Bay would be a very good opinion?

A I am not giving it that the stand of timber at Deep Bay was only 52,000 feet.

Q Do you think it was more than that ?

A I would say it would go a little higher, not very much.

Q And you would base that, I take it, on your knowledge of timber and the fact that you have flown over practically the whole of Vancouver Island, and so on?

A Yes.

Q In view of that would you be surprised if I told you that Exhibit 16 shows that Block 161 7, which had never been cut at the time of sale, was a block of timber of 790 acres and that the E. & N. cruise was only 7,298 thousand feet; that Block 566 shows 487 acres and the cruise of the E. & N. timber was 5646 thousand feet; that Block 504 shows 1372 acres and the cruise of the E. & N. timber was 9363 thousand feet. That makes a total of 2649 acres on which the E. & N. cruised 22,707 thousand feet of timber, or an average on this comparable timber you are talking about of only 8,400 feet to the acre.

A I would say that cruise is absolutely ridiculous.

Q I will use Mr. Kagetsu's cruise for the purpose of argument. We have had from Mr. Kagetsu, who has been cruising, he said, thirty years, -- he said the E. & N. cruises were always 100% below his cruise and it is still only 186 hundred feet to the acre.

A It is still low at that figure, in my opinion.

Q And you say that the Deep Bay timber should run, in your opinion, over 52,000 feet to the acre?

A: It should run

between 50,000 and 60,000 feet to the acre on an average.

Q In your position with the Provincial Government, I suppose you knew a great deal about timber that was for sale in the Province?

A Yes, we had a pretty good idea what was for sale.

Q And you made a statement this morning that from 1938, I think, onwards, when the big mergers started, the little logger had to rush out and get timber? A: Pardon me, I didn't say the little logger had to rush out and get timber. I said that the smaller mills who had no timber stumpage behind them, and were dependent on the open log market for their supply of logs, got alarmed and were afraid they were going to be frozen out and consequently they made what arrangements they could to obtain standing timber to keep their mills supplied; and that was the real reason for the jump in stumpage prices.

Q Does it follow from that, then, that the lumbering industry generally was very interested in where there was timber available and kept pretty well in touch with the market?

A I think they were very well aware of any timber that was for sale, or would be for sale, and I think they had their scouts out looking for it.

THE COMMISSIONER: Q: What period are you speaking of now?

A: From about 1938 onwards.

MR. McPHERSON: Q: Up to the present time would that be?

A Yes, practically up to the present time.

Q I would be correct, wouldn't I, if I said it was common gossip in the lumbering industry on the Coast here as to what timber would be available and what timber might become available or what timber was for sale actually. That would be a reasonable statement, wouldn't it?

A Yes, that is true.

Q I suppose at the time the Custodian took over this timber that, as a Provincial Government officer, you had some knowledge of the Custodian's taking over companies like Deep Bay and Royston?

A I knew of it; saw the advertisements in the paper.

Q And you knew that at the time, I presume, that the Custodian sold a block of timber at Cowichan, Cameron Lake, and Nimpkish River near Alberni? A: Well, I had general information on the matter but nothing specific.

THE COMMISSIONER: Q: While on that subject, do I gather from your remarks that persons engaged in the industry in 1943 and 1944 were aware that these blocks of timber belonging to Japanese organizations were on the market for sale or likely to become so?

A I think that is the case, my lord.

Q In other words, the information was pretty widely disseminated in the industry?

A I have no doubt.

MR. McPHERSON: Q: The statistical information contained in Exhibit 24 was extracted by you and does not contain all the sales?

A No, very few.

Q Would you consider it is a fair representation of sales comparable to the Deep Bay operation?

A Well, it is as fair as anyone could make it, I think. Some one else might have a different opinion but to me that seemed to be fairly comparable.

MR. McPHERSON: If my learned friend could loan Mr. Byers his Exhibit 24.

Q Now, Mr. Byers, we have been talking about acreages and comparable sales. Take the first sale listed there, No. 1, near Sayward, a sale made in May, 1943. I add up the estimated amount of timber at 965,000 for thirty acres which works out to 32,000 an acre. Do you agree that is approximately correct?

A It may be. I couldn't tell.

Q If you add up the amount of timber you get 965,000 and if you divide it by 30, you get approximately thirty-two thousand. Am I correct? A: Yes, but I am not prepared to admit that cruise is correct. As a matter of fact, as you know, the way these sales are handled by the Provincial Government

Forest Service, the amount of the cruise doesn't matter a very great deal except it will affect the appraisal, but they don't base their price of the timber on the cruise. They base it on the logs scaled and taken frmm that particular area.

THE COMMISSIONER: Q: In other words, all these sales a are on a stumpage basis?

A That's right. If their scale runs 100% over the cruise, then the value of the sale would be double although it would not appear on the scale.

MR. McPHERSON: But surely there must be some relationship between the cruise stated there and the actual timber on the property?

A I admit there is some relationship but most of these cruises are done on a very conservative basis.

Q You would say on that first block then of thirty acres that 965,000 is probably very conservative? A; Well, I haven't stopped to figure it out on thirty acres. It might be thirty thousand to the acre. I would say it was conservative although the average stand is over thirty thousand per acre, but there may be timber sales there that would be approximately the amount of timber that was on the area.

Q But you can't have this both ways. You have stated, first of all, that you didn't like the E. & N. cruise I quoted compared with your

own figures -- it was low; that you didn't like the upset price here. Now you tell me you don't like the cruise here, that that doesn't really mean anything, and you said that the cruise would be low. Are you saying now that the cruise is high?

A No, it is conservative.

Q Would it be fair if I said all the cruises here in your opinion would be conservative?

A Yes.

Q Let's go on then. First, say thirty thousand acres, 965,000, works out at 32,000 an acre?

A Yes.

Q Take the next one, Myrtle Point. First of all, I would ask you whether or not I am correct that that is principally a cedar show?

A 50% cedar.

Q And actually the Deep Bay property didn't run 10% cedar, did it?

A No.

Q I would also point out that even after allowing for the cedar that if you add up the figures it works out to 16,000 to the acre. I would point out that your next example, Sayward, --

THE COMMISSIONER: Is Mr. Byers acquiescing in your estimate of 16,000 to the acre? It is just a matter of calculation.

A I think that is a very, very low cruise. I would be very surprised if this doesn't cut over 16,000.

MR. McPHERSON: Q: I am quite satisfied to accept 16,000 at the moment. I am prepared to accept your statement it would cut over, but I am taking these cases we say are similar to Deep Bay, and I want to show you how much they run on the Province's own figures. First, do you agree it is approximately 16,000 to the acre on that cedar proposition at Myrtle Point? Do you think that would be fair?

A My experience tells me that cruise should be higher.

Q I am talking about figures which you gave his Lordship. Never mind what you think it would run. If you divide 4707 acres into the total, less the cedar, it works out to 16,000 to the acre?

A: Yes.

Q Would you accept my statement that that is probably right?

A Yes.

Q And if you take Sayward, the next sale, 200 acres, that adds up to 4,650 thousand. That is approximately 23,000 to the acre?

A Yes.

Q If you take the next one, 67 acres, it works out to approximately 15,000 to the acre?
The next one, at Duncan, -- am I correct that is principally a hardwood proposition?

A What number is that?

Q No. 5. A: Yes.

I wouldn't say it is principally hardwood, but I would say it is small timber because there seems to be an excessive amount of cedar, poles and piling and also there is some maple and alder in there.

Q It is about 80% hardwood from the standpoint of the timber?

A That is correct.

Q There wasn't any hardwood to speak of at Deep Bay, was there?

A No. There was some.

Q You wouldn't say that was comparable, would you?

A Well, I wouldn't say it was comparable to the Deep Bay timber, no.

Q If you turn over the page and look at No. 7, in the Alberni District, that is 147 acres, 2815 thousand, or twenty thousand to the acre?

A Yes.

Q And the next one is small. But take the next big one, Renfrew Harris Creek, the last one in 1943, that works out to 13,636 thousand which is approximately fifty thousand to the acre on 271 acres?

A Yes.

Q Now, Mr.Byers, if Mr. Kagetsu is correct or if the E. & N. Timber Company are correct, the Deep Bay timber on the evidence given here so far has been running at 8,400 to the acre. The cases you havegiven his Lordship as samples comparable to Deep Bay, the lowest you have given

his Lordship in 1943 is 15,000 to the acre and it goes up as high as 50,000 to the acre and you admit the figures are low?

A It must be low. I would like to make a statement in regard to that. I don't know any logging operator that would be interested in logging timber that ran 8000 feet to the acre.

Q There was one who was logging it. I shall endeavour to show it wasn't economical.

In view of the way they put up timber in the Province for sale and your suggestion that these cruises are low, isn't it a fact that any man buying Provincial timber has a pretty good idea of what he is buying?

A As a rule, yes.

Q And he bases his offer on what he knows is there, not what the Province tells him is there?

A I don't agree with that.

Q Don't you agree that the buyer in buying timber, if a prudent buyer, would satisfy himself that at least what the Province said was there was there or more?

A Yes, I agree that a prudent buyer would but I know cases where many men have bought timber they never even saw; just simply took the Government's cruise.

Q Would you say that H.R. MacMillan was a prudent buyer? A: Certainly.

Q With respect to these sale prices here, am I correct that in buying timber from the Province of British Columbia, you only have to put down

10% of the stumpage; you don't pay cash; you pay 10% of the stumpage?

A Plus the cost of the cruise, plus the cost of the advertising and the first year's rental.

Q You put down 10% stumpage and the timber is cruised, is it?

A The timber is cruised before the 10% is paid.

Q So that these figures aren't just guesses. These, as a matter of fact, are based on somebody's cruise on these statements?

A Presumably.

Q In any event, you pay 10% for stumpage? You have to pay a royalty on the timber and the stumpage is 10%. Would you agree with me that all the money you are required to put up is about 6% when you take the royalty into account?

A: I might, if I may be allowed, qualify that. Up until the end of June, 1947, that condition did apply but since that time the stumpage is included with the royalty and the tenderer has to put up 10% of the stumpage value which includes the royalty.

Q Of course that all happened since the Custodian sold the timber?

A Yes.

Q So my statement is correct?

A Yes.

Q The value of this timber, I suppose, would depend largely on the statements you made this morning: Its accessibility and proximity

to the market. Isn't it also true that with respect to Government-owned timber, a logger working in an area where there is timber -- for example, in the Sayward District -- wouldn't buy that timber until he needed it?

A Yes, that is generally the situation.

Q And at the time he made an offer to buy it and the Government put an upset price on it, am I correct by that time he, of course, would have his roads into that neighbourhood?

A He might have his roads adjacent to the timber, but he has no right to have them in the timber.

Q Therefore, the timber would be worth a little more because he was near the market, but now he has his road near the timber?

A Yes.

Q So the timber is worth more?

A I can't say that.

Q Isn't it, if you have roads up to the edge or a road built one to five miles to get your timber?

A Yes, sure, but if the Government hadn't been willing to sell that timber he simply wouldn't be able to get it .

Q But as a general rule the policy of the Government is to sell to the man who has the adjacent timber?

A That is true but there is another reason. The man would naturally not ask for that timber to be put up for sale until he was ready to cut

it, but in some cases in latter years these operators have had to act because they were afraid of someone else coming in and applying for the timber they wanted. So they bought it before they really wanted it.

Q I don't understand that statement. When a man buys Provincial timber, he has to give an undertaking to cut it within so many years.

A He can always get an extension of the contract. Up to the present time, anyway, he has been able to do that.

Q And the buyer of this Provincial timber, am I correct that he pays for the timber as he cuts it?

A He pays for the timber as he has it scaled.

Q Am I correct, then, that the only capital he invests in the timber is the 10% and the few extra charges you have mentioned?

A Correct.

Q Am I also correct that if the buyer doesn't complete his contract, even if he gets extensions, all that he loses is his deposit?

A That is so, as far as I know. That was the policy and I think it still is.

Q Wouldn't you agree with me that a man who is buying Provincial timber of the nature set out in Exhibit 24, who doesn't have to gamble a large sum of money, who doesn't have to gamble on the market, who doesn't have to pay interest on his investment, who hasn't tied up his capital,

who isn't running a fire risk, and who doesn't have to complete his contract, except if he doesn't he loses 10%, don't you think that timber is worth more than paying cash for timber?

A You say, "Who doesn't carry a fire risk". Well, he does carry a fire risk.

Q He carries a fire risk to the extent he is cutting timber, deesn't he?

THE COMMISSIONER: Would it not be the extent he has an investment in the timber?

A Once he acquires that timber, he may start to construct roads andthe more roads he constructs the more investmant he has got.

MR. McPHERSON: Q: That is right, but as he constructs the roads he is taking out the timber and paying for the roads out of the sale of the timber?

A Quite so, but the roads cost himm a considerable amount and he figures out the cost per thousand to find out if he can get them out economically. Therefore, he has an interest in the fire risk.

Q Why would that make any difference in the comparison between buying timber on stumpage and cash? You have to build roads in both cases.

A Quite so.

Q Don't you agree that the man who buys timber for cash is not only taking a bigger risk but economically he is investing his capital and then he has to take the timber out, that he should get his timber for less than the man buying on a stumpage basis?

A If he has expended the cash, yes.

Q And am I correct that, generally speaking, in this Province, the difference between cash dealsd -- and I am not talking of thirty acres or sixty-seven acres; I am talking about fair sales of timber -- the difference between buying timber on cash and stumpage basis is generally speaking somewhere about twenty-five percent. Would that be fair?

A I think that difference is too great.

Q What would you put it at?

A Probably ten percent.

Q And you think they are only entitled to 10% in a timber deal where you have invested $100,000.00 cash, run all the risks of fire and everything else, and pay the taxes, as against a stumpage basis -- there is only 10% earnings on his money? A: I am not saying what you are entitled to. I don't think you could buy for cash 10% cheaper than on a time basis today or even back in 1942 and 1943.

Q If you were selling timber, would you expect to get 90% for cash as against terms over a period of years on a stumpage basis?

A Yes, if I had good timber.

Q If you had good timber?

A Yes.

Q If it wasn't good timber, you would get less?

A I probably would, yes.

Q Of course your decision would depend on the market, wouldn't it?

A Yes.

Q With respect to the figures given in Exhibit 24, do you know whether all these properties were logged whether the contracts were completed? A: I haven't any idea.

Q That would affect the value of statistics whether the people who bought the timber then let it go?

A It would, but, generally speaking, those contracts are completed.

Q Would I be correct that if I said that timber sales held by the Province that at times the bidders who are most affected get, shall we say, stubborn and bid prices far in excess of the real value of the timber?

A They do that. I don't think it is fair competition but they get their heads together and get it for less than its value.

Q Do you know of any case recently in British Columbia where Provincial timber, fir, was bid up as high as $17.00 a thousand?

A Yes, I do.

Q Do you know whether or not the people who got the timber allowed their deposit to go?

A I have heard rumours they did.

Q So it doesn't follow that when you have statistics produced by the Province that these contracts are completed?

A Well, that is one case.

Q You say this is a fair extract from the Provincial

records for 1943 of comparable timber to the Deep Bay Logging Company?

A Yes.

Q I suggest to you that you have taken the high sales and you haven't taken the low sales of comparable timber?

A That is correct.

Q So that this isn't really a cross section? These are high sales.

A Those are among the higher sales. I didn't take any of the very low ones.

Q Would you say the timber around Nanaimo was comparable to Deep Bay timber?

A Well, generally speaking, yes.

Q Would you say that timber in the Kootenay area was comparable to Deep Bay?

A Yes, much the same.

Q I would like to show you a sale, Mr. Byers, to Frank Bevan Lumber Company. Do you know them?

A Yes.

Q Here is a sale No. 32802, 112 acres, and I don't think it is necessary to put in all these statistics of the other species, but the fir was 1,509,000, and you notice that the figure is 2.75 for the upset figure and the tender was 2.75?

A Yes.

Q And the royalty was $1.22?

A No competition.

Q No competition on that. A: No.

Q I point out to you that on sale No. 2 in May ,

1943, on the statement you filed as Exhibit 24, there was competition and the price was $3.70, and you are suggesting that because there was competition they got a higher price, is that right? A: Yes.

Q And as a result of the competition you think that would give you a fairer price?

A I wouldn't say be prepared to say it would give you a fairer price. I would be prepared to say it would give you a higher price, which is proved, I think, in every case where there was competition.

Q I point out that on the basis of your own statement, that is the cedar show at Myrtle Point, I point out to you that I said to 16,000 to the acre, and you have agreed with me, haven't you, that heavy timber is worth more because it is cheaper to log?

A You mean a heavier stand of timber?

Q Yes. A: That is true.

Q Now, I show you another sale to W.W. Bakai of Courtenay. That is pretty close to the B. & N. timber, isn't it?

A They are operating north of the Seymour Narrows and also in the Courtenay area, but I don't think there is any timber sale in the Courtenay area that I am aware of.

Q Where do you think this timber was? Can you tell from that?

A No, unfortunately there is nothing in it to tell where it was, but I rather think that is on

Johnstone Straits above Seymour Narrows.

Q And that is No. 3929 and it is 142½ acres, and fir, 820,000 of $2.25?

A: Yes.

Q I again presume you point out there was no competition. A: I imagine there wasn't.

Q Well, there wasn't. I show you another sale to A. McGarrigle, No. 33392, 397½ acres, 1,485,000 fir at $2.25 plus a royalty of $1.22. Would you think that would be comparable timber? Do you know where it is?

A I don't know where it is exactly but I rather think it is in the Nanaimo district; knowing the operator. I wouldn't say it was comparable timber because if it is in the area I think it is, it isn't quite as good as Deep Bay.

Q It isn't quite as good as at Deep Bay?

A No.

Q You are familiar with the reports of the Forest Branch? A: Yes.

Q I produce this to you. I take it my learned friend doesn't object to filing this as an exhibit.

MR. BAIDWIN: No.

MR. McPHERSON: This is for the year 1942, my lord, and I am getting the years 1941 and 1943, which I understand are in the mail from Victoria.

THE COMMISSIONER: Yes.

(FOREST BRANCH REPORT MARKED EXHIBIT 1388-25).

MR. McPHERSON: Q: I show you page 34. Now, this shows, doesn't it, that in the Vancouver area the average sale price of Douglas fir in 1942 was $2.41?

A Yes.

THE COMMISSIONER: That is timber, is it?

MR. McPHERSON: Yes, Douglas fir.

A That's right.

Q And to that, of course, would have to be added the royalty? A: Quite right.

Q And would you agree with me it averages about $1.22 a thousand?

A Yes.

Q And the average price for cedar in 1942 was $2.64? A: Correct.

Q And what was the royalty on cedar, have you any idea? A: The same, $1.22.

Q And the average price of hemlock was $1.07?

A Correct.

Q And the royalty on hemlock?

A Sixty cents, I believe, at that time.

Q And balsam is shown here as $1.28 a thousand, is that correct?

A $1.23.

MR. McPHERSON: Yes. Your eyes are better than mine. My lord, while on this point, unless my learned friend objects, I have obtained the other figures from the only copy of the report that they had in the Vancouver office

for 1943 and 1944, and I will be filing those reports when I receive them, but in order that your Lordship may have them in your notes, I will read them.

THE COMMISSIONER: Yes.

MR. McPHERSON: 1943, fir, $2.47; cedar, $2.28; hemlock, $.94; balsam, $.93.

THE COMMISSIONER: Q: Was there any increase in the royalty between 1942 and 1943?

A No, my lord.

MR. McPHERSON: And in 1944, $2.57 for fir; $2.95 for cedar; $1.58 for hemlock; and $.64 for balsam.

MR. BALDWIN: I think my learned friend has made some mistakes.

MR. McPHERSON: I think the balsam should be $1.64, is that correct, Mr. Baldwin? Have you got the figures?

MR. BALDWIN: Yes. I did exactly the same thing as my learned friend did, my lord, only my figures are not the same as he gives for 1943. On fir I have $2.76 and cedar $2.95.

MR. McPHERSON: Has my learned friend the reports here?

MR. BALDWIN: Yes. I was going to file this for a different purpose.

MR. McPHERSON: I have the book for 1944 now, my lord, and I find that all the figures I quoted to your Lordship were high. It appears that the report the liquidator obtained by telephone, they must have been looking at the wrong line. I will give you the correct figures for 1944

and file the report as an exhibit. The Vancouver area, 1944, fir, $2.44; --

MR. BALDWIN: Will my learned friend indicate what page he is reading from?

MR. McPHERSON: 38.

THE COMMISSIONER: Will counsel get together on this and make sure you agree that these prices you are now giving are correct?

MR. McPHERSON: Fir, $2.44; cedar, $2.82; hemlock, $1.25; balsam, $1.21.

MR. BALDWIN: If my learned friend would refer to page 37 of the same report that is entitled "Average Stumpage Prices", etc., Douglas fir there reads --

THE COMMISSIONER: Just a moment. I will give counsel an opportunity to get together. We will recess for a few moments and it will give you an opportunity to check your figures.

(PROCEEDINGS RESUMED AFTER SHORT RECESS).

MR. McPHERSON: My lord, the confusion on these figures arises from the fact there are two schedules. One of them relates to the bids received by the Province for timber, the average price on the bids, and the other schedule relates to the receipts by the Province for timber but not necessarily the same timber. So it is impossible to say that in the year 1942 you can compare the two schedules in that report as applying to the same timber.

THE COMMISSIONER: The bids would seem to be the most

helpful, would they not?

MR. McPHERSON: Yes, my lord, and I would propose with my learned friend's permission putting in the 1942, 1943, and 1944 reports of the Forest Branch, and then read into the record --

THE COMMISSIONER: Instead of putting in the actual reports, it would suit me better if counsel could agree on an extract from those reports.

MR. McPHERSON: Yes, my lord, I think we could. I didn't know that my learned friend had this when we were discussing it, and I haven't had an opportunity to consider this schedule which goes all the way to 1947.

If your Lordship would permit, I would just read at this time, without putting in the reports, the figures, which we did show.

THE COMMISSIONER: Very well.

MR. McPHERSON: Then my friend can put in this schedule, if he wishes.

THE COMMISSIONER: All right.

MR. McPHERSON: 1942 bids received, fir, $2.41; cedar, $2.64; hemlock, $1.07; balsam, $1.23.

1943: fir, $2.76; cedar, $2.95; hemlock, $1.48; balsam, $1.42.

1944: fir, $2.57; cedar, $2.95; hemlock, $1.58; balsam, $1.64.

And the receipts --

MR. BALDWIN: If I might interrupt my learned friend, for your Lordship's notes perhaps it would be more convenient to have this now. There are some figures here per thousand on the fir

only. He has given the average in all species, and the range is also included in the Forestry reports; in other words, the lowest to the highest.

THE COMMISSIONER: Yes.

MR. BALDWIN: 1942, the range per thousand on fir, $1.50 to $3.00; 1943, $1.25 to $6.50; 1944, $1.60 to $4.50;

THE COMMISSIONER: Just what are these high figures?

MR. BALDWIN: The highest stumpage rate; the highest single contract.

THE COMMISSIONER: And that is all in connection with lands on which the $1.22 royalty was paid?

MR. BALDWIN: Yes, my lord, royalty was payable with respect to all this land.

MR. McPHERSON: The receipts: 1942, fir, $2.29; cedar, $1.95; hemlock, 98¢; balsam, 79¢.

1943: fir, $2.47; cedar, $2.28; hemlock, 94¢; balsam, 93¢.

1944: fir, $2.44; cedar, $2.82; hemlock, $1.25; balsam, $1.21.

THE COMMISSIONER: Just what do receipts mean? Is that actual payments?

MR. McPHERSON: Mr. Byers, I think, could advise your Lordship probably on that.

THE WITNESS: My lord, as far as I can understand, they take the log scale of all the timber sales which are operating in that particular year and then they figure up the stumpage price on those timber sales, and they get a different average from the timber sales which were sold,

and in which the bid is indicated. A timber sale that was probably bid for and bought this year might not be operated on until next year or the following year.

THE COMMISSIONER: I follow you. So that the bid prices are really the most significant in terms of what the market was in a particular year.

A Yes.

MR. McPHERSON: Q: In giving your evidence today you were talking about the price of standing timber skyrocketing and you suggested to his Lordship that it started to sky-rocket about 1938 and you gave your reasons. Can you tell me what the going price of standing timber in 1938 was in the E. & N. timber belt?

A Are you referring to the E. & N. timber or private timber?

Q You have stated you have no information about p private timber. Could you give me the E. & N. price? A: Only by hearsay. I have no way of proving it.

Q Well, from hearsay what is your information? This is in 1938. A: My information at that time was that timber was selling from $1.00 to $2.00 a thousand.

THE COMMISSIONER: Would we not be on safer ground if you wrote to the E. & N. Company and asked for this information?

MR. McPHERSON: We are going to produce evidence on it, but this witness has been giving evidence

as to his knowledge and I was trying to find out whether or not he knew what timber was selling for.f

THE COMMISSIONER: I think Mr. Byers quite frankly said he didn't know as far as the E. & N. were concerned, and I take it the figure you gave just now was a guess or the best recollection you have.

THE WITNESS: Approximately, my lord.

MR. McPHERSON: What I am trying to arrive at at the moment is the question of sky-rocketing of timber prices should be tied into some knowledge of the going price at the time.

THE COMMISSIONER: All right, you may go on.

MR. McPHERSON: Q: Instead of going back to 1938, let us take 1942 to 1944. Would you say the prices were sky-rocketing in 1942 to 1944?

A I would say, generally speaking, that stumpage prices were on the upgrade.

Q The figures just put in -- I show you the statement -- don't they indicate that the prices were not rising to any extent?

A Quite so, but unfortunately these figures are not a true picture of the story for the simple reason that whenever you get a number of bids, you may get one or two that they bid abnormally high on, and they may be sold at those high rates and consequently that throws your average rates out considerably; and the same thing applies if there is no competition and the bids are comparatively low

for a period of time it throws your average lower than the rate is.

THE COMMISSIONER: Q: But is that a complete answer, Mr. Byers? Is not this the situation: Assuming there was a great demand for standing timber, would not one expect, regardless of the conditions you refer to, higher prices?

A Yes, that is what I mean, trying to influence, my lord, ~~-~~ the prices were stiffening and going higher during 1943 and 1944, but these Government sales are not a true reflection of what the going stumpage prices were because of those conditions obtaining. There was no competition in a great many cases and in a great many cases the timber was of poor quality, that is on a small area. In some cases I know myself, it would never have been taken out except it was handy to the logging operation. On good timber sales the price undoubtedly had a tendency to go up.

MR. McPHERSON: Q: Would you agree with me that your criticism of these figures read into the record is also a fair criticism of this Exhibit 24?

A The same thing would apply.

Q In other words, do you agree that Exhibit 24 doesn't really represent the true value of the timber? A: It doesn't represent the true stumpage value, no.

Q It was both Government timber and E. & N.

timber? Would you go so far as to say that the Government and the El & N. Company were both giving away timber, figuratively speaking?

A No.

Q Would you agree with me that they were selling at a reasonable price?

A They were selling at a price which they considered fair on which, with no competition, they were compelled to sell.

Q Do you know Mr. Hunter of the Lake Logging Company?

A Very well.

Q Would you say that he knows the value of timber?

A I think hedoes.

Q Would you say that his company in buying timber would strike a fairly good bargain?

A I am quite sure he would drive a hard bargain.

Q Would you say that in selling the company timber he would get as much as he could out of the timber?

A: I would say so, yes.

Q With respect to yourstatement to my learned friend about the efficiency of the Deep Bay operation, I take it you were referring to the efficiency of the management and not necessarily the efficiency of the operation as a logging operation? Would that be correct?

A Well to the efficiency of the logging that was being carried on.

Q Would you say that the railway operation was

an efficient operation?

A Yes, as far as I could say it was efficient.

Q So when you speak of the efficiency of the operation, you are not talking of the effieiency of the men directing it and managing it, but about the efficiency of it from the logger's point of view?

A Yes.

Q If it was an efficient organization and an efficient operation, would you expect it to make profits? A: Yes.

Q And if it didn't make money, would you say that was some indication that it wasn't so efficient? A: Well there might be many factors enter into that. It could be possibly they wouldn't make money due to certain causes which were beyond their control.

Q Such as the increase in the cost of labor?

A Yes, and danger from fire and flood, and so forth, and such circumstances over which they had no control.

Q In this particular company I don't think there has been any evidence that they had any fire. If this company wasn't making money under the conditions which you have described as existing in 1941 and during the war, when you have stated things were booming, prices s sky-rocketing, would you say they were an efficient organization?

A Well, ordinarily I would say they should have been making money at that time.

Q You think they should be making money ?

A Yes.

Q Would you agree with me, from what you have seen of the Deep Bay operation, that when Mr. Kagetsu was operating, he would take out the best timber he had?

A Well I am not prepared to say whether or not he did. I do know he took out some good timber especially in the early years of his operation, but it was a shorter haul, but I still think the timber left in the area was capable of being taken out at a profit.

Q And as a practical man in the logging game, if there was no timber other than the Deep Bay timber which the company owned, would you say this operation had become a clean-up proposition?

A Not with the amount of timber left in the area.

Q You wouldn't say it was a clean-up operation?

A No, I would say it was still a going concern.

Q 27 million feet? A: That is a lot of timber.

Q Have you any idea how much they were cutting a year?

A No, I can't recall but I would say on the average they would be cutting -- making a guess -- around ten million a year.

Q Then if he was cutting ten million a year,

this operation at the most had three years to go. Isn't that pretty much of a clean-up proposition?

A I know lots of people who would be glad to get a piece of timber for three years.

Q Could you tell me what the date of the Sloan Report was?

A I think 1943 or 1944. I should know. I was on it.

THE COMMISSIONER: I think 1944.

MR. McPHERSON: Q: Would you say before the Sloan Report was issued, it was not customary in big operations to cut small trees?

A No, I wouldn't say it wasn't customary. I would say it was customary even in big operations.

Q About cutting these 12-inch trees -- I think you got it down as low as ten inches?

A Yes.

Q How big are piles? What diameter are they?

THE COMMISSIONER: You are speaking of the butts?

MR. McPHERSON: Yes, I am speaking of the butts.

A Unfortunately we don't measure piles by butt. We measure them by top measurements up to five or six inches and beyond, up to eleven to fifteen inches--from five inches to fifteen inches top measurement.

Q Some of the logs would be in the category of piles, wouldn't they?

A There is no difference between a pile and any other log. It depends on the size. The

only reason they are cut as piles is for a special purpose.

Q With respect to these operations you have talked about, would I be dorrect if I suggested to you that a lot of these operators cutting small timber were cutting on the property with small mills in the woods?

A Some were and some were not.

Q Wouldn't a lot of the small timber go into ties?

A Yes, but there was a lot of timber too small for ties cut into two by fours.

Q Taking a big operation, if you have a stand of big timber and you have got some small timber, such as the case you gave today of 52,000 to an acre, with only a few thousand below 18 inches, -- I think you even suggested here that a lot of that timber was over 18 inches, -- if a big operator puts in heavy equipment and heavy donkey engines and tractors, and so on, is it economical from his standpoint to haul small logs as against big logs?

A Well it is more costly to log the small timber. On the other hand, if you get to big timber, it is just as costly to log that. It is the medium size timber that is ideal for logging. This small timber is taken out in three lengths, and consequently they can haul that small timber economically in three lengths where you couldn't boom it into logs.

Q Wasn't most of this small timber cutting from 1935 on -- wouldn't you agree with me most of that small timber would be cut by operators who had a stand of small timber?

A No. These big operators like Bloedel, Stewart & Welch and MacMillan -- the evidence is easily got from the Forestry Service Office -- the later situation will show they had logs 9 and 10 inches in diameter.

Q What year was that?

A Ever since 1936. I would go further back than that

Q Would you say that the H. R. MacMillan Timber Company and associates were cutting logs 8 or 10 inches at the butt in 1936?

A Yes, I think I would be correct in saying that, although my information is and my personal knowledge is that it was a little later than that when they actuall went into the business of cutting small timber on an extensive scale.

Q Wouldn't you agree with me that the big operators with heavy equipment didn't cut what we would call small timber, say 18 inches breast high, until the price of lumber and the price of logs, the ceiling was lifted, and it was only then that it became economical for the big operator to bring out little logs?

A Generally speaking, the big operator logs his land cleaner than the small operator, and he took as much of the small timber as it was economically possible for him to handle, and one

of the reason why he did that was because, as I said before, for the last 30 years the Forest Service has been continuously pounding at the logging operator to utilize all he could. This is not a thing of the past three or four years. It is a thing of the past 30 years and has been getting better every year.

Q When did the reforestation program start in this province? A: In 1920, they started to make these surveys of the timber and lay their plans for reforestation.

Q Isn't it true that the purpose of the Sloan inquiry was to find out how to make better utilization of the timber in this province?

A Quite so.

Q If all this knowledge was available before, why do you suggest they had the Sloan inquiry?

A Simply because public opinion demanded it.

Q But public opinion was already informed that the loggers had reforestation program; prior to that they were cleaning the land clean. You have suggested MacMillan was cleaning the land clean.

A I didn't suggest that at all. I said they started in about 1936 and 1937 to take out as much of the small timber as was economically sound for them to take out.

Q For the first time we have got the real point -- as was economically sound to take out.

A Yes.

Q When did it become ecnomically sound for a big

operator with big equipment to take out trees down to 10 inches? A: It was just as economically sound in 1920 as in 1944.

Q Was it economically sound in 1920?

A Absolutely.

Q And was it economically sound in 1941?

A Absolutely.

Q And in 1942? A: Yes.

Q And in 1943? A: Yes.

Q I take it from your evidence that pretty nearly everybody in this province from 1938 on -- you go back to 1920 now, but let's take 1938 -- from 1938 on, are you suggesting that these loggers as a general policy were taking out trees down to 12 inches breast high?

A As a general practice, yes.

Q And started taking them out even smaller than that? A: Some of the smaller operators, with small mills.

Q Where were they selling all these little logs?

A In Vancouver.

Q Who was sawing them?

A Various mills.

Q How many Swedish gang saws were in Vancouver in 1920? A: None at that time.

Q How many in 1938? A: You don't require a Swedish gang saw to cut a small log.

Q In 1938, how many were there?

A I couldn't tell you offhand. There weren't many.

I wouldn't say there are a dozen in British Columbia today.

Q You stated this morning you made some inquiries and ascertained there were six Swedish gang saws out of 1600 mills.

A Yes.

Q Do you know the Hillcrest Lumber Company, established near Duncan?

A Yes.

Q Was that a tidewater mill?

A No.

Q Was that a mill in the woods and they were sawing their own logs?

A Yes, they were sawing E. & N. timber.

Q Would you agree with me that when the Hillcrest Lumber C ompany brought in that Swedish gang saw, it was considered quite an innnvation in this province? A: Yes.

Q What would you say is the percentage of loss for the saw kerf of an ordinary headsaw?

A Well, on the ordinary headsaw, with a standard 3/8th gauge,it is 27%.

Q That is, on an ordinary head saw?

A With a 3/8th gauge.

Q And what is the saw kerf with a Swedish gang saw of similar type?

A I think 3/16th, as near as I can remember.

Q 3/16th %? A: 3/16th inch gauge. Pardon me, were you asking the percentage of the saw kerf?

Q Yes. A: I can't tell you, because I haven't figured it up, but if it was a 3/16th it would be double 27%.

Q You mean there is more saw kerf from a Swedish gang saw? A: I mean less saw kerf from a Swedish gang saw. It would be half.

THE COMMISSIONER: Q: When you say 27%, what does that mean? A: 27% of the sound wood in the log.

MR. McPHERSON: Q: With respect to these pony mills you mentioned and said they could be used for a similar purpose, isn't it a fact that pony mills and other mills in the Vancouver area are generally used for cutting timbers after they have been cut out of logs and are not used to cut the logs? A: No, that is not true.

Q You agree they are used for the purpose of cutting timbers? A: No.

Q Do you agree that was the original purpose for pony saws? A: No.

Q You don't agree with that?

A No.

Q What would be the saw kerf in a pony mill?

A Well, some of them are bandsaws and some are circular saws. As a rule, the circular saw is 3/8th and the bandsaw is 3/16th.

Q What would that work out to?

A The same percentage.

Q As the Swedish? A: No.

The percentage of the 3/8th saw kerf is 27.27%.

Q That is a pony mill?

A No, that is a standard gauge. It may be a pony mill. It could be, if a circular saw, but if a bandsaw, they use as a rule 3/16th. Then the saw kerf would only be half of the circular saw.

Q So the saw kerf would be the same as from a Swedish gang saw? A: Yes.

Q Do you suggest they were cutting small logs in the pony mills? A: Absolutely.

Q Then why was the Swedish gang saw considered such an innovation?

A It has certain advantages. When I refer to the pony mills, they were erected and in operation before the Swedish gangs came in. The only difference between the Swedish gang saw and the pony is that the Swedish saws saw a truer board; in other words, it has a tendency to travel straighter than a band saw or a circular saw.

Q Can you explain from your knowledge of logging why it is that there are not more Swedish gang saws in this province, if it is profitable to cut these small logs?

A I suppose that one of the reasons for there not being more Swedish gang saws is because there hasn't been a great many mills erected in the past ten years in this province. There has been one or two; and the Hillcrest Company and the Lake Logging Company had a gang saw which

they sold, I believe this year. There hasn't been a great deal of new mill construction, except in Vancouver, small mills.

Q But you say that a gang saw isn't suitable for a big mill. A: No, it isn't. A Swedish gang will only cut from 35 to 40 thousand in an 8-hour shift. For instance, when you use a Swedish gang saw, the whole output of your log is slash grained.

Q So they have some disadvantages too?

A Yes, but they are really an improvement over the old method of sawing small logs.

Q You agree with me that you would only saw small logs, if there is a good market for lumber?

A It depends on conditions.

Q Good economic conditions?

A It depends. If you have a good local demand for lumber, you can saw small logs and make money.

Q With respect to the overruns indicated on these charts, Exhibits 22 and 23, what might be taken as overruns by some people, would you agree with me that some of that overrun would be accounted for by the cruiser not having taken into account trees below 18 inches?

A In relation to cruises, now?

Q Yes, the general picture of cruising timber. Perhaps I should ask you this first: Would you agree with me, generally speaking, the cruises made in this province by reputable timber cruisers are, as a general rule, considered conservative?

A Yes.

Q Do you agree with me as a general rule the industry, in buying standing timber in this province, pays on stumpage.

A Generally speaking, yes.

Q Do you agree with me that timber cruisers, in cruising timber, cruising 18 inch timber in 1944, they would put smaller timber in as No. 3 grade?

A No, because they don't do that.

Q What do they do? A: They cruise that, as a rule, from the other stand of timber. Most cruisers cruise up to 18 inches, d.v.h., and then they show the quantities below 18 inches, d.v.h.

Q And they don't just put that quantity in with their grade 3? A: No.

Q Would you say that is the way they were cruising timber in 1939, 1940 and 1941?

A Yes, that was done at that time.

Q With regard to the mills operating and cutting lumber in this province, would you say that the mills today are not getting as large an overrun from their cut as they were before 1943?

A No, I wouldn't say that. I think it would be similar today as five or twenty years ago.

Q And you don't think there is any difference between up to 1943 and the present time?

A No.

Q You left the Government in 1947?

A Yes.

Q I take it from your last statement that you would not agree with me that the scaling of logs is more favourable to the logger today than it was prior to 1943?

A No, I don't think so.

THE COMMISSIONER: Have you considerably more ground to cover?

MR. McPHERSON: No, I am just about finished, my lord.

Q I show you these Provincial records again and I show you a sale to the Brown Logging Company, Haney, in which there was competition, and the sale is No. 33815. It is mostly hemlock, 300,000, fir, 40,000 at $2.75, and there was a bid of $6.50. A: Yes.

Q Do you know Mr. Brown of the Brown Lumber Company?

A Yes.

Q Is that Mr. Fred Brown?

A No.

Q What Brown is that -- J. L. Brown?

A Yes, that is correct.

Q Would you say that Mr. Brown is a man who wouldn't like to be outbid?

A Knowing him, I don't think he would bid an unreasonable price. I think he would use discretion.

Q From the statement you just read, that is a small block of timber? A: Yes, a fairly small quantity of fir. He could very well bid $6.50 on the small quantity in order to get a large amount of the other timber there.

Q In these figures my learned friend gave of the price range, I notice he refers to 1943, $1.25 to $6.50. A: Yes.

Q You went all through these records in making your extract? A: Yes.

Q Do you recall having found any other than that one sale of $6.50 in that year?

A Offhand, I don't remember, but I think there was one in there with the price of $8.00.

Q Fir? A:I don't recall whether fir or not.

Q That couldn't have been in that year, because the Government figures say it was $1.25 to $ 6.50.

A No, it wouldn't be in that year.

THE COMMISSIONER: For your information, the Sloan report was published December, 1945. Any re-examination?

MR. BREWIN: I have one or two questions.

THE COMMISSIONER: Would you prefer to leave it until the morning?

MR. BALDWIN: Mr. Byers is going to be here in any event.

THE COMMISSIONER: If Mr. Byers is going to be here in any event, you can leave it until the morning.

MR. BALDWIN: There is only one point. My learned friend, early in the cross-examination this afternoon, introduced some figures which Mr.Wray prepared for him, I think, as to the average yield per thousand, the average number of thousand feet per acre, and said it worked out to

8,000 feet per acre.

THE COMMISSIONER: The statement was made, but I do not recall any document having been put in to establish the fact.

MR. McPHERSON: I took it from the exhibit. I took the figures from the document, and I understand from Mr. Wray they are correct. I added up all the blocks and took the average. I understand that my learned friend has done it on a different basis, but I was dealing with the average.

MR. BALDWIN: Ours are considerably higher, the way we do it. 198 shows 20,000; 234, 21,000; 256, 19.6 thousand; 276, 20.1 thousand; 263, 15.6 thousand; 267, 19.3 thousand.

MR. McPHERSON: If my learned friend wants to put in evidence on those other blocks, that is agreeable to me, but I am only talking about three blocks of timber, where most of the Deep Bay timber is, 617, 566 and 504, and I averaged that timber. Now, he is talking about the other blocks of timber. I am talking about the timber there at the time the Custodian took over.

MR. BALDWIN: I misunderstood my learned friend.

THE COMMISSIONER: Very well, We will adjourn until ten o'clock in the morning.

(PROCEEDINGS ADJOURNED UNTIL NOVEMBER 19,1948, AT 10:00 A.M.)

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

Deputy Official Stenographer

IN THE MATTER OF THE JAPANESE PROPERTY CLAIMS

B E F O R E

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

Vancouver, B.C.,

November 19th, 1948.

Ryers. re-exam 357-363, 449-452.
re-cross 452-462.
allison chief 363-371.
cross 371-394.
re-exam 394-398
re cross 398-420
clement. chief 421-434
cross 434-442
re-exam 442-447.
Winter chief 447-449.
Kagetsu- cross 462-479
re-exam 480

CASE NO: 1388

IN THE MATTER OF THE CLAIM OF THE DEEP BAY LOGGING COMPANY.

PROCEEDINGS AT HEARING

(Pages 356-480)

The Commissioner.

Vancouver, B. C.

November 19th, 1948 10.00 a.m.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Is Mr. Byers still in the witness box?

MR. BALDWIN: Mr. Fox of the Forestry Department is here, my lord, with some documents which he wishes to deliver into your lordship's custody.

MR. E. P. FOX: I am producing here some tally sheets on scale bills which I have been asked to put in the custody of the court.

THE COMMISSIONER: These are records of the Forest Branch are they, Mr. Fox?

MR. FOX: Yes, my lord, and we would much appreciate it if we could get them back at the earliest possible date, because they are the only ones there are.

THE COMMISSIONER: Could counsel have them copied, and these originals can be returned to the Forest Branch as soon as possible. I won't be able to deal with them for some little time, because I understand I am not to have the argument until later on.

MR. BREWIN: My lord, my suggestion would be that if we could wait and see what parts, if any, of them are going in and will be referred to, then those parts can be copied. It would be quite a task to copy all of them. A lot may not appear to be relevant.

THE COMMISSIONER: Mr. Secretary, I will direct you to take particular care of these documents, and see

they get back to Mr. Fox as soon as possible. You had better not put the exhibit mark on them at all.

WILLIAM BYERS, resumes stand, testified further as follows:

RE-EXAMINATION BY MR. BREWIN:

Q Mr. Byers, I have just a few questions in re-examination. I note Exhibit 25 that was put in was an extract from Forestry reports showing the average paid for sales on standing timber. What I wanted to ask you was whether there was any reason why we , in considering the Deep Bay property, should consider the average as a guide, or whether we should take the Deep Bay as higher or lower than the average.

A The For est Branch records are not comparable in this respect, that they are for much smaller areas of timber, and also, in many cases they are marginal stands of timber, adjacent to current logging operations, and for that reason they were sold at the appraised stumpage, which in my opinion is not comparable to stands of timber such as the Deep Bay Logging operating, which should command a higher stumpage rate.

Q You made one statement to my friend that perhaps you would like to explain. You said in preparing Exhibit 24, I think it was, which was an excerpt of various sales that had been made that you had secured from the records of the Forestry Branch, you picked out the higher sales and left out some of the lower sales. What was the reason for that?

A Well, just that I picked what was in my opinion

more comparable to the quality of timber which you would find on the Deep Bay operation. I didn't deliberately leave out the smaller operations, except for this reason, that they were very small. There was no point, consequently, in my opinion they do not represent the true sale value of the dumpage at that particular time.

Q Then another matter that my friend asked you about what the process that has been suggested of trucking to a railway, I understood it. He asked you, I think, something about that. Can you, first of all, perhaps, tell us whether that operation of combined trucking and use of railway is followed at all? A. Well, joint railway and trucking operations are in use today and have been in use for many years. I know of several operations where the logs are brought from the woods to the main line of the railway and hauled to the mills or to salt water by the railway. That is standard practice, and not excessively costly.

THE COMMISSIONER: Q; Now just a moment. Would you not be reversing the process, in this instance? The suggestion, as I have understood it, is that the hauling by truck would be from woods to the main line ? A. Yes, my lord, that is so.

Q That is reversing the process to which you have referred. You spoke of hauling from the main line to salt water? A. By rail, your lordship.

Q Where does the trucking come in?

A The trucking comes in at the rails head, in the woods. In other words you truck the logs to the railhead, and load them onto the cars, then haul them to the salt water, or to the mills.

MR. BREWIN: Q: Is it a very costly, or uneconomic process to reload the logs from the trucks onto the railway?

A No, it is standard practice. It is standard logging practice, even today, in British Columbia. In some instances logs are hauled by a truck to a lake, and hauled down the lake and loaded on the cars and then hauled to the salt water or to the mill, as the case may be, and in one particular case I know the logs are trucked to the railway and loaded directly onto the cars.

THE COMMISSIONER: Q; Of course, every handling means additional cost, doesn't it?

A Y es, my lord.

MR. BREWIN: Q: I suppose, of course, the question of whether it would be economic to do that would depend on whether the margin of profit was such that the extra cost made it uneconomic?

A I don't think there is any question of the economics in it, because , as I say, it is done every day. I can name certain operators that are doing it at this moment.

Q In giving evidence, as I replied to my friend's question, you spoke of the smaller timber being logged back to a period when I think you said a change of utilization became pronounced, in 1938.

and you referred to the tally sheets. In giving your evidence in that, did you have access to tally sheets to check on that?

A No, I had no access to the tally sheets, except for my own recollection of tally sheets that passed through my hands for the last twenty years.

Q Now I understand that Mr. Fox has brought here a number of tally sheets. I wonder if you would look through them and tell us whether they bear out what you have said in respect of this or draw attention to anything in them that bears out what you said.

THE COMMISSIONER: Will you bring out, in the first instance, Mr. Brewin, how these particular tally sheets were selected.

MR. BREWIN:Q: Do you know, Mr. Byers, how these particular tally sheets were selected?

A Yes, my lord. I went down to the Forest Service office this morning and asked them to take out a few tally sheets from the years 1936 to 1944, inclusive, that showed the smaller size of logs being logged.

The time was very limited. There was no time to make any discrimination. I didn't have time to stay there and see them picked out, and I haven't had access to them and I don't know about them.

MR. McPHERSON: On the question of these tally sheets, my lord, I would like to ask your lordship if I

would have the right to cross-examine on these tally sheets, because I consider them to be new evidence. This is not re-examination at all.

THE COMMISSIONER: Yes, you will have the right.

MR. BREWIN: May I ask the witness to look at these tally sheets and tell us what they show in regard to this point, if anything.

THE COMMISSIONER: Yes, proceed.

Q Perhaps it would be more satisfactory from every point of view, if you had a little time, Mr. Byers. I can stand you down in the meantime.

A My lord, I can explain this very briefly. It is just a question of logging down to a low diameters, and the evidence is plainly on the face of these tally sheets. For instance this tally sheet, which is numbered 316534, has a considerable number of logs between the diameters of 10 and 18 inches.

Q Would you come up here, Mr. Byers, and point them out to me? A. These figures along the top here are the diameters, and these are the lengths. That one commences at ten-inches, and between ten and eighteen is a considerable quantity of timber, and this one goes down to nine-inches and the same thing applies there is a very considerable quantity of timber logged there. I don't know who logged these, and I am not interested. It is just to point out the fact, my lord, that it has been practiced along with that type of timber. This one goes

down to nine inches.

Q What is the date? 1945?

A That is 1945, my lord. This is the Stoltz Logging Company. It goes down to nine inches. This is another one which goes down, with a considerable quantity, at nine-inches. That one is the same. That one goes down to eight, my lord.

MR. McPHERSON: My lord, might I ask that Mr. Byers, who is explaining this sheet , that I can't see at the moment, that he might state what the years are on the right-hand corner.

THE COMMISSIONER: They are all 1945.

MR. McPHERSON: None are as of the time the Custodian sold this property?

THE COMMISSIONER: I have not seen any yet.

MR. McPHERSON: I was wondering what evidence this would be in this case? I heard in the evidence a moment ago that they were selected from 1936 to 1946.

THE COMMISSIONER: The earliest one I see is February 12th, 1944.

MR. MCPHERSON: I suggest then, my lord, they are not evidence at all in this case.

THE COMMISSIONER: It is a matter of weight.

THE WITNESS: Well, my lord, none of these go back beyond that date, and this isn't the information I asked for. The others are similar to what we have already produced but I haven't any doubt we could produce those if we had the time to produce them.

MR. BALDWIN: It has a probative value. The sale of

the Deep Bay operation was in March of 1944, as I recall the agreement for sale.

MR. McPHERSON: My lord, we will be arguing the date of sale. As I recall it the tenders closed at the end of August 1943, and that was the date the price was fixed.

The reason it was tied up in the signing of the documents was because of certain contracts.

THE COMMISSIONER: Even then, there are only two tally sheets dated as early as 1944.

MR. BREWIN: The fact is the department was asked to furnish this information and it hasn't provided the information.

THE COMMISSIONER: No one is overlooking that. If you can get other tally sheets all right, but as I see it these are of little value.

Thank you, Mr. Byers. If you want to recall Mr. Byers later to deal with this particular point you may do so.

(Witness aside)

WILLIAM JOHN ALLISON, a witness called on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Allison?

A 1485 Davie Street.

Q 1485 Davie Street, in the City of Vancouver?

A Yes, sir.

Q And what is your occupation?

A Logger and mill operator.

Q How long have you been in the logging business?

A Roughly, eighteen years.

Q Eighteen years, and in what area have you been conducting your logging business in that time?

A Well, pretty well all over the coast, but quite a bit of the time on Vancouver Island.

Q Vancouver Island. On what particular part of Vancouver Island?

A Well, we did have an operation at Nanoose Bay, back in 1944, through to 1946, and at the present moment we have an operation further north up in the Johnson Straits.

Q Did you have any logging operations on the east coast of Vancouver Island prior to the one you referred to at Nanoose? A. No, sir.

Q You say your logging operations have not been confined to Vancouver Island?

What do you say as to the nature of the timber which you have observed on the east coast of Vancouver Island, that is, the timber stands?

A Well, as a general rule they are considered very good merch. fir.

Q Very good -- ? A. Merch.fir.

THE COMMISSIONER: Q; Merchantable fir?

A Yes.

THE COMMISSIONER: I think we might relate the evidence to the E. & N. timber. That is all we are concerned with, is it not?

MR. BALDWIN: Very well, my lord. That is what I meant by the east coast of Vancouver Island.

Q In what belt lay the timber limit from which you were logging at Nanoose?

A They were originally E. & N. lines.

Q They were originally E. & N. lines?

A Yes, sir.

Q I see. A. What I mean by that is, we didn't purchase it from the E. & N. company, but we purchased from people who had purchased it from them.

Q It was a private sale of what had formerly been E. & N. timber? A. Yes, that is right.

Q What was the nature of the chance there of your operation?

A You mean the type of operation it was?

Q The nature of the chance. I understand that to mean the ease with which the logs can be taken out and the nature of the topography?

A Well, it was a very good logging show.

Q Are you familiar with the area around Fanny Bay and Deep Bay? A. Only in a general way.

Q Do you know anything of the quality of the timber which is cut in that area?

A Yes I know a certain amount.

Q How do you know that?

A Well, we have cut booms from the Fanny Bay area in our mill, and I have seen how those logs cut out.

Q From whom did you buy those logs, can you recall?

A Well, I believe the people that logged them was the

Union Bay Logging Company, but we purchased the booms through McMillan. I believe they acquired these booms in some manner from the Union Bay Logging Company, but we purchased them from McMillan when they came from the Fanny Bay area.

Q What have you to say with regard to their grade, first of all? A. Well, they were good. They were a little better than average.

Q And as to the quality of the timber?

A The quality and grade were both good.

Q When was this? When were these purchased? Over what period? In what years were those purchases of Fanny Bay timber for your mill?

A It was this year, the spring of 1948.

Q The spring of 1948? About how far is this operation of yuurs at Nanoose from Deep Bay?

A I would imagine it is roughly thirty miles.

Q In which direction?

A Nanoose is south of Deep Bay.

Q And how did you acquire this timber limit of yours at Nanoose? A. We purchased it from Charles McGargle.

Q And what was the stumpage you paid when you bought it?

THE COMMISSIONER: Q; When did you buy it?

A In 1944, my lord.

MR. BALDWIN: Q; And what date?

A It was April 1944. I think it was April 9th.

Q And what stumpage did you pay for it?

A Well, we didn't buy it on a stumpage basis. We bought it for a lump sum.

Q What was the basis of the purchase?

A Well, the basis of the purchase was that we had this particular block cruised, and the cruise amounted to 16 million feet. Then we eventually came to an agreement on $79,000, for the lump sum purchase of this block.

Q I see; cruised at 16 million, sold for $79,000. I believe that works out to $4.93 per thousand?

Have you ever run a logging show of a railway?

A Yes, sir.

Q Where was that? A. In the Queen Charlotte Islands.

Q How did you find it? Did you find it an economical show? A. Yes. Railroad logging is usually supposed to be very economical.

Q When was that? A. It was just prior to 1944. We started there in the late thirties, and went through until late in 1943.

Q Were there any other railway operations in that neighborhood? A. No, that was the only one on the Queen Charlotte Islands.

Q Now did anybody else use the right-of-way or use the rails you had laid there, other than yourself, to get timber out, I mean?

A Not exactly, although we did haul timber for other people on one or two occasions, but there was no one else ran their equipment on our roadbed, if that is what you mean by the question.

Q What was the other company you had the agreement with? A. It was the Pacific Mills.

Q The P acific Mills, and what was the agreement? You say they didn't supply their equipment? You supplied your own equipment, did you?

A Yes.

Q On what basis did you supply the equipemtn?

A Well, we hauled their timber at cost to us, and then we charged them, I think it was fifty-cents a thousand for the use of the road.

Q And over what length of railway line would that haul be? A. It is five and one half miles.

Q And as a logging operator you would assign to the use of a railway a value of what -- fifty-cents per thousand feet, on getting it out over a stretch of five and a half miles, is it?

THE COMMISSIONER: That is what he charged.

A I would think so.

MR. BALDWIN: I mean in general.

THE COMMISSIONER: Put the question to him. Well, I will.

Q How did you arrive at the figure of fifty-cents a thousand? A. The way we arrived at it was we used ten-cents a mile per thousand for the basis of figuring it.

Q And that figure was fixed arbitrarily?

A No. That was only our information of what it was worth, after we had made several investigations of what other people charged.

MR. BALDWIN: Q: And was this company -- I have forgotten the name of it -- was it the Pacific Mills?

A I am not sure whether it was Pacific Mills or the North Coast. I am not exactly sure which logging company it was. There was quite a mix-up at that time. That was when the war was on. I know it was Pacific Mills timber, but I am not sure whether they did the logging, or the North Coast did the logging. I am not exactly sure on that.

Q I see. Was it very much to the advantage of your company to give them this right of way, or were they forced to use your right of way?

A I mean, it wasn't to our advantage or disadvantage, really. We could do it, and we did it. I mean it wasn't a particularly attractive thing for us to do, but at the same time it wasn't a great burden.

Q Now, when the war begin, what happened to stumpage prices in British Columbia? That is, what was the trend? A. Well, from the time the war began prices were just starting to rise, and they continued to do so for about the length of the war.

Q And do you consider the price that you paid to M cGargle for the purchase of your timber in April 1944 -- are you sure of that date?

A Yes.

Q -- do you consider that a reasonable price? Do you think you got it cheap, or paid too much for it, or what do you think?

A We thought it was a fair price at the time.

Q Now suppose, Mr. Allison, that in the purchase of

that timber McGargle had made it a condition of a purchase that you cut and log immediately without the right, for example, to log later at your convenience when perhaps the market would be better. What effect would that have had on the price? A. I think it would have depressed the price. It wouldn't have been so attractive.

Q Why do you say that?

A Well, if a person wants to buy something they usually wish to be able to liquidate it, in the case of timber, at their convenience. You might not wish to log it during a certain period. You might wish to hold it, and if you are tied down by a contract where you are forced to log it within a given length of time, I think that that would not be advantageous, it would be the other way.

THE COMMISSIONER: You have put up a hypothetical situation here, Mr. Baldwin, that we are not faced with.

MR. BALDWIN: Yes, we are, my lord.

THE COMMISSIONER: The stumpage situation is not as you have put it. Are you seeking now to compare prices in the case of a stumpage purchase, as opposed to a cash purchase?

MR. BALDWIN: No, my lord. It is in evidence -- I don't know if it is already in, but the agreement for sale on which the Custodian sold these properties contained a condition, that it was a condition of the contract, and the letters on file will show

it was regarded as a very important one, that the purchaser go in and log these limits immediately.

THE COMMISIONER: Oh, I did not appreciate that.

MR. BALDWIN: That is what I was getting at.

Q By the way, Mr. Allison, what do you say about the relative merits of the timber stands on Vancouver Island and inother parts of British Columbia, with a view to accessibility to market?

A Well, the timber stands on Vancouver Island are readily accessible. I presume they would be more accessible than any others except the Lower Mainland.

MR. BALDWIN: Your witness. Thank you, Mr. Allison.

CROSS EXAMINATION BY MR. McPHERSON:

Q Mr. Allison, would you mind telling me how old you are? A. 35 years old.

Q And you have been in the business 18 years?

A Yes, sir.

Q Then you started very young?

A I did.

Q When did you finish logging in the Queen Charlotte Islands? A. December of 1943.

Q December 1943. When did you buy the timber at Nanoose? A. April of 1944. That was the actual date when we signed the papers. The negotiations had been started a few months previous to that.

Q Would you agree with me that logs were very hard to get in 1944, for sawmills?

A That is true.

Q Did you have any other logging operations at that time, in 1944, or just the Nanoose one?

A No. The simple reason is we had just sold out our interests in the Queen Charlotte Islands in December.

Q Would I be correct, Mr. Allison, if I said you bought the Nanoose timber for the purpose of logging it immediately, to supply your own mill in Vancouver? A. That is in effect what happened, yes.

Q And the Nanoose timber, I am correct, am I not, that it was particularly accessible to the Vancouver market? A. Well, yes and no. It is no more accessible than any other Vancouver Island timber.

Q Now, when you bought the Nanoose timber from McGargle, were there any roads in there?

A Yes, there were.

Q You didn't put a railway show in there?

A No, I didn't.

Q It was a trucking operation?

A It was a trucking operation.

Q Would you say that the price you paid, in paying that price you took into account the fact there were roads in? A. We had to purchase the roads.

Q You had to purchase the roads?

A Yes, but not from McGargle. He didn't own them.

Q What did you pay for the roads?

A I can't remember offhand, but it was a matter of

some thousands of dollars.

Q Would you say the timber was more valuable to you because there were roads that you could get into that timber by? A. Definitely.

Q And it was more valuable to you, because you needed the logs at that time?

A Well, I wouldn't say that that particular timber was more valuable because we needed logs. Any timber would be valuable.

Q Wouldn't you agree with me that timber on the market was hard to get in 1944?

A It was difficult, but not hard. It wasn't, until I would say 1945 or 1946 that it really became difficult. 1944 wasn't quite as difficult as the two later years.

Q Now when would you say the price of logs skyrocketed The real rise in the cost of logs came was it not, after the price controls were lifted?

A Oh yes, definitely.

Q That would be about 1945, wouldn't it?

A I believe it would be about 1945. It was after 1944, anyway.

Q Now, were you up in the Queen Charlottes yourself?

A Yes.

Q What about this railway operation? How much timber did you have up there when you first went in there?

A Well, we purchased a block of about 60 million, and that was right in front of timber holdings of the Powell River Company and the O cean Falls Company. They both together amounted to 400 or 500

million, after and/we had liquidated that first sixty million then we logged the timber of the Powell River and Ocean Falls Companies. We purchased it on a stumpage basis from both of those companies.

Q So, your railway show was a big operation?

A Yes.

Q Did you own a mill in Vancouver at that time?

A No.

Q When did you buy the mill in Vancouver?

A We built the mill in Vancouver. I believe it started to operate in 1944, although I am not quite sure of that. It may have operated in 1943.

Q There was a long period there after it was built that it didn't operate.

Q Did you ever cut any timber or logs in your mill in Vancouver that came from the Deep Bay property?

A Well, I wouldn't say the Deep Bay property, because I don't know for sure this pro perty you are speaking of.

Q You have never been on the Deep Bay property, to know it? A. No, I never have, no.

Q Would you say that a stand of timber that runs somewhere around 8,000 feet to the acre is a good stand?

A No, I wouldn't.

Q Would you say a stand of timber that runs 16,000 feet to the acre is a good stand?

A Round 16,000 I would say is a little better than marginal.

Q What would you say about a stand of timber that runs

52,000 to the acre?

A Very good.

Q Do you think there are many of them left?

A Yes, quite a few.

Q Where? In the Queen Charlottes?

A No, Vancouver Island.

Q What about this stand of timber that you bought? What would it run per acre?

A According to the cruise it would run around 16,000 to the acre, because as I remember there were a little over a thousand acres in the one block. The cruise was 16 million, but I think there was a lot of dead area in there. There were acres upon acres that had nothing on them, just bare rock, or very small timber that wasn't merchantable. So, I think the timbered acres would run around 25,000 to the acre. That is what I considered.

Q Would you agree with me if timber runs 25,000 to the acre it is a lot better to log than if it runs 8,000? A. Yes.

Q There were a lot of dead areas you say?

A There were a lot of dead areas, with no timber at all.

Q So, there wasn't any question of adding in those dead areas? A. No. You bypass them.

Q What about the unmerchantable timber you mentioned?

A It was too small. I mean, three or four inches in diameter.

Q This was in 1944? A. Yes. They are just about the size of Christmas trees.

Q Yes. How did your cruise compare with what you took

off? A. We took off more than the cruise.

Q Have you any idea approximately how much or what percentage it would run over?

A Well, ourselves, we logged bout 15,000,000 in 1944, 1945, and 1946 and then we sold the balance of that block to the Valdez Lumber Company and we estimated at the time there was about 5 million left on it. So it overran about 5 million over the cruise.-- about 5 million.

THE COMMISSIONER: Q; You bought it as 16 million?

A Yes.

Q And you say you cut 15 million and there was 5 left? A. It was really 15 and one-half. We thought there was five and a half left.

There was really 21 million, I think on the block, but that last figure on what we sold it was only an estimate. We didn't cruise it when we sold it.

MR. McPHERSON: Q; When you sold it was there a lot of small timber? A. No. Just what we hand't logged.

Q You just went in and took it all out as you went in?

A Yes. The Valdez Company didn't purchase the block with the idea of the timber that was on it. They purchased the block so they could have the right of way over that road. They owned timber behind it and wanted to start logging in a hurry, and purchased that block from us so they could have right of way on the road. It wasn't a straight timber purchase.

Q With respect to this overrun on your timber, would that be due in any way to the fact that mills were cutting smaller logs from 1944 on?

A It could be, but, I mean, it didn't make any difference to the way we logged it.

Q You logged it straight through?

A Yes.

Q But small logs were marketable, weren't they?

A Oh, yes.

Q What about in the year 1940? Were you logging in 1940? A. Yes, sir.

Q What size timber would you be cutting?

A V ery big.

Q Very big timber? A. Yes.

Q Was it a big operation that you had?

A It was a railroad operation.

Q Railroad operation. You had big equipment?

A Yes.

Q Heavy donkey engines?

A Yes.

Q Would you take timber down to twelve inches D.B.H.? A. No, we didn't.

Q How small would you go?

A Down to about eighteen inches D.B.H.

Q And that is in 1940?

A Yes.

Q What about in 1941? Did you change your method of logging? A. No.

Q With respect to the railway operation, did you ever cut with the railway operation below

eighteen inches? A. No, we didn't.

Q Would you agree with me that when you are running a railroad show it isn't practical to cut below eighteen inches?

A No, I wouldn't say that. The reason we didn't was because of our geegraphical position.

On the Queen Charlotte Islands it didn't pay us to cut the smaller timber because there was too high a transportation cost from there to where we sold them. I wouldn't say that was true of all railroad operations at that time, it was only true of ours.

Q Yes, but were logs down to ten-inches saleable in 1940? A. Yes.

Q You think they were saleable?

A Yes. I mean, we put in a small percentage of them that you naturally get whether you are cutting for them or not, and they were as saleable as any other.

It wasn't a matter of size for selling them, but we didn't choose to log them in the particular situation we were in.

Q If you have heavy equipment and a railroad show, does it pay to take out little logs?

A Generally speaking, yes.--

Q Generally speaking yes?

A -- but we were in the Queen Charlotte Islands, and the cost of making them up into deep sea rafts and the tow from the Queen Charlotte Islands to the Lower Mainland mills was the main reason we

didn't take that.

Q Those would be Davis rafts?

A Davis rafts, yes.

Q How many cars a day would you take out over your railway show? A. I think sixty would be a fair average.

Q Sixty? A. Yes, sir.

Q And what footage on each car, have you any idea?

A It used to average around 6,000.

Q So you were taking about 60,000 a day -- no, I am sorry -- 360,000 a day?

A Yes. We used to put in around between six and eight million feet a month.

Q What would you think about a railway show where evidence has been given that the average was somewhere around 32,000 a day?

A It might not have been as big a show.

THE COMMISSIONER: Q; What was that?

A It might not have been as big an operation as ours.

MR. McPHERSON:Q: No, it certainly wasn't as big an operation as yours. How many men would you have on your crew to take out 360,000 a day?

A It would be upwards of 300. About 325.

Q Would I be correct, as a rule of thumb in the logging industry, there is a general idea that you should take out at least a thousand feet per man per day? A. That is correct.

Q What would you think about a show that took out about 30,000 feet a day, and had 65 men? Do you think that is a very economical show?

A No, I wouldn't think so.

Q It is pretty difficult to make it pay if you have to hire 65 men to take out 30,000 feet a day? A. Only knowing that fact, without knowing any of the other factors, I would say, offhand, it wouldn't be a very good show, I wouldn't think.

Q This 50 cents a thousand that you were paid for the use of your railway, that was in addition to the overall cost, was it? That was a profit?

A It wasn't a profit, as much as we were amortizing our road at so much a thousand on what was hauled over it. We had more or less amortized the main line. That was just more footage hauled over it.

Q Well, would that fifty-cents a thousand, or part of that fifty-cents a thousand, represent the increase in maintenance cost , because other people were using your road?

A Partly, but the main idea was to help pay for the capital investment in that main line, spreading it over a period of years.

We usually charged on the basis of per thousand for everything hauled over the road, to eventually wipe out the cost of building it.

Q What about a railway show as compared to a trucking show. Would you say that trucking operations are more economical as a general rule?

A. No, I wouldn't say so, no.

Q Would it depend on the size of the show?

A Largely, yes.

Q And on the elevation of the timber?

A The main difference between a railway and a truck show, in my estimation, is the type of ground. There are certain types of ground that it is not possible, or feasible to operate a railway show because the grades are too steep.

Q So the elevation of the timber would have some bearing on whether you would operate by rail or by truck? A. Yes, that would be one of the main reasons.

Q If you had a railway show in, and at the end of steel you had to build trucking roads in and yard your logs anddrive yuur trucks down to the railroad and unload them, what would be your estimate to how much it would cost to yard in the woods, load them on the trucks and unload them at the rail end? Could you give any figures a thousand?

A I wouldn't care to, no, because costs have changed so much over the last few years. What it would cost back in 1944 definitely has nothing to do with what you can do it for nowadays.

Q You would agree it isn't as economic a system to adopt as to log straight by rail, or straight by truck? A. Oh, definitely not; but usually the reason why that is done is they haven't a railroad in, and they get back so far and they can't get into the other country, on account of the steepness of the ground, and that is usually the reason why they use the two systems

in the one operation.

Q But another advantage of the truck over the railway is its flexibility. It is easier to make truck roads than a railway road, isn't it?

A I wouldn't say that. Usually once a railroad is in it is better than a truck road.

Q But when it is in, it usually stays where it is?

A Yes.

Q Whereas a trucking road can be switched to new timber? A. You have to build a new road.

Q Do you think it costs as much to build a truck road as railway grade?

A I think they are comparable.

Q Do truck bridges have to be as strong as railway bridges? A. For modern logging, yes.

Q Wouldn't truck roads have a shorter haul, as a general rule? A. As a general rule. Very few railway operations that were put in didn't eventually get quite a long haul before they were finished. They started off with a railway operation with the idea eventually they would have to be longer operations, and that is why they were put in.

Q Would you agree with me in an operation which has a comparatively short haul, with a short supply of timber, you would be better off to put in trucks than a railwoad?

A That would be the common practice.

Q Have you any information on the price of standing timber in 1939 and 1940, and so on, and what the going price was for standing timber, generally?

A Well, prior to 1938 and 1939 for standing timber I would say the stumpage rate was around between $1.50 and $2.00.

Q That would be for fir?

A That would be for fir.

Q Would that be on private deals, or E. & N. land, or provincial land?

A I would say it was more or less the going rate in any field, around $1.50, $2.00.

Q As a logger have you ever been under the impression that either the province or the E. & N. Company were giving away timber?

A The E. & N. did on in the early forties. Sometime in the early forties the E. & N. found they were giving it away, by reason of the fact that their cruises were comparatively low. They had been cruise thirty or forty years ago and now they are re-cruising all the timber they own.

Q And on their recruises do you say the price of E. & N. timber-- the price they charged for their timber from 1940 on, was low?

A I wouldn't say their price was low, but it was sold en bloc for cash, or a lump sum. If it had been under cruised you would naturally get it cheaper.

Q When you speak of selling for cash --

A A "lump sum" per block is worth so many thousands of dollars. There was really no stumpage mentioned. That is the way it was usually sold. You purchased the land and all.

Q What would you say about the comparison of buying timber by stumpage and buying it for cash? Would you think a 25% discount would be reasonable in a big block?

THE COMMISSIONER: A what? 25% discount?

MR. McPHERSON: A 25% discount for cash.

Q That is, if you figure out the stumpage at so much a thousand on the basis of a cruise and then buy it for cash, do you think if you offered to buy it for cash you could get a discount?

A Definitely.

Q Do you think 25% discount is reasonable or unreasonable? A. 25% might be a good deal.

Q What percentage would you expect to get for cash, keeping in mind you will have to pay the taxes, and you will have to take the risk of fire, and invest your capital, and you are going to have to rely on the market? Taking all those factors into account, what would you say would be a reasonable discount?

A Are you referring to a straight stumpage purchase from private parties or from the government?

Q Let's take a purchase from the government.

A That is altogether different because there is a time limit to taking that timber off when you

purchase from the government.

Q But you can get extensions of that time ?

A No. You can only get a one-year extension, then it comes up for resale again.

The majority of timber sales are only put out for two years and then you are given a one-year extension, and then the sale lapses. There may be a further grace granted in certain cases, but certainly not in the majority of cases.

Q Would you say that it is not correct that people don't bid for provincial timber until they need it?

A That is very true. It is a senseless proposition not to do that.

Q You needed good cutting timber, so you made a deal with McGargle?

A We purchased it, but the deal was we could cut it when we wanted it. We could leave it stand for years. All we had to pay on it were very small taxes.

Q I thought you said you started to log in 1944, and finished in 1946?

A We did, in this particular case, but it wasn't a case of necessity. We bought the timber, and just started to log it. We could very easily have held it if we had wanted to. We didn't have to log it in 1944 if we hadn't desired to do so.

Q You didn't have to, but I suggest to you it was economical to log it in 1944, because the price

of logs started to skyrocket in 1945?

A We did purchase it with the idea of logging it.

Q When the price started to skyrocket, the mills that owned timber were in a better position to cut than mills who had to buy on the open market?

A I wouldn't say that, but the mills that didn't have a supply of logs had a difficult time to get logs to keep their mills going, but I don't think a great saving was made that way.

Q Didn't they have to buy logs on the open market? A. Yes.

Q You owned your own timber, and could charge the stumpage you wanted?

A Yes.

Q In theory, or theoretically you could buy logs cheaper? A. Yes, theoretically you could buy logs cheaper, but inpractice we couldn't have, I don't think, because we were purchasing logs at the same time, other than what we produced ourselves, and there wasn't a great deal of difference in the cost.

Q Let's go back to the provincial timber. If you are buying provincial timber what would you think would be a reasonable discount for cash, on the basis of provincial sale?

A I don't think they are very comparable, myself.

Q Then let's take the E. & N. timber. What would you think would be a reasonable discount for cash on the E. & N. timber?

A If you were allowed to purchase that on an acreage basis, I would think it would be worth roughly a dollar a thousand. I would be prepared to pay a dollar thousand more on the stumpage basis, than if you had to pay cash for it to start.

Q What about private deals? Would you pay the same?

A Yes, I would consider the E. & N. a private deal.

Q What was the going rate for extending E. & N. timber in 1941, do you know?

A I don't know.

Q You wouldn't know in 1942, then?

A No. I didn't know until we bought this timber from McGargle, and I understood at that time that you could buy E. & N. timber slightly less than that, but you couldn't get it, though. That was the main thing. At that time it wasn't on the market.

Q Yes. With respect to those cruises of the E.&N. which were low, as you have stated, having been made twenty years ago and so on --

A Yes.

Q -- there is considerable growth in twenty years?

A That isn't the main thing, though. The main thing is, twenty or thirty years ago they didn't cruise the timber. They didn't consider the timber was merchantable as small as it is nowadays. Therefore they disregarded a lot of timber as too small, but nowadays it is considered merchantable.

Q What size would you cut down to nowadays, in a cruise? What would you think would be reasonable? A. Down to around, oh, I would think twelve to fourteen inches, chest level.

Q Yes. That is the diameter breast high, eh?

A Yes.

Q Would you could down to ten inches?

A No .

Q Would you could down to eight inches?

A No, I wouldn't.

Q Do you agree with me that today there is an exceptional market? It is a very high market today? A. It still is, yes.

Q What about when the E. & N. made their cruises? Haveyou any idea as to what size of timber they were cruising twenty years ago? What would be the smallst diameter D.B.H.?

A I have been told they didn't take anything under eighteen inches.

Q Do you know the Cowichan Lake district?

A I havebeen in the Cowichan Lake District, yes.

Q I show you a map of Vancouver Island, Exhibit 4. Wouldyou just look at this map? This case involves Block 195 which you see marked here (indicating), and the evidence given by the claimant is, he was going to log that and haul to Lake Cowichan, then presumably load there.

A Yes.

Q What would you estimate was the fair amount to take

off for the stumpage on that haul?

A Well, how far is the haul?

Q I think Mr. Kagetsu told us the haul. Well, I rouhgly estimate it would be five or six miles, and then from Lake Cowichan to Tidewater is about twenty miles, or over twenty miles.

THE COMMISSIONER: This map is scaled four miles to the inch.

MR. McPHERSON: Yes, my lord. Well, it might be more than that, my lord. It might be closer to ten miles. It is about seven miles in a straight line, but I would think from there to tide water is about twenty.

THE COMMISSIONER: Your question was directed to the cost of hauling to Lake Cowichan, was it not, from block 195?

MR. McPHERSON: From Block 195 to the head of the lake there (indicating).

THE COMMISSIONER: That looks like about two inches. That would be eight miles.

MR. McPHERSON: That is, eight miles in a straight line.

Q Assuming it is eight miles, now, I point out that you are hauling from Block 195 to the head of the lake, and there you are putting the logs on either the C.P.R. or C.N.R. and hauling to tide water, something around twenty miles.

Before you answer the previous question, have you any information as to how much the C.N.R. charge per thousand to haul logs?

A No, I haven't.

Q What would you think about the stumpage on timber on Block 195 in 1944, if you were going to have to build a road in and haul that timber to the head of the lake -- in 1943, rather -- 1943?

A That stumpage would rouhgly be the same stumpage as any other stumpage in that area, taking comparatively.

Q Assuming we compared it to Nanoose?

A I would think it would be comparable. The timber we purchased at Nanoose was seven miles from salt water. We had a seven mile haul.

Q But you had roads up to the edge of the timber?

A Yes.

Q So from the standpoint of stumpage on 195 what would you allow on the haul? 50 cents, a dollar or $1.50?

MR. BALDWIN: I don't think there is any evidence as to there being no roads up to the timber in block 195. The picture presented by my friend is a little inaccurate, my lord.

MR. McPHERSON: The claimant has put in his case, and given his evidence, and he hasn't said there were any roads. He has admitted it was unopened. It isn't up to the government to prove there were roads there.

THE COMMISSIONER: If there are roads, you had better find out, Mr. Baldwin, and let me know. Certainly the evidence to date does not indicate there has been anything done to open the timber.

MR. BALDWIN: Not into the timber, but the timber itself

is in a block.

THE COMMISSIONER: Yes.

MR. BALDWIN: And my friend is assuming there were no roads into the block, or rather into the edge of the block.

THE COMMISSIONER: There is some evidence, Mr. McPherson, that Block 403 had been logged, in part.

MR. McPHERSON: I understand it was logged, but whether it was by railway, or by truck, or whether the roads are in --

THE COMMISSIONER: If you are going to put a hypothetical question, it should be based on some facual foundation.

MR. MPHERSON: Well, my lord, I will drop that line of questioning then, and put in evidence on it.

Q Have you a Swedish gangsaw in your mill?

A No, sir.

Q Have you a pony mill? A. No, sir.

Q What would you say about the cutting of logs in 1940? That is the cutting of standing timber of the diameter D.B.H. that it would be customary to cut in 1940?

THE COMMISSIONER: What minimum diameter?

MR. McPHERSON: What minimum diameter.

A Oh, I am not sure of the D.B H., but I would say about ten inch top diameter would be about average.

Q In 1940? A. Yes.

Q Then the D.B.H. tends on how big the timber is, and how straight it grew, and what the taper was?

A Yes.

Q In 1941 would you say it continued about the same?

A I don't think there has been any change since 1940 until now.

Q So, what would you say about this ten-inch top? What would you say about the D.B.H?

A Roughly it would be 14 inches. I am speaking of ten-inch top on a 40 foot log. It has usually a one-inch taper for every ten feet. That would be about 14 inches.

Q Would I be right if I said in a timber operation where you have a lot of small timber, and very little big timber, you can afford to cut the little timber because you can use wider equipment and few men, and so on.

A That is correct.

Q Would you say that in big timber, that is in big heavy stands of timber, that small timber was more of a nuisance, and if they log it they do it to get it out of the way in order to take the big timber which they are after with their equipment.

A That is correct.

THE COMMISSIONER: Q; Is it economical to cut down as low as twelve inch D.B.H., or was it say in the period from 1940 to 1944?

A I would say so, my lord, in certain operations. Where they had a reason for wanting small timber it would be economical to do it.

MR. McPHERSON: Q: Am I correct, that since the introduction of the Swedish gangsaw it is more economical to cut small timber?

A That is correct,.

Q Because the introduction of the Swedish gang saw has created a better market for small logs?

A It is a better method of cutting small logs.

Q What is the minimum diameter of logs you cut in your mill today?

A I would say ten-inch, top diameter.

Q That is estimated 14 D.B.H.?

A 14 D.B.H, yes.

Q And what would be the minimum diameter you were cutting in 1944, when you first built your mill?

A The same size. We haven't changed.

Q What would you say was the percentage of logs in your cut, as between say eighteen inch dimeter and fourteen inch diameter D.B.H?

A We cut a great deal more fourteen, and bigger, than smaller. We definitely don't like to cut small logs in our particular mill.

Q Have you cut any hemlock from the Fanny Bay area?

A No, I don't think so. It was practically all fir. There might have been a few pieces of hemlock in a boom, but it was practically all fir.

Q Do you know anything of the quality of the hemlock in the area of Fanny Bay?

A I couldn't say from firsthand knowledge.

MR. McPHERSON: Thank you, Mr. Allison.

THE COMMISSIONER: Q: There is just one queestion I wanted to ask you, Mr. Allison. Your firm was in the market for timber in late 1943?

A That is correct, my lord.

Q Had you any information regarding the probability

that timber, the property of Japanese-Canadians, was likely to be on the market?

A We hadn't heard of it at that time.

Q When did you hear of it?

A Well, it was subsequent to the time that we actually started logging in Nanoose.

Q Had you any knowledge of the fact that this Deep Bay timber was on the market?

A No, we hadn't.

Q At the time you bought at Nanoose?

A No, we hadn't.

Q And you have never examined it?

A I have never examined it. No, I have never examined it, my lord.

THE COMMISSIONER: Thank you very much.

MR. BLADWIN: My lord, I have a few questions in re-examination.

THE COMMISSIONER: I am sorry, I overlooked it. Go ahead.

RE-EXAMINATION BY MR. BALDWIN:

Q Mr. Allison, the Swedish gang saws, when did they first come into use in this province?

A To the best of my knowledge, sometime in the thirties, though I am not definite on it.

Q They are no innovation in the last five years?

A I agree with that.

Q Or since 1940? A. No. There were gang saws previous to that.

Q I understood your evidence, Mr. Allison, to be

that logs in 1940 were being cut on an average -- that the average was 14 inches D.B.H. Is that correct? A. That was the minimum I would say, that they were cut down to.

Q In your operation?

A In my operation anyway.

THE COMMISSIONER: Q: How did your operation compare with others? Have you any knowledge?

A I believe ours was average, my lord.

MR. BALDWIN: Q: Before you purchased this timber from McGargle at Nanoose, did you try to get E. & N. timber from the E. & N. itself?

A I believe we did. I wouldn't have been doing it myself. At that time it would have been my father.

I can't say for sure, but I was under the impression hat there was no E. & N. timber for sale at that time.

Q Now, in your previous evidence I believe you told my learned friend that it is quite a customary way of operating to take a railway in so far and then to truck down to the end of steel.

MR. McPHERSON: My lord, I don't think this witness said it was customary. Mr. Byers said it was customary. This witness said it was uneconomic.

THE COMMISSIONER: I do not know but that this witness did say that.

MR. BALDWIN: I am quite sure he did. We can refer to the reporter for that.

THE COMMISSIONER: Put the question to him straight.

MR. BALDWIN: Q: Did you say that?

A I don't think so. I wouldn't say it was customary, no. I say it has been done, but I don't say it is customary.

Q Then in some cases it is more economical to combine a trucking operation with a railway system already in place, than it would be to truck all the way back parallel to the railway line? A. Usually it happens that the railway is in, and then further timber is required that cannot be logged with a railway and the timber is acquired at a later date and they log the later acquisition to the railhead. That is usually the reason for combining the operations.

Q In railway logging operations, isn't it so that geared locomotives can negotiate fairly steep grades? A. Relatively steep, but they don't negotiate a grade anywhere near what a truck will. A geared locomotive that I have seen can operate on a 9% grade. That is about the steepest I have ever seen a locomotive operate on.

Q Now, you told my friend, when you were operating in the Charlottes in 1940, you were cutting 18 inch D.B.H?.

A That is correct.

Q Were you cutting any particular species there?

A We were cutting a great deal of this large spruce, which is commonly called airplane spruce.

Then we also cut a great deal of overgrown, very large cedar.

Q Is that Sitka spruce?

A Yes, Sitka spruce.

Q And down to what size is it economical, or profitable, to cut that particular type of timber? A. Well, we very seldom cut anything less than 18 inchees D.B.H. but not because it has anything to do with the particular type of wood, it was just the particular operation.

THE COMMISSIONER: Do you think there is any purpose of pursuing this line of examination, in relation to the Queen Charlottes? You have a peculiar condition there , where the logs are brought to market in Davis rafts, and I take it from your previous evidence the reason that you do not cut smaller logs is because of the difficulty of transportation and the possible loss.

THE WITNESS: That is true, my lord.

MR. BALDWIN: Q: Now, with regard to the purchase at Nanoose, you told the Commissioner that the over run on the 16 million cruise was about five million?

A That is correct.

Q Was that what you expected , or what you anticipated when you bought it?

A You would expect to just get 16 million on it, because we had a cruise ourselves. That was our own cruise, the 16 million, and that is what

we expected to get off there.

THE COMMISSIONER:
Q Who made the cruise for you?

A Mr. A.B.Root. He is a B.C.Land Surveyor.

Q Do you know down to what minimum he cruised? That is, the D.B.H.M

A I am not sure. I couldn't say exactly.

MR. BALDWIN: Q: My friend has used the term skyrocketed, for logs. I assume that to mean a sharp jump in the market. Did stumpage skyrocket earlier or later than logs, or did it tend upward?

A I would say the stumpage went up first, because the price of logs was pegged. Logs couldn't go up until a later date, on account of the Wartime Control. There was no control on stumpage, as far as I know.

Q What was the general trend, from say, 1939 at the outbreak of war, up through 1941,1942, 1943 and 1944, on the stumpage price?

A It gradually and generally rose.

MR. BALDWIN: That is all, thank you.

MR. McPHERSON: Might I ask the witness, my lord, a question on the point your lordship raised?

THE COMMISSIONER: Yes.

M

RE-CROSS EXAMINATION BY MR. McPHERSON:

Q You were in the Queen Charlottes, in 1943, were you not? A. Yes.

Q Am I correct that your father died just about a year ago?

A Yes. It was in April. Pretty nearly two years.

Q Up until his death he was running a logging company. A. He was president of the company, yes.

Q And he was buying the timber?

A To a great extent, but my father and my two brothers and myself, we always more or less did things as a unit, not as individuals. I mean, my father didn't do anything without first talking it over with us.

Q But the view up in the Queen Charlottes in 1943 when the Custodian took the timber on the market for sale, that is, the various blocks of timber, there wouldn't be any particular reason why in the Queen Charlotte Islands you would know about it? A. No particular reason.

Q Were your other brothers here?

A Yes.

Q Is one of your brothers Douglas?

A That is correct.

Q Do you know if he knew anything about the Custodian's offering the timber?

A No, I don't.

Q With respect to the Queen Charlotte Islands, did you ever hear of a Queen Charlotte timber holding company? A. No.

Q Do you know the Kelly Logging Company?

A Yes, I do.

Q And you know the Aero Spruce? They were logging Sitka Spruce? A. Yes.

Q You don't know anything about the sale of the Queen Charlotte timber holding Company? That was a Japanese Company?

A No, I just know it took place. I don't know any of the details.

MR. McPHERSON: Thank you, my lord.

MR. BALDWIN: Q: Mr. Allison, are you the president of your company?

A I am now.

THE COMMISSIONER: Q; Mr. Allison, I would like you to have a look at this sketch ,Exhibit 13. Would you comment on what kind of a timber show you would consider that to be, from what you can see on the sketch, Exhibit 13. You notice the quantities are shown. Are you in a hurry to get away? A. No, my lord.

Q I am going to recess now, and I will give you an opportunity to look at it. I am quite sure counsel will wish to examine you again after you have expressed your view.

A All right, my lord.

THE COMMISSIONER: I will give you a few minutes to think it over. If counsel think these other sketches give any more information or might be helpful to the witness, I wish you would point them out to him.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

WILLIAM JOHN ALLISON, resumes the stand.

THE COMMISSIONER: Q: Mr. Allison, is there enough information on that plan to permit you to comment on the character of the operation?

A I think so, my lord. If I could just ask a question on these approximate estimates, of how they were arrived at?

MR. McPHERSON: That is Eustace Smith's cruise, my lord.

THE COMMISSIONER: Made when?

MR. McPHERSON: Made in 1943.

THE COMMISSIONER: Q: You know of Eustace Smith, I take it? A. I do.

Q You know of the character of his cruises?

A Yes, my lord.

THE COMMISSIONER: I take it Mr. Smith is going to be called in this case?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: We will start then with the premise that Eustace Smith will be called, and will establish the fact that these figures show his cruise?

MR. McPHERSON: Yes, my lord.

MR. BALDWIN: My lord, there is just one thing I would like to say. That is, I submit that the description of Mr. Smith's examination is shown by his reports, and it isn't a cruise, but an estimate, probably.

THE COMMISSIONER: I think Mr. Allison probably knows more of Mr. Smith than I do. My own thought is if Mr. Smith makes an estimate he bases it on a reasonably sound foundation.

Q Is that true of your knowledge of them?

A I would be prepared to accept his estimate. It would be close enough.

MR. BALDWIN: Subject always to Eusatace Smith's own description in his report.

THE COMMISSIONER: Have you his report there?

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: I would like you to have this information as well, Mr. Allison, before you express any view.

MR. McPHERSON: I think the confusion here, my lord, is that Mr. Eustace Smith made a preliminary report, and he says something about an estimate.

The government will produce, Mr. Smith, and establish that he actually went over the timber and did cruise it, and confirmed his estimates. That is what it amounted to.

MR. BALDWIN: May I read it? My lord, this is a copy of the report made to the Custodian, or to P. S. Ross & Sons, I am not quite sure which, dated August 16th, 1943, and it is entitled, "Report on Inspection Trip . . . . . excessive".

THE COMMISSIONER: Very well.

MR. BALDWIN: That is all I was drawing attention to.

THE COMMISSIONER: Q: Now, you know what the picture is?

A. Yes, my lord. I would say in my opinion that this was a better than avarge, but not much better than average.

I would have liked to log this type of a proposition I mean, it looks to me like a logging show. It is well opened up, with roads right into it , and , while there are no contours on this map so you wouldn't tell for sure the nature of the ground, at the same time I would take from this plan that it is loggable, particularly this lower portion would be, because of that being in river or creek bottom. The upper portion which says that it is side hill, it doesn't say "steep side hill", but it is just side hill and I imagine that timber is all accessible, and you could easily open it up. This was a very short spur road (indicating) off the road already in.

MR. McPHERSON: The witness is referring to a road which wasn't there. The road has been added since. There was a railway in there, but the logging road wasn't there when the Custodian sold it.

THE WITNESS: That shows it as a new truck road built to clean up the balance.

MR. McPHERSON: There was no logging in there.

THE WITNESS: This wasn't in when it was sold?

MR. McPHERSON: Oh, no.

THE COMMISSIONER: The truck road was not in when it was sold?

MR. McPHERSON: No, it was built by the people who purchased that.

THE COMMISSIONER: Do you agree with that, Mr. Baldwin?

MR. BALDWIN: I don't know if I can. I can tell in a minute. This purports to be a map which Mr.

Eustace Smith used on his examination of the property in 1943, when he made that report.

MR. McPHERSON: My lord, I think I pointed out to my learned friend at the time I gave him a copy of that map, and I even told him we were putting in the road, because we were going to establish where the road ran, and this was a railway operation. There was no truck road in there. Surely he can agree to that.

THE COMMISSIONER: We can ascertain that from your plans, Mr. Baldwin.

MR. BALDWIN: Yes. May I have the Exhibit, my lord.

THE COMMISSIONER: Yes.

MR. BALDWIN: That is correct, my lord. I am sorry. I just wished to be sure.

THE COMMISSIONER: Q; Will you proceed then, Mr. Allison.

A I understand, then, the road wasn't in.

THE COMMISSIONER: No. The railroad was in, but not the truck road.

THE WITNESS: That wouldn't make a great deal of difference except in what you would offer for the proposition, because in places that a railroad can be put in, a truck road can be put in over the same grade as that, and that wouldn't make a difference.

If the road was in, you would naturally expect to pay for the work that was done on it. If it hadn't been, you would take that into consideration.

There is a seven or eight mile haul from the first of this timber to tide water, which isn't excessive, and I would state from looking

at this sketch that that was a good buy.

THE COMMISSIONER: Q; Then, in terms of market conditions at the time that you bought your Nanoose timber, if this timber was sold at much the same time, can you express an opinion as to a fair price per thousand? There is some added advantage here in the fact that there was a mill at tide water at Fanny Bay.

MR. McPHERSON: No, my lord, there was no mill in this case. That was the Royston case.

THE COMMISSIONER: Then, I am quite wrong.

A Well, according to these estimates there is over 14 million on these two blocks, and there is a note on the side here that there is accessible timber, 50 million. That is not cruised, that is an estimated amount of the accessible timber.

MR. McPHERSON: My lord, the witness shouldn't take into account accessible timbers, because there wasn't any accessible timber. The timber was under option, and couldn't be obtained.

MR.BALDWIN: That is correct. At the date of sale it wasn't obtainable, but the evidence of Mr. Kagetsu and the other witnesses does show that the E. & N. policy was to allow people to progress further, progressively in the belt.

THE COMMISSIONER:Q:Well, ignore the 50 million accessible.

A If it is just the timber outlined in green, I would say it was a good proposition.

Q At what price? A. I would say around $4.00 a thousand. This is E. & N. timber

that would have no royalty.

Q That is right?

A I would say the stumpage would be worth $4.00. If you don't have to pay the royalty, you can take that into consideration.

Q Would it improve the value if there was, instead of fourteen million, twenty-seven million?

A I would think so, yes. The bigger the block you purchased, the more valuable it is.

THE COMMISSIONER: I much appreciate the information you have given us, Mr. Allison.

Do either counsel wish to pursue this subject with Mr. Allison?

MR. BALDWIN: I have only one question which accurs to me after your last question.

Q Mr. Allison, what would you consider the stumpage value to be, assuming as his lordship said, twenty-seven million there, rather than fourteen million?

A I don't think the stumpage per thousand -- I don't think the per-thousand stumpage would be worth any more than that, but it would be a more attractive proposition. It would be more attractive, because it is a larger area, but I don't know that the stumpage per-thousand, would be affected. I think it would be still $4.00 a thousand.

THE COMMISSIONER: Mr. McPherson, have you any questions?

MR. McPHERSON: Q: Mr. Allison, would you look at that map there? If it were established that most of the timber on Blocks 566 and 617 was all above the 2,000 foot mark --

A In elevation?

Q -- in elevation -- all above 2,000 feet and that Mr. Kagetsu, the claimant, has already given evidence that with respect to Block 504, at the top, where his railway ran alongside there, that at no time he went in there, he left it, and he stated in evidence in reply to my questions that he could log it by truck but he proposed putting a railway through it, that is, he was going to build a new line because it would be accessible to his line operating there; if you were buying that, and you knew in 617 and 566, most of the timber was above 2,000 feet, and 617 goes up to 2700 feet and you would have to build a new road through to the top of 504, would you still think it was worth $4.00 a thousand?

A Well, no, because I wouldn't have developed it that same way myself. I wouldn't have built a road up to the top.

Q First of all, would you put in trucks, or would you have used the railway?

A I would put in trucks.

Q Do you think it would be feasible to log the rest of the timber by rail?

A I think it would be very difficult at those

elevations.

Q So you would have converted it to a truck road?

A I think so, yes.

Q You said one of the reasons you placed your value on it was because the railway grade was in there, and you could use it for logging road?

A Yes.

Q Evidence has been given by Mr. Kagetsu that in building parts of that railway grade at least parts were not a normal railway grade. You build up your road and put rails on your ties, and Mr. Kagetsu has admitted in cross-examination some of the railroad was built by logs, for and aft, and ties on top and filled with a ballast of rock and gravel. So, when you come to make a truck grade out of it and put your bulldozers in there, you have those obstructions under the ground. Would that make any difference? If that evidence given by Mr. Kagetsu was correct, would it make any difference?

A No, it wouldn't, because if I was going to make a truck road out of the existing railway grade I would just removed the ties and steel and run on top of the grade.

You would have to use more gravel to smooth it off on top, but that wouldn't affect the railroad grade too much in a truck grade. I wouldn't chew it up.

Q Let me ask you this question, then; you know H.R.McMillan?

A Yes, sir.

Q And you know Mr. Keith Shaw?

A Yes, sit.

Q And you know the type of logging that is carried on by McMillan's forest operations?

A Yes.

Q What would you say if the government produces evidence to prove that that road you see marked on there is a road which McMillan's loggers built to log the rest of that timber? Would you think if McMillan went to the trouble of building a road that there was a good reason for building it , rather than using the railroad grade? You see the road marked in there with pencil?

A Yes, I see it. I have never seen this, physically. I don't think I can answer that question.

Q I say you know McMillan and his forest operators. Would you expect Mr. McMillan's operators to spend the money building a brand new road running parallel to the railroad grade, if that could have been used as a road?

A I wouldn't expect it, but stranger things have ~~a~~happened.

Q Would you agree with me they probably had a good reason for doing this?

A I would say probably.

Q Taking all those things into account, and if the

government can establish all the statements I have made, that the timber on the lower levels or blocks ran from 2,000 to 2,600, and the timber not accessible to the railroad would have to be either logged by truck to the railway or you would have to put in a new railway grade, and the purchasers for some reason unknown to them built a new road, taking all those factors into consideration, what would you think would be a reasonable price for the timbers on a stumpage basis?

A If you had to build a road, as they evidently have done, from the tide water back eight miles into the block, I would think that that amount of timber, 14 million, that you would never be able to pay $4.00 a thousand for it, if you had to consider a new construction right from tide water to the block, that is over eight miles of road, because that would be rather an expensive proposition, and on only 14 million feet of timber to liquidate that road with you would naturally have a fairly high cost per thousand., and you have to take it from what you would be prepared to pay, or you would be paying too much for the timber.

Q Before you finish your answer to the question may I add one more bit, because in the evidence of Mr. Kagetsu, he admitted in cross-examination he had removed most of the accessible timber. If you add that to all the other factors --

THE COMMISSIONER: Accessible in terms of the railway

operation.

MR. McPHERSON: Q: -- accessible in terms of the railway operation -- if you add that to all the other factors, would you still say it was worth $4.00 a thousand on the stump?

A Not taking in all those things. They all naturally take off the price.

Q What would you give us? Would you care to give a rough estimate of what you would be prepared to pay, if all the statements I made were correct?

A If all the statements you made were correct, it would at least take another $1.00 off. That would be $3.00, instead of $4.00.

THE COMMISSIONER: Anything further, Mr. Baldwin?

MR. BALDWIN: Q: Mr. Allison, if in fact it wasn't necessary to build a new road there, but if the steel hadn't been taken up and the truck road could have been built just over the old railway roadbed, what would your stumpage rate be -- if the steel hadn't been taken up?

A $4.00, because if you could use the old railway right-of-way , just having to add a little gravel for smoothing on top of your road, your road would be in. You wouldn't have to build a road, but if you couldn't have used the old railway grade for some reason and it had to be built where this other road has been built, then that is a proposition of building eight miles of road, which isn't cheap.

THE COMMISSIONER: I very much appreciate your assistance, Mr. Allison.

THE WITNESS: Thank you, my lord.

(Witness aside)

THE COMMISSIONER: Counsel may be interested in a note that I have made from Chief Justice Sloan's Forestry Report.

Now, he is referring to the Ladysmith experiment, which was an experiment to determine whether it was economically practical to use waste timber left in the woods. I am reading from page 47 of the report.

"The original logging produced approximately 6,405 cubic feet per acre, and logs down to a top diameter of from nine to ten inches were recovered, indicating close utilization under present logging methods".

That is quite in accord with the evidence that Mr. Allison has given us this morning, as to the minimum sized timber taken out, at the time the Sloan report was brought down. The evidence on the Inquiry was taken, if my memory serves me right, during 1944.

MR. BALDWIN: My lord, does the report indicate the date at which the limits were originally logged?

THE COMMISSIONER: It must have been just prior to this experiment having been made.

Perhaps Mr. Allison could help us.

MR. ALLISON: I wouldn't know that.

THE COMMISSIONER: My recollection of the operation is that the Comox Logging Company had been logging in this area, and it was part of the logged off land that was applied to the experiment. So that the logging would have been done in the period from 1940 to 1943.

MR. BALDWIN: Thank you, my lord.

MR. McPHERSON: My lord, I might ask if your lordship will take judicial notice of the Sloan Report. We don't have to put it in as an exhibit, but in argument we can refer to it.

THE COMMISSIONER: Would you have any objection, Mr. Baldwin?

MR. BALDWIN: No, my lord.

THE COMMISSIONER: All it comes down to is this; the report made by the Chief Justice is made on the evidence of experts in the timber industry. I think I am right in saying that all of the outstanding authorities at some time or another gave evidence before the Chief Justice.

MR. BALDWIN: Are they now dead, my lord?

THE COMMISSIONER: They are not now dead. Some, no doubt are, but I think Mr. Allison's father was one of the witnesses on that occasion.

Since this is an inquiry, rather than a trial of a legal action, unless you object to it, my disposition would be to allow both counsel to make full use of the comments the Chief Justice has made, and the findings he has

made in his report.

MR. BALDWIN: I would be prepared to agree with your lordship's suggestion in that.

MR. McPHERSON: I might point out to my learned friend, my lord, that I haven't read the report myself, and I don't know whether it is in my favor or not, but I feel it is an important document.

THE COMMISSIONER: I do not think it would touch on very much germain to this issue, but in reading that bit of it this morning, it just occurred to me it was a matter of interest in terms of Mr. Allison's evidence, because there has been some conflict as to this question of utilization.

Incidentally, there was one question I wanted to ask Mr. Allsion, and that is this; when was it that the operators of the Industry first began to cut the smaller diameter timber?

MR. ALLISON: Well, the best of my knowledge, it has been done a long time.

I would say though, that of latter years they may be cutting more small timber, but they always have cut some, but of later years I think they are cutting more. That is, the main reason is they are taking more off each year, but it has always been a practice in my experience in the woods to cut small timber.

THE COMMISSIONER: I had the impression, perhaps a wrong one, that experienced operators did not

care to take less than eighteen inch D.B.H. up to say the beginning of the war. Was that impression a wrong one?

MR. ALLISON: They didn't take small timber during the early thirties, but that was a matter of a market. You couldn't sell the small logs, because the markets were very poor in regards to price, and they were very particular about quality.

The small timber didn't make as good lumber as bigger timber did, and it wasn't as profitable to handle, and in the very early thirties with very small returns you had to cut the dust or you wouldn't be operating. That is the reason why, in the very early thirties, small timber wasn't taken.

THE COMMISSIONER: We had the evidence of one witness that this policy, if such it may be called, was first generally recognized around about 1936.

MR. ALLISON: I would say that is about correct.

THE COMMISSIONER: Thank you.

MR. McPHERSON: My lord, would you care to ask Mr. Allison, in view of his statement what he considers to be small timber, that is, we have discussed small timber. What was the maximum -- not the minimum, but the maximum size for small timber.

THE COMMISSIONER: You have heard the question, Mr. Allison, can you answer it?

MR. ALLISON: I would class small timber at anything

between ten and fifteen inches, top diameter.

MR. McPHERSON: Am I correct, that that means approximately fourteen inches D.B.H., or is it nineteen or twenty?

MR. ALLISON: I would say fourteen to eighteen.

THE COMMISSIONER: Fourteen to eighteen D.B.H?

MR. ALLISON: Yes.

THE COMMISSIONER: Your minimum would be fourteen?

MR. ALLISON: Yes. I know as general practice that we don't like anything smaller than ten-inch top diameter, and we never have in our logging operations.

THE COMMISSIONER: All right, thank you. Who is your next witness, Mr. Baldwin?

MR. BALDWIN: Mr. Byers is next for the purposes of re-cross examination. To get these tally sheets that your lordship wished -- he has gone to get them, and I propose to call him this afternoon.

THE COMMISSIONER: Yes. Very well, we will adjourn now and resume at two o'clock.

(PROCEEDINGS ADJOURNED UNTIL 2.00 P.M.)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.
J. P. Hanrahan
Deputy Official Stenographer

2:00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Who is your next witness, Mr. Baldwin?

MR. BALDWIN: Mr. Clement.

JOHN WILLIAM CLEMENT, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q What is your name, Mr.Clement?

A John William Clement.

Q Where do you live, Mr. Clement?

A In the city of Vancouver.

Q Yes. What address?

A 1331 West 47th.

Q And what is your occupation?

A Agrologist.

THE COMMISSIONER: I did not hear you, Mr. Clement.

A Agrologist.

MR. BALDWIN: Q: What institutes are you a member of?

A I am a member of the Agricultural Institute of Canada and also the Appraisal Inssitute of Canada.

Q Have you a degree in agrology? or on any particular subject that relates to agriculture?

A I hold a Bachelor of Science Degree in agriculture, and I graduated in 1942 at the U.B.C.

Q And your father is the Dean of the Faculty of Agricutlure at the U.B.C. , is he?

A Yes, that is correct, he is Dean of the Faculty of Agriculture.

Q And you have had considerable experience through him, have you not, in making tours of the province? A: Since I was a boy, Mr.Baldwin, I have been travelling with dad on his survey tours in my summer holidays in British Columbia, and I think I know the nature of the outlying districts pretty well.

Q And what survey was he taking?

A He was conducting economic surveys of all types throughout British Columbia in relation to cattle, poultry and small fruit industry, and I think he has been in every field throughout the province.

Q Now,I think if you would talk a little more slowly, the reporter would find it easier, and do not drop your voice.

A I beg your pardon?

Q If you would just talk a little more slowly. Now, I show you a copy of a map, Mr. Clement, which is Exhibit 13 on this hearing. Do you recognize it?

A Yes, sir, I recognize that map.

Q And it outlines these various blocks in the Deep Bay area. A: Yes.

Q Have you ever visited those blocks?

A Yes, we have been over to see that land. We have been all up the truck road as far as you can drive your car.

Q Now, just a minute, Mr. Clement, please go a little more slowly. That is the truck road leading up how far? A: To the point where

the logging is now being carried out.

Q That is up in Block 167 here, as shown on this plan? A: Yes.

Q And where else did you go?

A We parked our car on the way down very close to the upper water tank, and we have been on foot right up to the end of the old steel grade, in the area which is blocked out here -- in Block 504.

Q By the upper water tank, you mean the one in 274? A: Yes.

Q And then where did you go from there?

A Well, from there -- in our opinion, when we were up there, from what we could see, after having walked in to Block 504 and having driven along this truck road, we saw that the land was very rocky and of a precipitous nature somewhat east of the lower water tank, and we felt that there was no use looking at this land for agricultural purposes, and we concentrated on the lower area by the lower water tank.

Q By the lower water tank, do you mean the one south of the lowest point on this northern portion? A:That is correct. We can give you the measarements on the roadway-- on the highway of all the various points where we stopped. We took those.

Q Who took those? A: Mr. Winter, who is a survey engineer, he accompanied me on the trip and he has the field notes. You can get them from him.

Q Will you tell his lordship what you found in this area which relates to this lower water tank?

THE COMMISSIONER: Will you just indicate it to me on the plan, so that I can follow you, Mr. Clement.

A There is a point somewhat west of the lower water tank that is marked here and Mr. Winter has those filed notes in his notebook, and this area up in here is of a very rocky, precipitous nature.

Q That is the area lying west of the water tank?

A Yes, you will note it here on your map -- just a little bit west of the water tank -- there is an altitude of 1100 feet, and it follows up 1600 and follows up to 2100, and you can see from the road that that is very rocky and very steep, and there is very little soil. As I say, it is very rocky and very steep and we did not consider it fit for agricultural purposes in that area.

MR. BALDWIN:

Q Now, will you indicate to the Commissioner the area in this part here you refer to.

A That is this area here I refer to.

Q Yes, I see. Now, with relation to this water tank, what did you find in there?

A The area immediately surrounding the water tank, and I speak from memory, is very, very steep for about a mile, when it comes down to the flat country. It is all logged off and it is bounded on the west by a very high piece of rock, and in which area there is still timber and there is

bush on it. Now, there is a piece of land west of this water tank comprising about 70 acres, which has second growth timber on it and bush, and still leafy trees growing there. The soil indicates there is 6 inches to 2 feet of soil there, and there is water. That water is depending upon this long rock that I mentioned a few minutes ago. The water comes down from there. I believe on the property on the north side of the road is not being considered at this time.

THE COMMISSIONER: You are speaking of the truck road?

A Yes, it was the truck road. We were on the Franco-Canadian fruit lands.

MR. BALDWIN: I might mention Mr. Winter has his field notes, which are going to be produced here.

THE COMMISSIONER: I appreciate that.

THE WITNESS: There is an area there of about 70 acres around about Block 267, That is the notation on the map here, and there is this area of about 70 acres which we feel is quite suitable for certain agricultural purposes.

MR. BALDWIN: Mr. Secretary, will you tell me the number of the exhibit of Mr. Clement's report?

MR. McPHERSON: I don't think it is in.

MR. BALDWIN: I supplied you with a copy and I thought it had gone in. My learned friend tells me it is not in, so I will put it in now so that the witness may prefer to it.

THE COMMISSIONER: What number will that be, Mr. Secretary?

THE SECRETARY: 26, my lord.

(REPORT MARKED EXHIBIT NO. 1388-36)

MR. BALDWIN: Q: Now, this area you have just been describing to his lordship, is that the one that you have described in paragraph 1 of Exhibit 26?

A That is correct.

Q And what value did you put on that -- what valuation? A: $5.00 per acre.

Q And the principal use would be for sheep raising and berry raising, is that it?

A Principally sheep raising, and it would be very simple to clear a part for growing berries. The soil is very light and there is a good deal of gravel, and you should be able to establish berries on the land. I don't say all the 70 acres could be put in a berry patch, but a good deal of it could be handled that way.

Q And how was the acreage determined?

A You will see that in Mr. Winter's field notes. We had the mileage readings on the road and readings of the depth of the soil in this area.

Q Now, I refer you to paragraph 2 of your report. Will you indicate to his lordship the area referred to there? A: We refer here, sir, to an area slightly west of the gravel pit down in this direction.

THE COMMISSIONER: That is in a northerly direction?

A In a northerly direction, yes.

Q Along the road? A: Well, along the old railroad bed here. I can give you the distance

very shortly. Now that area is bounded on the west, at a point approximately 500 feet east of the gravel pit shown on your maps -- it is bounded on the east by the present B.C. Power commissions high line, which runs right across the property.

MR. BALDWIN: I don't knww, my lord, if the gravel pit is marked on the exhibit or not. It is not on this copy here, but it is on the one he furnished me with.

THE COMMISSIONER: It is on the copy I have. It is on the line of railway immediately north of the letter "N" -- in "No".

MR. BALDWIN: Q: Now, did you find this plan to accurately represent the situation as you found it there? A: No, sir.

Q In what respect did it differ?

A Well, as far as we were concerned, everything west from the gravel pit seemed to conform pretty well to the way it shows on the map. You will note the map, Mr. Commissioner, where the truck road is showing, it looks as if it was some distance down the creek and really it is only 20 feet, and there is a very steep drop-off, and we found a little fault with the actual location on this map of the gravel pit.

We did find a surveyor's pin in the corner of Lot 88. Unfortunately, we could not say which corner it is, but we have some information on it.

Now in effect, sir, the gravel pit is either

further north than shown on this map, or the road is further north than shown on this map-- one or the two, but Mr. Winter can tell you about that.

THE COMMISSIONER: What acreage is there in the second in the second area you indicate?

A Between 80 and 100 acres.

Q Yes. proceed, Mr. Baldwin.

MR. BALDWIN: Q: What is the nature of this lower area that you have described?

A In this lower area, Mr. Commissioner, there are, I would say, between 80 and 100 acres, which for the purpose of the report we divided into two pieces.

On both sides of the old railway bed there is evidence there was a settlement or a camp of some sort, where people had certainly had lived and had house gardens. There is no question about that. It might have been more extensive than that, but it is very badly overgrown now, but we estimated there was an area there amounting to approximately 35 acres which could have been very easily under cultivation -- just by the railway bed there, and it would be suitable for cropping. Now, just a moment -- the land is sandy loam underlain with sand, and we are perfectly safe in judging that as being suitable agricultural land. The remainder --

MR. BALDWIN: The value of the land in 1943 and 1944, how would it compare with the value of the land there now in that area, that had been under cultivation, as you say?

A Well sir, the value of the land has not changed at all, or has not changed remarkably in the last number of years, but the number of dollars you can get for it has.

Certain areas of that land were very definitely under cultivation and other areas are just raw land that could easily be brought under cultivation, because there is land there that could be easily cleared.

Q And the cost of clearing in that area would not be very great now, would it?

A Insome areas it would be very expensive.

Q well, I am speaking more particularly of the 35 acres that you mentioned.

A The cost of clearing that would not be high. It is a light growth and some of the old raspberries canes are there now.

THE COMMISSONER: Does that apply to the area on both sides of the road?

A Yes, that area of 35 acres would spread on both sides of the old railway bed. The rest of the area that I speak of, the soil is quite deep and very easy to clear, and other parts it would require a bulldozer. But that area of approximately 55 acres could be cultivated and brought into agricultural land.

THE COMMISSIONER: Q: This is all part of the 80 to 100 acres? A: Yes, that whole tract of land. There is just a strip down the middle that had been cultivated quite intensively.

Q 55 acres out ofthe total area would be comparatively easily cleared?

A Yes, sir.

MR. BALDWIN: Q: In your report, Mr. Clement, you mentioned fruit trees. Can you say how many there were and what was the condition of them?

A The former occupants of theland had small areas in fruit trees there. The ones we saw were apple trees and those trees had reached a good size now, Just how large they were when they vacated the property, I cannot say, but they are showing a certain amount of new growth and with a certain amount of pruning, they could be made to grow again, because the trees grew there even without care.

Q What would thatindicate to you, that they grew and continued to bear fruit evenwithout care?

A Well,the type of apple tree that is there is of a fairly hardy nature and it would stand fairly hard treatment. And some of the raspberries canes are still showing, but most of them have died out. They die out when there isno care given them -- in six to eight years.

Q And these values that you put on this are the values as of what date -- 1944 or today?

A That is as of 1943-44.

Q And will you give his lordship in some detail what experience you have had recently in apprais-ing lands? A: Yes.

Q As to value. A: We were

retained not long ago, Mr. Commissioner, to assist a firm of barristers here in town in appraising certain Japanese lands in the Fraser Valley, and we have examined approximately 100 properties quite closely in an effort to place a value on these properties as of June, 1942.

The way the appraisal was carried out was this. We went to the Pacific Co-operative Union at Mission, and we were able to get a ledger there which showed us the value of the berries produced in 1940 and in '41 on certain of these Japanese owned lands.

I will enter an exhibit demonstrating the relationship between the returns from berries on the berry farm and the capitalized value of the land.

Now, based on the value of the lands here in the Fraser Valley, according to the survey, we appraised lands on Vancouver Island as being worth so much, and the nature of the land in the Fraser Valley as worth so much, and a comparable area on Vancouver Island would be worth so much.

Now the relation of the production of the farm to the capitalized value of the farm is this.

In 1946, Mr. Commissioner, the University of British Columbia carried out a survey of 78 small fruit farms, in which they determined the average value of the farms; The average capital value of the farms, the average net production

or net return to the farmer from his production of small fruits, and speaking from memory I believe the figure in small fruits multiplied 1.4 is equal to the capital value. This is on an average of 78 farms. Therefore, we were able to determine in these dairy lands in the Valley the value of those lands according to their varied production.

Now, based on an acre value here in the Fraser Valley, we said if they are worth so much then the Island lands are worth so much. And that is the figure that appears in our report.

Q Now, in regard to the 35 acres of cultivated land on the Island, you assign a value of $75.00 an acre.

A Yes.

Q And what value would you assign to similar soil in the Fraser Valley in the assessment of these farms which you have just described?

A As of 1942, from $60 to $75, depending on the cultivation.

Q Then why did you assign a value of only $25.00 to these other lands?

A Vancouver Island acres are not as accessible to the market. There is not such a demand for them as farm lands. The production might be of equal quality -- or probably equal, but the location is not equal and it is written down on that basis.

Q Well, if there is no demand there would be no value. A: Well, naturally.

Q Do you wish to qualify that or explain it?

THE COMMISSIONER: This is your witness, Mr. Baldwin.

MR. BALDWIN: Yes, I know, my lord.

MR. McPHERSON: He will be able to qualify it when I cross-examine him.

MR. BALDWIN: In any event, you assign a value of $25.00 to these lands?

A Yes.

Q Well, do you say that agricultural land or land like that on Vancouver Island has no sale value --

A Not at all.

Q -- for agricultural purposes?

A Not at all, sir.

Q Well, continue. A: I am sorry if I have given you a wrong impression. The value we placed on it is the value from a production standpoint and not from a real estate or sales standpoint.

THE COMMISSIONER: I understand. You are not saying it could be sold forthat.

A No, not at all.

Q Or that that is the market price.

A That would be its value in terms of its agricultural productivity.

MR. BALDWIN: And you also arrivedat these other values, did you, by comparison?

A We arrived at --

Q Will you please let me finish my question?

A I beg your pardon?

Q How did you arrive at the other values?

A We determined the value of the arable land at

$25.00 an acre, and the other two sections of it we arrived at that value by comparative methods. -- by comparison.

Q Are you familiar with the market values of agricultural land on Vancouver Island?

A The market value?

Q Yes, and the sale of x farms?

A No, sir, but I know what farms are selling for, but that is not within my field.

Q Thankyou, Mr. Clement, your witness.

THE COMMISSIONER: You may sit down if you wish to. Mr.McPherson is going to cross-examine you now.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Have you ever done any stump farming?

A No.

Q Have you ever farmed yourself?

A Well, that depends on how you classify a farm.

Q I don't mean farming at the University, when you are taking your course or anything like that, but have you ever been responsible for a farm that you operated and worked on?

A I have been responsible for a farm I operated but not necessarily worked on.

Q Have you ever pulled stumps?

A No.

Q And I suppose in valuing property like this agricultural land, its proximity to a road had a great deal to do with the value of it?

THE COMMISSIONER: You are referring to the market

value, areyou?

THE WITNESS: Are you referring to market value or agricultural value?

MR. McPHERSON: Q: I was waiting for the witness to say. Would you say that land near a road has a better value than land that is not near a road, and in valuing this land that you put on it so much an acre, and did you take into account there was a road there in arriving at your value?

A Yes, I think we did.

Q So that there is a little more than just a straight production value involved in this valuation of yours, is there?

A Yes.

THE COMMISSIONER: Just answer so that the reporter can get it, witness.

A Yes, sir.

MR. McPHERSON: Q: Well, what would you allow on your valuation because there was a road there? How much would that increase your valuation per acre-- supposing there had not been a road there?

A The fact remains that there is a road there and you are asking for a value of a piece of property in a given location.

Q I am asking you to tell hislordship what effect it would have had on your valuation if there had been no road there.

A I would say, sir, there would not have been a valuation.

Q There would not have been a valuation? Would you

say there would not have been a valuation because the land would not have any market value whatever?

A No, not at all.

Q Why would not there be a valuation? Couldn't you go in on that railroad grade?

A That is how we did go in.

Q I am not so sure that you know how you did go in. You went in by car, didn't you?

A Yes.

Q Now, would you be surprised if I told you there was not any road there at all at the time the Custodian sold this property?

A I would be very much surprised.

Q Well, there was no road there.

A Wasn't there a railroad bed?

Q There was a railroad bed, but no truck road, and I know something about this property in the last few months. You drove up on the truck road?

A Yes.

Q And you did not drive up the railroad bed?

A We followed the old railroad.

Q But youdrove on the road the trucks are using, didn't you?½ A:That is right.

Q And when you got up by that water tank in there and made your valuation, you were assuming at the time you made your valuation that there was a road there? A: Which water tank?

Q The lower one. A: In the pasture land there, that is what it was used for,-- there would have to be access, but it seemed there

would not necessarily need to be a road.

Q Well, from the standpoint of market value of this property near the lower water tank --the property you mentioned first, from the standpoint of market value, would you say that land up there was worth $5.00 an acre, if there was no road in there and nothing but that railroad grade?

A Well, it has a value as a cleared area.

Q You think the value would be $5.00 an acre?

A Oh, I would think so.

Q You think so? A: I think so. It is grazing land -- supposing you put it into sheep raising, it would be all right.

Q Well, if you are selling that piece of land there, and you just have that grade -- the railway grade, as the property was in 1943, you would have to bring your sheep in up the railway grade and go out on the railway grade for your supplied?

A Yes.

Q And how near was the nearest farm there?

A I don't know.

Q Well, even today did you see any houses up there and people living in them?

A There are houses at the entrance -- on the Island Highway.

Q Well, there are no people doing stump farming in this area that you saw?

A I didn't see any.

Q So if you went in there to raise sheep, you would have to maintain your own road in there --

in getting in and out of there?

A Yes, a road or trail.

Q And you would have to maintain that to get in or out?

THE COMMISSIONER: At the water tank -- the lower water tank, how far are you from the Island Highway?

A Well, if you would ask Mr. Winter about that. He has an accurate record on that, but I would say roughly 8 miles. Q: The Island Highway is close to the waterfront at that point, is it not?

A Within a few yards of it, I think.

MR. McPHERSON: Q: Now, what about this land in this Valley here near the lower water tank?

A In what way?

Q What about the stumps that were left there after they finished logging -- were there any stumps there? A: Yes.

Q And the land had not been cleared of the stumps? Do you know what year, in 1928, they finished logging it? A: I don't know.

Q Would the year they finished logging it have any bearing on the cost of removing stumps?

A Yes.

Q So, if they did not finish logging that lot until 1931, in 1942 or '43 you would have about 12 years the stumps were sitting there?

A Yes.

Q Now, how much do you think it would cost an acre to pull stumps that are 12 years old?

A In 1942?

THE COMMISSIONER: It depends on the kind of stumps that have to be pulled out. In this province, some of them you have to blow them out.

THE WITNESS: I cannot quote you on land prices in 1943.

MR. McPHERSON: Q: Well, if you arrived at a value of land, as you have here, $5.00 an acre and $25.00 an acre on other lands, isn't it, and $10.00,-- you are just talking about the agricultural production of the land?

THE COMMISSIONER: The production value.

MR. McPHERSON: Are you not making any allowance at all for the fact the man who buys it has to clear it, or do you assume that it is clear and set up for a farm?

A I say if the land were all clear, it would be worth more than $5.00 an acre.

Q If it were clear? A: Yes.

Q But in arriving at your value of $5.00, you don't know what it cost to clear land?

A I cannot quote you a figure on the price.

THE COMMISSIONER: Q: Well, did you take into account the cost of clearing in arriving at your price?

A Well, the examiner is asking me a question on the actual cost of producing land -- not an agricultural farm.

THE COMMISSIONER: Well, if you can answer my question.

Q Did you take into account the cost of clearing in the estimate you have given?

A Yes, I think so, yes, sir.

Q So they have that value over and above what you estimate to be the cost of clearing?

A The land itself, sir?

Q Yes. A: Where it is cleared, it would be worth, I would say, more, than wild land in that particular area.

THE COMMISSIONER: I had better not interfere with you any more, Mr. McPherson. You go ahead and I will follow it up later.

MR. McPHERSON: Q: Well, if you took into account the clearing of the land, how much did you take into account per acre for clearing land?

A We did not take into account so many dollars and cents. It was a question of saying, "This land is worth, in our opinion, $5.00 an acre." We know the land as it is would support possibly a few sheep and possibly a few other types of animals, and we also know if part of it were cleared up, supposing a man went in there and cleared up an acre or two, he could make a garden out of it.

Q Where would he truck his produce to and get his produce? A: He would have to feed himself.

Q Well, if he is away in there at the end of 88, and he has not got a road -- he has his railway grade -- I presume if he raises sheep, he kills them and sells them -- if he gets them out of there, he has to keep a road open.

THE COMMISSIONER: Are you not arguing with the witness. Just proceed with the cross-examination.

MR. McPHERSON: Q: If you were advising a client of yours concerning the purchase of agricultural land on Vancouver Island, would you advise him to buy either of these pieces of land at the prices you have set?

A At today's market?

Q As of 1943. A: Yes and no, sir. The Japanese colony were there and they were possibly an outlet for it.

Q No, the Japanese colony was gone in 1943.

A No.

Q You would not advise them?

A No.

Q Now, what about comparable land to this, or agricultural land? Do you know if there is any other agricultural land available in the area of Fanny Bay, closer to the Island Highway?

A I believe Denman Island, across the water, has a little.

Q And would you agree with me if anyone wanted to go over there and wanted to start a small farm, they would not buy a piece of land at the back of 88 or in the southeast corner of 88 if they could buy land nearer to Courtenay or Deep Bay?

A That would depend on how much the man has to spend on it.

Q How much appraisal work have you done on the Island?

A I have only been on a second case on the Island.

Q This is the second case. Where was the first case?

A 8 miles north of Courtenay, or 2 miles north of

Duncan?

Q Was that Japanese property?

A No.

Q What kind of land was that-- agricultural land -- the same kind of land as this, or better land?

A Better land than this.

Q Was it logged off land?

A Oh, it would have been originally. It was a producing farm.

Q And it was not really comparable to this type of property at all?

A Hardly, no.

Q Thank you, Mr. Clement.

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

MR. BALDWIN: Yes.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q You have told my friend that you have operated a farm. What farm was that?

A I am not at liberty to disclose the names of my clients, but there are farms in the Valley here that are subject to my direction, but I cannot tell you who they are.

Q How big a farm is it?

A There is one in Coquitlam that comprises 1100 acres, and one at Langley, 160, and one on the Island that comprises 120.

Q Well, you say you direct the operation of these farms, is that correct?

A That is right.

Q And what do you do, what does that mean? What does it comprise?

A Well, generally speaking it is this. You go on to a man's farm and he will tell you he has a herd of such and such a size and he wants to maintain it as a milking farm, and he will say, "How can I operate it to break even," and, "How can I keep the financial cost down," And we will go out with a report to him -- what acreage he should buy and what fertilizer he should use and what herd he should have, and what silage he should use, and in that way we direct the operation.

Q There seems to have been a little confusion as to whether or not you took the cost of stumping this land into account. Now, am I correct in saying: This valuation that you have given is of the land as you found it in 1948, with the value related back to 1943?

A That is correct.

Q And other words, without taking into accountt the cost of clearing?

A That is correct.

Q But with that in mind?

A With that in mind, yes. We have a lot of things in mind when we take the value on something, but we don't put it down in so many dollars and cents.

Q Now, you told my learned friend of a producing farm near Duncan which you did assess the value of. What value did you put on that per acre?

THE COMMISSIONER: Are we interested in that, Mr. Baldwin

MR. Mc PHERSON: My lord, that sounds very much like cross-examination to me.

MR. BALDWIN: Well, it has it has arisen in cross-examination, my lord.

MR. McPHERSON: But he is your witness.

THE COMMISSIONER: What help is it to me if Mr. Clement tells us the value he put on this Duncan farm?

MR. BALDWIN: Because, my lord, it would indicate that he did take it into consideration and he has said the fact of this land being on Vancouver Island, he has knocked the price down and I wanted to compare a producing farm on Vancouver Island with a producing farm in the Fraser Valley, which he says he has assessed.

THE COMMISSIONER: You may ask him how they compare in value.

MR. BALDWIN: Q: I think you set $60.00 an acre for comparable land in the Fraser Valley.

A If we were to back off this farm on the Island that I mentioned over there to the 1943 price, I think it would be $100 to possibly $150 per acre, depending on the various parts of the land.

Q Are you speaking in terms of production value or selling value?

A Production value. The selling value is higher today.

Q I am not clear, my lord. Perhaps you would ask the witness whether this value that he has assigned to this land is straight production value or

sales value. I understood it was sales value. Those were my instructions, but in the evidence it has come out he was quite confused.

THE COMMISSIONER: I think it is quite clear the witness, in answer to my question, said it was production values. If I am wrong there, I would like you to correct me.

MR. BALDWIN: May I ask what relation the production value has --

THE COMMISSIONER: Let us get the first answer cleared up. These values that you have in your report are production values and not market values?

A That is correct.

THE COMMISSIONER: All right, go ahead, Mr. Baldwin.

MR. BALDWIN: Q: What relation have these values, then, to a fair market value in 1943? Are they higher or lower? A: The production value would also be a fair market value, and what the relationship is between actual sales prices and what the production values were in 1942, I am not prepared to say. That is for a real estate man to deal with.

Q Your production value is capitalized income, is it not? A: Yes.

MR. McPHERSON: May I ask the witness one question, in view of the line of re-examination of my learned friend?

THE COMMISSIONER: Yes, Mr. McPherson.

MR. McPHERSON: Q: I am correct, am I not, that you did tell me you would not recommend these pro-

perties to your clients if there were other agricultural properties available for sale?

THE COMMISSIONER: Yes, the witness has said that.

(Witness aside).

MR. BALDWIN: I will now call Mr. Winter.

THE COMMISSIONER: Well, perhaps we might break now.

MR. McPHERSON: I wonder if my learned friend is calling Mr. Winter to prove distances and so on, because I am willing to accept what the last witness has said. I am not interested in identifying the particular peoperty.

THE COMMISSIONER: Is that all you want Mr. Winter for?

MR. BALDWIN: Yes, and to ask him if he has been on these blocks and if he has brought his detailed notes.

THE COMMISSIONER: I think we can take it from Mr. Clement's evidence they were on Block 88, and it is not very material just where these areas described are located, so I do not think we need Mr. Winter unless you have some other reason for calling him.

MR. BALDWIN: I did not quite catch what you said.

THE COMMISSIONER: I say it is not clear as to the exact location where these areas are and it is immateial, as long as they are the lands of the company.

MR. McPHERSON: As long as they are in the exact area Mr. Clement said-- I would not like them to be down on the foreshore. I am quite sure what Mr. Clement identified on the map is what Mr. Winter

will prove.

MR. BALDWIN: Well, if my friend will also concede the location.

THE COMMISSIONER: We are taking Mr. Clement's acreages and measurements and locations as correct.

MR. BALDWIN: Yes, then I can check over with Mr. Winter in the adjournment and see if there is anything else that I want him for.

THE COMMISSIONER: Yes, we will recess now.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

MR. BALDWIN: My lord, I wish to call Mr. Winter very briefly.

THE COMMISSIONER: Yes, all right.

JAMES FLETCHER WINTER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Winter?

A I beg your pardon?

Q Where do you live?

A I live at 1770-13th Avenue, West.

Q In the city of Vancouver?

A Yes.

Q Did you accompany Mr. Clement on a trip over to Deep Bay recently?

A Yes.

Q I show you a copy of Exhibit 13 in this Hearing, Mr. Winter, and I indicate to you a water tank situated -- it is south of the -- it is the easternmost on the map of the two --

A Yes.

Q Will you tell his lordship how far from the gate, at the Island Highway, the northeast corner of the area lying to the south and east of that water tank, which Mr. Clement has already referred to-- how far that northeast corner was from the Island Highway gate, where you came in?

A I wouldn't say it was the northeast corner. I would say from the point that we took our distances from-- looking back both ways, that would be approximately 3.8 miles.

Q Is that point, Mr. Winter, approximately the mid point of that area?

A Approximately.

Q The mid point east and west?

A More to the westerly than the easterly.

THE COMMISSIONER: Where is the point on this map?

MR. BALDWIN: My lord, this is the area. This is the water tank and this is the first area that Mr. Clement referred to down here; and that is, he says, the westerly corner -- the western parcel, and it is 3.8 to the Island highway.

THE COMMISSIONER: The first point that Mr. Clement dealt with is 3.8 to the Island Highway.

MR. BALDWIN: Yes, slightly west -- because it was to the west part of it.

Q What is your occupation, Mr. Winter?

A I am a draftsman and field engineer for the B.C. Telephone Company.

Q And how did you determine this distance?

A By car mileage, and in this particular case, using

a type of a logging road at the start -- and the top water tank which we located, and then from there we picked up the different marks, like the lower water tank-- that is, these points over here.

Q Now the other area around the plan referred to, in the second paragraph of Mr. Clement's report--

A Yes.

Q /-- Exhibit 26 -- A: Yes.

Q How far -- just roughly speaking -- was that from the Island Highway gate?

A Approximately 2 miles..

Q That is all thank you, Mr. Winter.

THE COMMISSIONER: Any cross-examination?

MR.McPHERSON: No questions,my lord.

(Witness aside).

Mr.BALDWIN: My lord, we have now other tally sheets from the forest branch and I wish to recall Mr. Byers.

WILLIAM BYERS, already sworn, resumed stand and testified further as follows:

DIRECT EXAMINATION BY MR. BREWIN:

Q I see you have in your hand some tally sheets, I think you call them. Will you tell us the dates of those tally sheets?

A I might explain, my lord, that I intended to get them from the years 1936 to 1944, but I find the records were destroyed for the years '36 and '37 and all back records, and they only have records

for 1938, so that these records --the first one is on February 24, 1938, and the S. & R. number is 214698.

THE COMMISSIONER: Just indicate what number of small logs are shown in these different accounts.

MR. McPHERSON: My lord, before the witness gets into this, could he tell your lordship where this timber is and what these tally sheets relate to. I don't think there is any evidence that this is Deep Bay property.

THE COMMISSIONER: No. The suggestion is not that they are Deep Bay. What they are dealing with is when small logs with 10 inch butts were cut.

THE WITNESS: The number of this tally sheet is S. & R. account, No. 214698. It was logs that were scaled for the B. & K. Logging Company, at Alex Bay on Vancouver Island. That is above Campbell river.

THE COMMISSIONER: To the north of Campbell River?

A Yes. The logs run from a diameter of 10 inches to 28 inches and approxi ately 50% of them are under 18 inch diameter. That is, 6½ sections of fir.

Account No. 214707 is dated February 26, 1938, which was a boom of logs scaled for the Merilring Lumber Company at Theodosia Arm on the mainland, just above Powell River, It was ten sections of cedar, and the logs ran from 10 inches in diameter to 37 inches in diameter.

MR. BREWIN: I wonder if I might stop you there,

and askyou to explain for my benefit -- ~~kkk~~ it is the diameter taken at what point?

A At the small end of the log-- at the top end. None of those logs are over 40 feet long.

Q Well, we have had other evidence that they would be -- if you were taking the size of the bottom end of the log, it would be about 1 inch above the diameter of the top for every 10 feet. Would that correspond with your idea?

A That is what the practice of the Forest Branch is.

THE COMMISSIONER: Then that 14 inch shown on the scale would be 14 inch plus --

A Yes, practically 40% of these logs are under 18 inches in diameter.

The S. & R. account 214718, there are fourteen sections of fir logs, scaled for the Elder Logging Company at Muir Creek. That is between Jordan River and Victoria, my lord. Those diameters run from 11 inches to 40 inches; and again, approximately 50% of those logs are under 18 inches diameter.

MR. BREWIN:

Q Mr. Byers, it has occurred to me that unless my friend deisres them or the Commissioner, we don't need to go through everyone in detail. Have you looked at all these yourself?

A I have examined them all myself and they all show a large proportion of logs under 18 inches, some actually down as low as 6 inches -- and up to 40 inches, as I have indicated here. In addit-

ion to these, there are hundreds of others ~~in~~ of the same nature in the records, my lord.

THE COMMISSIONER: These accounts are between 1938 and when?

A 1938 and '44, inclusive.

MR. BREWIN: Q: Is there any noticeable difference in the tally sheets as you move on from '38 to '44?

A No, the percentage of small logs run much the same -- small diameters, I should say.

Q Unless my friend wants you to go into more detail, I think we can actually leave it there, my lord. It is suggested we might pick out a few of the six inch ones. But you have told us there are some with six inches.

MR. McPHERSN: I will have him pick out some when I cross-examine him.

THE COMMISSIONER: All right, Mr. McPherson.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Byers, with respect to these records here, will you just pick out some six inch ones.

THE COMMISSIONER: Some showing six inches,-- that would be 10 inches to the D.B.H.

A ~~In~~ Approximately, my lord, depending on the length of the logs.

MR. McPHERSON: Q: How many cases there have you got of six inch?

A There are three. This one is down to 7 inches, and those two are down to six, and there are several in there down to 8.

THE COMMISSIONER: What years are the 6 and 7 inch?

MR. McPHERSON: Excuse me, my lord, but I don't want to get this out of order. The 7 inch logs, my lord, are April 25,1947, and the 9 inch logs are December 16, 1946, and the 6 inch logs are June 6,1944, so that in all these sheets there is only one case of 6 inch logs that Mr. Byers can find.

A May I have a look at that -- at that date -- it must have been misfiled if that is '46 and '47.

Q That is '44. A: That is '44.

Q '46 and '47? A: '46 and '47, that is right, they must have been put in the wrong file.

Q Do you mean you don't think the dates are right?

A No, I think the dates are right, but the tally sheets must have been put in the wrong file.

Q Now, Mr. Byers, do you think these returns indicate that loggers were taking out a lot of small logs? A:Undoubtedly.

Q You think that is correct?

A Undoubtedly.

THE COMMISSIONER: Q: What do you mean by small logs?

MR. McPHERSON: Q: Well, what do you say to that? What do you call small logs?

A Logs under 18 inches in diameter. That is the point in issue.

Q Well, I don't think that is the point in issue. But anything under that is a small log? Is there anything you can tell from these tally sheets, when you look at 6 inch logs, that that

was the butt of the log?

A No.

Q When you refer to the fact it is 4 inch at the butt, it does not automatically follow it is 10 inch D.V. H.? A: Well, it does not automatically follow, but a 10 inch log cut from a stump 40 feet long, is a much more mature log.

Q Well, is there anything here to show whether it is a good log or a bad log?

A It would not be on the scale. It would be marked as a cull if it is a bad log.

THE COMMISSIONER: You see, Mr. McPherson, as I understand it, the record shows these logs to be 40 feet long in most instances, and if you are going to get a log 10 feet at the big end of it, that is almost certain to be the butt, because you are not going to have many trees that provide two forty foot logs.

MR. McPHERSON: I think the Government will produce evidence to show there are lots of trees that produce more than one 40 foot log, is that right?

A That is correct.

THE COMMISSIONER: Q: Would the top end be 10 inches in diameter?

A At the top end, it could be, but not at the butt end of the log or the large end.

MR. McPHERSON: Q: Mr. Byers, isn't it right that frequently in this province, in logging, they get three lengths out of one tree?

A Yes, but those are not tree lengths. Those are 40 feet and under.

Q I don't see any tree lengths-- three 40 foot logs out of one tree.

A Yes.

Q So those X 6 inch logs referred to here could be the logs next to the butt, or the next one or the top one?

A Quite right.

Q Is there any way to tell from this sheet the total number of logs covered by the tally -- is this 829? A: 829 is the total number here.

Q Of hemlock? A: It is all hemlock. That is the total number of the logs in the whole--

Q On the scale? A: Yes.

Q I will point out to you, Mr. Byers, out of 829 logs here, there is only one, two, three, four five, six inch logs?

A Yes, but how many seven inches?

Q Well, quite a few, but you will agree with me a seven inch log is 11 inches at the butt, do you? A: Well, it could be. Those logs run all the way from 28 to 32. There is/less than 28 feet log, and they run to 40 feet. It could be a top log or a log taken off the stump.

Q Well, let us take this sheet here,then. This is the sheet you picked out as having nine

inch logs. Am I correct there is only one 9 inch log?

A No, these are all 9 inch logs here. These are all 9 inch logs right down at the bottom.

Q And that is out of 500-- 553 logs.

A I think there is more than that. That is the total that all those added up to there. No, that is the total number of pieces: This, this, this, this, this and these, added together, would be the total number of pieces.

Q Was this some of the Stultz logging --

A Yes.

Q Stultz Logging at Cowichan Bay?

A Yes.

Q This is the tally sheet?

A Yes, on Block 195.

Q Some of this is on Block 195.

A Yes.

Q And out of all these logs, you would agree with me there are at least 450 logs--

A -- on the tally sheet?

Q Yes, on the tally sheet.-- at least 450--

A Yes.

Q -- and out of the 450 there are no six inch and there are two -- four -- 7 inch logs.

A Yes, but over 40% of those are under 18 inches.

Q And you do not find any 6 inch logs recorded in here as being cut in '43, do you?

A I am not prepared to say whether there are or there aren't. I am quite sure that I could find

in the records 6 inch logs cut in '43 and logg before '43.

THE COMMISSIONER: The earliest one there was in June, '44.

MR. McPHERSON: Q: In any event, you have not produced any evidence that there were any 6 inch logs cut in '43 on these tally sheets, have you?

A I would have to examine them again to make sure.

Q All right, I will have to let you examine them now. I would rather you do that than wait for more evidence to be produced.

A Are you confining this to the year 1943?

Q '43 -- if you can find any in 1944 --

THE COMMISSIONER: Take it from '44 or earlier.

A I have got them from '38.

MR. BALDWIN: '44 and earlier, the Commissioner said.

THE COMMISSIONER: Have you any other witness to go on with today?

MR. BALDWIN: We have a witness from the Foret Branch to clean up Exhibits 1 and 2, but he has proven a little recalcitrant and will require a subpoena before he will appear.

THE COMMISSIONER: Who is that, Scott?

MR. BALDWIN: No, a forest official over there who actually made a tracing of them.

THE COMMISSIONER: Have you talked to your friend about it? Do you need that to be proven?

MR. McPHERSON: I would be quite agreeable to accept any statement from my friend as to the exact date any map was made. That is, the latest date they

came into the picture.

THE COMMISSIONER: And your friend can only say what information he has had fromthe Forest Branch.

MR. McPHERSON: If he can obtain that information from this witness or the Forest Branch, I will accept that.

MR. BALDWIN: I can, my lord.

THE COMMISSIONER: That seems to be rather a happy solution of it.

Q Now,Mr. Byers, what did you find there?

A There are no 6 inch logs in any of those tally sheets -- from '38 to '44, my lord.

Q Well,perhaps this may help to clear the situation up. Were you in the room this morning when I read fr an extract from Mr. Justice Sloan's report?

A No, I wasn't.

Q Well, I will read it to you. It is under the heading of " The Ladysmith Experience:"

"The original logging produced approximately 6,405 cubic feet per acre, and logs down to a top diameter of from 9 to 10 inches were recovered, indicating close utilization under present logging methods. 66% of this volume was Douglas fir"--

Now, that would mean a 14 inch D.B.H. log, wouldn't it? A: Yes.

Q Do you subscribe to his comment that cutting down to a top diameter of from 9 to 10 inches indicates close utilization under present logging

methods? A: Well, my lord, I was one of two members of the Forest Branch who was assigned to that Ladysmith experiment on behalf of the Forest Branch.

Q Yes? A: And I can assure you that there were logs much less than 8, 9 and 10 inches at the top end taken. They were coming in from a great many of them.

Q I am not talking of that. What the Chief Justice is referring to here is the original logging produced so much per acre, and in the course of the original logging logs down to a top diameter from 9 to 10 inches were recovered. He is not talking there of stuff taken after the experiment. Would you agree with that?

A Yes, I subscribe to that.

Q And he says that situation indicates a close utilization under present logging methods.

A That is quite right, my lord.

Q All right, Mr.McPherson, you may proceed.

MR. McPHERSON: Q: Mr. Byers, with respect to this question of the taper of trees -- the tapering from a 6 inch top to a 10 inch top: If you had a tree, that was three sections -- three logs, high, that would be -- 120 feet of log to come out of that tree, and you started with the top log of 6 inch, 40 feet down would be presumably a 10 inch butt, and then you start with a top of 10 inches for the next log and 40 feet down would be a 14 inch butt, and then

you start with the last log with 40 inch top and you go down 40 feet and you have an 18 inch butt? A: Yes.

Q And it is quite common in logging in British Columbia to get three logs out of the tree?

A Yes.

THE COMMISSIONER: If you are referring to my comment, I will retract it, Mr. McPherson.

MR. McPHERSON: Q: Now, Mr. Byers, I will have to look at these sheets again. Will you correct me if I am wrong? Up to 1943, there are practically no logs under 9 inch tops, and in fact very few at 9. A: On these particular tally sheets, I would say yes.

Q Well, who selected these tally sheets?

A I selected them at random.

Q Well, take December 6, 1943 -- that is pretty close to the date of sale, and this is one of the sheets you selected and it only shows two 9 inch logs. A: Yes, that is right.

Q And that is out of a total of 550 logs.

A No.

Q That is in 1943. A: Correct.

Q Now, here is one in 1943 which has a few more 9 inch logs, but the 9 inch logs are the smallest. That reports 21 9 inch logs. Could you tell me the total-- is that 595, the total number of pieces? A: That is correct.

Q So out of 595, you had 21 9 inch logs.

A I did not select these for 9 or 6 inch logs. I selected them for logs under 6 inches.

Q But you would agree with me this is a pretty good cross-section of the tally sheets?

A I think you will find approximately 75% of the sheets are similar to these, as far as diameters are concerned.

Q Do you agree with me, after you get away from 1943 and you get up to 1944, you will find they are cutting, as the tally sheets disclose, more small timber? A: No, I don't agree with that, for the simple reason I can go back and find you ample evidence before that.

Q My learned friend has had several months to get this evidence, and you have presented today two different groups of tally sheets and I have just taken the evidence of my friend. Now, will you look at this statement and tell me if I am wrong?

A In what respect?

Q The statement I made: After the end of 1943, and from 1944 on, we will say, you will find a great many more logs under 10 inches, down to 9, 8, 7 and 6.

A On these particular sheets?

Q Yes, on these particular sheets.

A Yes, I will admit that.

Q And if you just had these sheets, and these sheets represented all the logging in British Columbia, you would agree with me it was in 1944 that they started to log smaller logs?

A No, I cannot agree with that.

THE COMMISSIONER: Whether or not the witness agrees, it is immaterial. I notice the interpreter is not here, Mr.McPhersnn, so I am afraid you cannot proceed with Mr. Kagetsu now.

MR. McPHERSN: I beg your pardon?

THE COMMISSIONER: The interpreter is not here.

MR. McPHERSON: I am quite willing, if your lordship wishes, to proceed with Mr. Kagetsu's son as interpreter.

THE COMMISSIONER: That is quite satisfactory. How long are you likely to be?

MR.McPHERSON: Not very long, my lord.

(Witness aside).

THE COMMISSIONER: You might swear Mr. Kagetsu.

(Hag Kagetsu, sworn as interpreter.)

EIKICHI KAGETSU, resumed stand and testified through the interpreter further as follows:

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Kagetsu, the statement, Exhibit 21, that was filed, is that for the whole of 1931 to the end of 1941, the cutting?

A Yes.

Q Is that the cut? My lord, I do not want to waste time getting these questions across -- if my learned friend will agree with '31 --

THE COMMISSIONER: Is it 1921 you are dealing with now?

MR. McPHERSON: 1931, Exhibit 21. What I am asking the witness is whether or not the cut shown as

96,526,726 includes the whole of 1931 or not, and I think my learned friend says it doesn't. It is from September to March, 1942 -- if that is correct, I will accept my learned friend's statement.

MR. BALDWIN: That is my information from Mr. Kagetsu. That is just to September, 1931.

THE COMMISSIONER: This was cut after 1931, is that correct?

MR. McPHERSON: Yes, my lord.

Q When did you finish logging Block 256, Mr. Kagetsu?

A Can he refer to his black book?

Q Yes, this is his black book.

A 1934 to 1935.

Q And what about Block 198?

A 198 -- 1934 to 1936.

Q And what about Block 234?

A 234, I don't remember. Thatis on the other side of the river.

MR. BALDWIN: It is not included.

MR. McPHERSON: I am not interested in whether it is included or not. I am just asking him when he finished logging 234.

THE COMMISSIONER: What is his answer?

A He says this is a different area altogether and he does not remember.

MR. McPHERSON: Q: Well, 234 is shown as adjoining -- there is Block 234, (indicating on map).

A Yes.

Q Now, did you log that when you logged 88?

A Just that area. We moved to here and we logged this area. Now, this is a different area.

Q When did you finish logging Block 88?

A You are only interested in that Block 88?

QQ Yes. A: September, 1931.

THE COMMISSIONER: What was his answer in regard to Block 234?

MR. McPHERSON: He says he logged it before he moved his railway. That would be before September, 1931.

THE COMMISSIONER: What was the first lot you dealt with priot to 198?

MR. McPHERSON: 256, my lord.

THE COMMISSIONER:

QA And what was his answer as to when it was logged?

MR. McPHERSON: 1934 to 1937.

Q Now, Mr. Kagetsu, with respect to Block 263 up there besides 234, would your answer to 234 apply that you logged that before September, 1931?

A Yes.

Q Now, Mr. Kagetsu, where did you get these figures?

THE COMMISSIONER: What figures?

MR. McPHERSON: Excuse me, my lord, I do notknow whether my learned friend filed as an Exhibit the break-down of Exhibit 21 or not. Did you file that?

MR. BALDWIN: I am not sure. The secretary perhaps can say.

THE COMMISSIONER: I do not think you did.

MR. McPHERSON: Your lordship would have to have a copy of it.

MRR BALDWIN: I have a copy ot if here,my lord. I just attached it to the original. I will hand you a copy.

THE COMMISSIONER: Very good.

MR. McPHERSON: Q: Mr. Kagetsu, you have a copy of this breakdown of Exhibit 21. Where did you get that breakdown? A: He borrowed the Custodian's ledger for a day and copied it out of there.

Q Mr. Kagetsu, maybe you can find 1931 and 1932 in here. I have not been able to find it. Will you show me the 1931 cut and the 1932 cut?

A No.

Q So, 1931 and '32 are not in that book?

A No.

Q And they are in that little black book of yours?

A This here -- September, we moved --

Q That is an interesting book you have,Mr. Kagetsu. It carries a lot of answers, but unfortunately not all of them.

THE COMMISSIONER: Now, what is happening?

MR. McPHERSON: '30 and '31 are in the black book, and starting in '31 is in the recording company's ledger.

Q Can you tell me from your little book what timber marks you were logging under in 1931 and '32?

A Unless he has the files, he could not tell you.

Q Would the files tell the timber mark?

A Inside the files there should be many copies if scale bills and they should be on that.

Q Now, when you buy a block of timber, Mr. Kagetsu, do you get a timber mark for that block ?

A From the Forest Branch, you get the mark from the Forest Branch.

THECOMMISSIONER: Mr. Byers is the man you can get that information from rather than worry through an interpreter for it.

MR. McPHERSON: Can I ask the interpreter -- Mr. Byers, do you issue a timber mark for each block?

MR. BYERS: Not necessarily. There may be several of them.

MR. McPHERSON: Then there is no way of telling then.

MR. BYERS: Yes, you can tell but there is no way of telling whether the logs are from this Block or that Block.

MR. McPHERSON: Well, would there, as a general rule, be more than one mark for a block?

MR. BYERS: No. There have been cases where theye have been two marks for a certain block, but they would be using it for a different purpose. One man would be taking out cedar poles under a certain mark and another man taking out under a different mark.

MR. McPHERSON: Well, can his lordship assume that no block would have more than one mark?

MR. BYERS: I would not like to make that statement, because I have no occasion to swear the same block has been registered under different timber marks by different owners.

THE COMMISSIONER: During the period of the Deep

Bay operation, from my experience, it is quite definite that only one timber mark would be used, except in the circumstances Mr. Byers refers to.

MR. McPHERSON: Yes, but their owning all these blocks, -- it was not aquestion of two people operating one block.

THE COMMISSIONER: No.

MR. McPHERSON: Q: Now, Mr. Kagetsu, your ledger sheets here show the timber marks you were cutting under, don't they? A: He does not think so.

Q Well, I will show you, Mr. Kagetsu. Look at these, Mr. Kagetsu. Here is 1933. Here is a record of the log output of your company, and over here you see D.26 with a circule under it, and Q.5 -9-- Q.56 -- Q.59, D.24 and so on, these are timber marks, aren't they?

A Yes.

Q Those are timber marks?

A Yes.

Q And if you will just look over that, Mr. Kagetsu, I suggest you will find in 1933 you were cutting under 1, 2, 3, 4, 5, 6 timber marks -- 6 different marks. A: If you take September out, no doubt you will get more than one timber mark.

Q Mr. Kagetsu, in 1933, for the purpose of this Exhibit 21, and the breakdown of 21, you took the figures from the ledger, didn't you, of the

timber cut in '33.

A Yes.

Q Now, I take it in making up your breakdown for your counsel, you took these figures and added them together and you got 8,463,933.

A He says there should be a more specific figure than that in the record somewhere.

Q Yes, that is all right. But that is the total of your logging for 1933, isn't it?

A Yes, yes.

Q And you see opposite those figures, "D.26" and that is Q.59, all with circles under them. Now, those would be timber marks, wouldn't they?

A Yes.

Q So that is, in 1933 you were recording in your book that you were cutting timber that you were marking under those different marks, is that correct? A: He says he does not recall, but if they re in the ledger here it must be so.

Q Well now, I point out to you, Mr.Kagetsu, on Exhibit 21 you are giving a breakdown of timber cut from 1, 2, 3, 4, 5, 6 , 7, 8 blocks of timber. I point that out to you.

A Yes.

Q Now, from the evidence which his lordship has -- from the letters from the E. & N. Railway, (one of which I put in on behalf of the Government and my learned friend put the other one in -- one is Exhibit No. 16 and the other is Exhibit 20)

from Exhibit 16 and Exhibit 20, Mr. Kagetsu, I suggest to you in 1933, when you were cutting under six timber marks, all of the blocks that you have listed in Exhibit 21 -- out of all those blocks, only 1, 2, 3, 4 have been shown in your breakdown, so that the year you were cutting under those marks you have only listed four blocks. Is that correct? Just see the dates.

A I don't quite follow you.

Q I will explain it to him-- without taking it down, in the record again. Can you explain that?

A No.

Q No what? A: The logic does not follow.

Q Well now, Mr. Kagetsu, --

A He says he has contracted some of these blocks out and when you do that, every timber contractor has timber marks of his own over and above his own marks.

Q Now what blocks of timber did you contract out in 1931? A: 1931, is it you want?

Q Yes. A: None in 1931.

Q What did you contract out in 1932?

A None in 1932.

Q What did you contract out in 1933?

A Not any,-- not Block 198, Stotski, and Stotski cut 196.

Q Were there any other blocks in 1933 -- any other blocks contracted?

A Mr. Stoski, in 1933, logged off some other blocks which he does not know what blocks.

THE COMMISSIONER: What am I to understand from all that?

MR. McPHERSON: Q: Well, Mr. Stotski, if he logged off other blocks, would you have his timber mark in your ledger? A: The timber marks on it, which Mr. Stoski cut, are registered in here too.

Q Wellnow, take 1933. I know Mr. Stotski logged 256 and 198. What other blocks did he log? Your little black book shows the other two.

A It only shows what Mr. Stotski logged of his own.

Q We are only talking of Deep Bay timber. I see the record here -- Mr. Stotski logged two blocks, and both belonged to DeepBay. If Mr. Stotski logged on any other block that belonged to Deep Bay -- A: It is only Deep Bay?

THE COMMISSIONER: I didn't get that answer.

MR. McPHERSON: Mr. Kagetsu is explaining that Mr. Stotski did lumber other timber than Deep Bay timber in those years.

THE COMMISSIONER: How is this helpful here at all?

MR. McPHERSON: It is not helpful to the other side; it is very helpful to me.

THE COMMISSIONER: I do not follow the significance of it.

MR. McPHERSON: If I might explain: On Exhibit 21 the claimants are claiming that they took off

the blocks listed, roughly 112 million feet of timber.

THE COMMISSIONER: That is right.

MR. McPHERSON: And now I am endeavouring to establish through Mr. Kagetsu, when he gives a breakdown for 1933, for example, of 8,643,000, in 1933 he only owned Blocks 198, 256, 267 and 276, so he only owned four of the blocks listed here in 1931, but he was cutting under six timber marks, and I am inferring, or attempting to prove he was cutting timber in other blocks than those enumerated.

THE COMMISSIONER: And the timber he cut is included in that 8 million feet?

MR. McPHERSON: Yes, my lord.

Q Now, with respect to 1934, had he let any contracts to cut timber on your Deep Bay property?

A Start in 1934?

Q You are still talking about Blocks 198 and 256 -- leave them aside for the moment -- any other timber? A: In 1936 they cut in 1982 too.

Q Well, I am saying did he let any one any contract to cut timber in 1934 other than on those blocks?

A No.

Q Now, Mr. Kagetsu, I show you a page in your ledger log record for 1934, and you will notice timber mark D.28, which does not appear in 1933.

A Yes.

Q So I suggest to you in 1934 you got a new timber

mark. That would be correct, wouldn't it?

A He says he is not very familiar with the contents of this book. He would like to have the bookkeeper -- you quizz the bookkeeper, he says.

Q Now, I don't understand that, my lord. This man is very bright when he is looking at his own records -- at his own black book, and when I refer him to the company book, it is very easy for him to say -- there is a page of it -- isn't that a timber mark? A: Yes.

Q Now, in 1935, I show you a timber mark -- just excuse me, I cannot find that mark now. In 1935, Mr. Kagetsu, I show you another new timber mark appearing in your books "F.98" -- thatis over here, you see.

A In 1935?

Q You see that in the book, don't you-- F.98? Will you just ask him if he can see F.98 in there, with a crescent under it.

A Yes.

Q You can see that all right. Now, in 1936 here you will see a nother timber mark, "K.56". Is that right -- that is 1936.

A Yes.

Q And from 1936 on, Mr. Kagetsu, I can find no record of your timber marks. Do you know where I might find the record of your timber marks?

A He says he would not know. The bookkeeper might.

Q Now, Mr. Kagetsu, I point out to you from the figures I have shown you in the book here, that in

1932 four blocks of timber listed in your Exhibit 21 as being logged by your company while you were logging those four blocks, you had six timber marks; and in 1934 you got a new timber mark, but you did not get any new timber, so you had seven timber marks; and in 1935 you got another timber mark, so you had eight timber marks; and in 1936 you got another timber mark, so I suggest to you at the end of 1936 -- and there is no record I can find in that book after that date -- you had four blocks of timber -- only the four of the blocks of the timber listed in 21 were owned by your company and you were recording logging under nine timber marks. Now, how do you explain that?

THE COMMISSIONER: Mr. Kagetsu, I think you had better explain that as far as you have gone.

A He says as far as these figures in here go, that is where these figures come from -- it is elsewhere in the book, and he cannot find, but his bookkeeper can, but he says as far as these figures go it does show other timber marks, because he was in the export business and he had purchased logs having other timber marks. He was loading them out at Fanny Bay there. So briefly, these figures did not come from this part of the book.

MR. McPHERSON: Mr. Kagetsu, I take 1933 --

THE COMMISSIONER: Your bookkeeper is right here, and he says that his bookkeeper can indicate where these figures did come from.

MR. McPHERSON: Well, if I might just ask him this one

question, because I think Mr. Kagetsu, understands very well what I am asking him. In 1933, your log record for the company shows -- well, here is your stumpage account and here is the logs, and I suggest if you break that up you will get your figure of 8,643,933.

A Well, he says that might be so, but as for the rest of it he would not understand unless the bookkeeper was referred to.

MR. MCPHERSON: Well, my lord, we had better call the bookkeeper, because this is a very important point to determine whether these figures are correct or not.

THE COMMISSIONER: I quite agree with you; it is very important.

MR. BALDWIN: And if my learned friend will make it available to the bookkeeper for his help in identifying these timber marks, the scale bills,- if he would have the scale bills in the Custodian's possession.

MR. McPHERSON: I don't understand the suggestion. Mr. Kagetsu has been, and his staff also, in the Custodian's office for many days and they have offered to give any information they want to them, and I want to know where they got their figures. I am not so worried about where the Custodian gets his information for cross-examination as I am in finding out if he is making a correct claim or not.

THE COMMISSIONER: Well, if the bookkeeper is here now

you might call him. I assume you wish to have the bookkeeper called.

MR. BALDWIN: I am quite willing to have this cleaned up in any way we can.

THE COMMISSIONER: Well, swear the bookkeeper and let Mr. Kagetsu stand down in the meantime.

(Witness aside).

HENRY ARIKADO, being first duly sworn, testified as follows:

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Arikado, where did you get those figures?

A In '33, I got from this book.

Q Where did you get this figure from, 8,643,933 --

A That is the figure.

Q That would be that addition there?

A Yes.

Q I show you this book. Do you agree with me there are six different timber marks included in your log output for 1933?

A This writing is not my writing. That is before my time.

Q Well then, let us look at the next one.

THE COMMISSIONER: Well, while we are at it, is it a fact that those 1933 figures show six different timber marks?

MR. McPHERSON: Well, there is one that he does not concede is correct.

A Most of these are D.26 and there may be only a few logs in there for that mark. You can see here D.26,8,045,789. Out of that, what Mr.

McPherson quoted, so most of these logs was taken fromD.26.

Q All right. So then take the next one, 1934, D.28 -- do you see D.28?

A Yes.

Q All these are D.28. A:Yes, and here is one small one,D.26 there.

Q Well, I ask you, didyou take your total of logs from this to get the figure of 1934 -- your figure of 2, 209,000? A: I did.

Q You took that right out of the book here?

A D.28 -- that year is the most year we have taken from 28 and only a few from D.26.

Q And am I right, with these new timber marks issued to you, you took over 90,000, --you took 94,000? A: No, 9 million.

Q You took 9 million of the 10 million under a new timber mark in 1934?

A Yes.

Q And in 1935, under timber mark F.98 -- I am sorry, it is not broken down in that year as to the timber marks; it just gives the totals, but I think the evidence of the bookkeeper at the moment establishes the point that I was anxious to make, and I would like to continue now with Mr. Kagetsu's cross-examination.

THE COMMISSIONER: Is there any thing further you wish to get from the bookkeeper?

MR. McPHERSON: No.

THE COMMISSIONER: If so, Mr. Baldwin, you can recall

him on Monday.

MR. BALDWIN: Very well, my lord. I have not seen that book.

MR. McPHERSON: This book has been in Mr. Norris's hands for some time.

MR. BALDWIN: I don't wish to infer I have not had an opportunity to see it.

EIKICHI KAGETSU, resumed stand and testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q You made a statement a moment ago that you were buying logs for export, and that might explain the large number of timber marks that you were operating under. A:He says if it is connected with this, he would rather you ask the bookkeeper. He never looked at that book, you know.

Q Mr. Kagetsu is the one who made the statement.

THE COMMISSIONER: Ask him to answer the question.

MR. McPHERSON: Q: He was in the export business and was buying logs for export, and that might account for the timber marks. Did he say that or didn't he? A: He says he could not say.

Q Mr. Kagetsu, I point out to you, on Exhibit 21, when you refer to 296 and 198, the two blocks of which you kept a record because Mr. Stotski was logging them, there is very little difference betweenthe E. & N. cruise and the actual

logs recorded in your little black book as having been taken off; and as far as the other blocks are concerned, there is a considerable difference of 90 million as against 103 million. Now, am I right you have included in this breakdown of figures logs that did not come off the Deep Bay property? A: No, that is not the case.

Q Well then, Mr.Kagetsu, am I correct that all of the timber marks listed in your ledger apply to Deep Bay timber?

A He said if you would produce the scale bills, he will explain to you, otherwise he couldn't.

Q That is all, my lord.

THE COMMISSIONER: Mr. McPherson, it is my impression that a record is kept in the Forest Branch of timber marks, and of the timber in respect of which each mark is issued.

MR. McPHERSON: I am already getting that. I am going into that question later,but I was trying to get this witness to give me that information. He seems to know everything he wants to know, but not anything the Government wants to know.

MR. BALDWIN: I don't think my learned friend's remarks are at all called for.

THE COMMISSIONER: I think it is wise for the claimant to investigate this matter further, because certainly this line of cross-examination has indicated the 96 million figure does include other logs.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Now, if there is any explanation for it, I would like to have it.

MR. BALDWIN: Certainly, we want to give it to you. May I ask Mr. Kagetsu a couple of questions which might clear up some of the confusion?

THE COMMISSIONER: Very well.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q In making up this breakdown from the ledger, did you, yourself, give instructions to Mr.Arikado, or did you personally do it?

A Yes, I got Mr. Arikado to do it for me.

Q That is all, my lord.

(witness aside).

MR. McPHERSON: My lord, if I might speak to this point generally. The only point that really disturbs me is that the Government is endeavouring to present the facts here and I do not like to be put in the position of asking questions in cross-examination and then someone going and getting information to bring in. They have given this as their breakdown and theyx should not be at liberty to amend it again.

THE COMMISSIONER: I am seeking the facts, Mr. Mc Pherson. Certainly, if the claimant has been so casual as to come in with a claim, that 96 million feet were taken off an area, and he has not satisfied himself that he has included timber only taken from that particular area, it will be

a matter for adverse comment in regard to that, of course.

MR. McPHERSON: Thank you, my lord.

THE COMMISSIONER: I am not passing it on to anyone yet, but I think this is a matter that warrants further investigation on your part, Mr. Baldwin. We will adjourn now until 10 o'clock on Monday morning.

MR. BREWIN: What are we going to do with these Forest Branch sheets?

THE COMMISSIONER: Well, I see no reason to keep them here. We have all the evidence in the transcript.

(PROCEEDINGS ADJOURNED TO MONDAY, NOVEMBER 22,1948, AT 10:00 A.M.)

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

E. Blyth

Deputy Official Stenographer

CASE NO: 1388

JAPANESE PROPERTY CLAIMS COMMISSION.

B E F O R E

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

Haj. Nagetsu chief 485 - 494
cross 494 - 506.
Schultz. chief 506 - 526.
cross 527 - 558
Swanson chief 559 - 563
cross 563 - 566
Yelvam 566 - 567.

Vancouver, B.C.,
November 22nd, 1948.

IN THE MATTER OF THE CLAIM OF

THE DEEP BAY LOGGING COMPANY.

PROCEEDINGS AT HEARING

(Pages 481 - 567)

The Commissioner.

Vancouver, B. C.

November 22nd, 1948 . 10. a.m.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: When we adjourned on Friday my learned friend was cross-examining Mr. Kagetsu and Mr. Arikido the bookkeeper on the matter of what appeared to be , from the line of cross-examination, to show that in Exhibit 21 the total shown of the cut was taken from Blocks other than those blocks listed on the left-hand side of the Exhibit. As I indicated at that time we are just as anxious to bring before your lordship the full facts and to that end we have been working over the weekend in an endeavor to see what these numerous timber marks in the ledger mean. I have given my learned friend just now a memorandum from Mr. Kagetsu to myself setting out all the facts as nearly as they can ascertain them from the information they have. In that connection I would like to point out of quite a considerable number of the files of the company are either somewhere in storage or in the custody of the Custodian, I don't know if there are more any/or not -- but there was some taken from Mr. Kagetsu's house and there was not list and no receipt signed for them. I am not suggesting that the Custodian has access to them, but we could more fully explain some of these matters if we had access to certain scale sheets which may be in that considerable volume which may have been mislaid.

THE COMMISSIONER: Have you endeavored to run the timber marks down through the scalers office.

MR. BALDWIN: My learned friend has done that, my lord, and I have a copy of the letter to the office of the Custodian from Mr. Fox, which my learned friend will no doubt produce in his continued cross-examination. I merely wanted to give your lordship the story of what we have been doing over the week-end and to suggest that Mr. Kagetsu, Junior, who has been doing most of this work, would be the person most likely to be helpful in this connection.

MR. McPHERSON: My lord, I am somewhat at a disadvantage, but my learned friend has a letter from Mr. Fox addressed apparently to myself, which I have never seen and has not been received by the Custodian's office. In fact we have been trying to get this letter for the purpose of this hearing. I may say in confirmation of what my learned friend said that rather than worry about these tally sheets and so on that may or may not have been in Mr. Kagetsu's home, which the Custodian assures me he didn't remove, at any rate we went to the Forest Service and did get a list of the timber marks as disclosed in the blocks and the blocks to which the timber marks applied, and the government takes the position that the government is entitled to rely on the books of the company as being correct, that if the books show timber was logged under a certain mark that that is the timber

to which that mark was assigned, and in the governments reply they will be producing a witness from the Board, or we will put in an official letter giving the particulars as to the blocks; but my lord, it was not my intention to continue this cross-examination of Mr. Kagetsu. I think I can make that point in presenting the governments case. As far as the government is concerned, I don't see much point in continuing this line of cross-examination with Mr. Kagetsu. He has put in a statement as to how he breaks down the figures and the government is relying on his books and his statement, and in presenting evidence on behalf of the government we will endeavor to show that timber was cut or purchased from other people or cut from blocks other than disclosed in his breakdown, and that is how he arrives at this large over run as against the E. & N. cruise. I had finished my cross-examination.

MR. BALDWIN: If my learned friend doesn't wish to pursue it, I do, because there is an inference suggested that this cut is either inaccurrate or dishonest.

THE COMMISSIONER: You are quite free to re-examine if you wish.

MR. BALDWIN: I would like to, my lord. As to my learned friend's statements that the Custodian didn't take any files for which he gave no receipt, we can call evidence to refute that.

THE COMMISSIONER: I do not know that I am greatly

concerned with that, Mr. Baldwin. You can appreciate that in an organization such as the Custodian's office it is quite possible that was was done without the present officials of the Custodian's office knowing anything about it, and it is quite possible that some other branch of government, such as the Security Commission, or some similar organization, might have had something to do with the removal of the files. I am not concerned with that.

MR. BALDWIN: But I am concerned to show that the absence of these documents does handicap us in answering some of the questions which my learned friend raised.

THE COMMISSIONER: I quite appreciate that, and I think your friend would concede that.

MR. McPHERSON: Yes, if my learned friend will admit the company's records are not correct, but if the company's records are correct, it is not necessary to have the tally sheets because the company records show the timber marks and the timber taken from those marks.

THE COMMISSIONER: If they can explain the presence of these marks, it is open to them to do so. Do you wish to examine young Kagetsu?

MR. BALDWIN: Yes, my lord.

TH ECOMMISSIONER: Was it his father that gave evidence?

MR. BALDWIN: It was his father and the bookkeeper that have been called before.

THE COMMISSIONER: Then you are proposing to call Mr. Kagetsu Junior, for the first time, is that the situation?

MR. BALDWIN: I believe this is the first time he has given evidence.

THE COMMISSIONER: Yes, he hasn't been on the stand before.

HAJ KAGETSU, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Mr. Kagetsu, will you tell his lordship how Exhibit 21 and the breakdown were arrived at -- the righ-t hand part or the cut?

A This is the ledger of the Deep Bay Logging Company and from the year 1933 through to 1942, when they left Fanny Bay, the figures or the scale of each individual boom they sold has been entered in here. As we turn those pages there is a summary at the end of each year and from these summaries we obtained the figures which we used in Exhibit 21. We didn't know this at the time. We thought that these figures represented only the timber marks of the blocks listed in Exhibit 21. I have subsequently discovered other timber marks entered in the ledger. In looking over the information that we had over the weekend, we have found that most of these , should I say, unacceptable timber marks were entered here in view of the fact they were boom sticks and swifter logs. However, upon looking through this

thing further we found that boom sticks and swifters besides sticks with no marks on had not been included in the figures of this book which we can quite easily prove by producing our 1941 and 1942 S. & R. scale accounts.

THE COMMISSIONER:Q:But how do you account for the timber marks that are not included in the areas which the company was cutting at Deep Bay in these years?

A We haven't unfortunately the S. & R. account for early years but for 1941 and 1942 we have, and in the S. & R. accounts you run across a lot of other timber marks besides our own and instead of just entering Deep Bay log timber mark the bookeeper entered the marks of the boomsticks and swifters too. Why he did that, I don't know, but he did that. At the same time he didn't include the scale of those other logs.

MR. BALDWIN: Q; Will you explain to his lordship -- take for example one entry. It is true, isn't it, that in many of these entries of a single sale there appear as much as three timber marks. Is that right? A. Yes.

Q Will you take one for which you can show it?

A I am just going through this at random and picking them out. It doesn't matter which one it is as long as it has more than one mark in it.

THE COMMISSIONER: Just come up here.

(Witness explains timber marks to the Commissioner).

THE COMMISSIONER: For the purpose of the record the witness has pointed out a scale bill showing the

total of approximately 2,084 feet. The entry in respect to that particular scale bill in the ledger, when the corresponding entry is made in the ledger it appears as 2080 feet, which is the total of the B-28 logs shown in that particular scale bill and excludes the other logs shown on the scale bills showing other marks or no marks.

MR. BALDWIN: If your lordship permits, it would perhaps facilitate this witness if he had the memorandum he made up in this connection.

THE COMMISSIONER: That is satisfactory.

THE WITNESS: In 1933 there are a lot of other timber marks which are not acceptable.

MR. BALDWIN: What do you mean by "not acceptable"?

A That is, they don't cover the areas in Exhibit 21.

Q What have you to say as to those?

A The Q-56 and B-24 -- I am reading from the 1933 ledger -- it is headed "wood logs", and these figures have not been included in the summary here for the year 1933 nor for any other year.

Q Then they don't appear in Exhibit 21?

A No, they don't.

Q They don't form part of the cut shown on Exhibit 21? A. No.

Q Yes? A. There are however, marks here. The one which appears most often is Q-59. Before each timber mark Q-59, there is the mark D-26.

MR. BALDWIN: D-26, according to Mr. Fox's letter to the Custodian, was issued the 12th September, 1942., in the name of the Deep Bay Logging Company to cover Block 267, Newcastle District, Vancouver Island.

THE COMMISSIONER: For Block 267.

MR. BALDWIN: That is one of the blocks in Exhibit 21?

THE WITNESS: And the reason it was entered first it would seem to me is, because it represents the boom, whereas the second mark represents boom sticks and swifters.

Q What is the second mark?

A This is not an important remark really, but I think it represents boomsticks and swifters; the important mark being D-26.

Q For the year 1933, what is the total number Q-59 at the end of the year?

A In the summary it shows 36017 board feet.

Q And what area does Q-59 cover?

A Lot 88, Deep Bay Logging Company.

Q That is what Mr. Fox's letter states, is it?

A Yes.

Q And that is not one of the areas there?

A No.

THE COMMISSIONER: Q; So that in that respect there are figures shown in Exhibit 21 which are not accurate?

MR. BALDWIN: That is correct, to the extent Q-59 is not one of the areas in Exhibit 21; and in 1933

it amounted to 36,017 feet.

THE WITNESS. I think however, to be perfectly honest, that a few sticks of Lot 88 were lying out in the booming ground and that is what this figure represents. It is only 36,000 from a total of over 8 million. It is really a negligible quantity. There is another thing too, I think I should mention. Upon looking over this letter from Mr. Fox, we found there was a mark M-31 which was issued in August 1941 and it covers block 198, which is in Exhibit 21. However, it also includes Lot 47 and part of Lot 88. These two parcels of land are not in Exhibit 21. Fortunately this was for the period for 1941 and on, so we had the S. & R. accounts and we went through all the S. &R. accounts one at a time to determine how much was cut under M-31, and furthermore we determined whether the M-31 mark was entered in the ledger. We discovered the bookkeeper was inconsistent. He entered some of the figures and not the others, but even if he had entered them all they would have amounted to only 254,108 feet -- slightly over a quarter million feet -- which we are willing to concede subtracting from the total entered in Exhibit 21. It, I might say, is an insignificant amount too. Incidently I might mention that we have in the S. & R. account no numbers of these entries which Mr. McPherson is objecting to, and whether or not it is possible to get copies of these accounts from the Forest Branch, I don't know,

but I rather think it is, and if we get hold of those I am sure we can prove beyond any shadow of doubt that Q-59 and all these other marks represent amounts which are very insignificant.

Q In the ledger in what order do these questioned timber marks , that is the timber marks which do not cover the area in Exhibit 21, where they appear in the order as they are listed -- take the example you showed his lordship, that particular scale sheet, what was the timber mark for the boomsticks in that case?

A A-60, I believe it was, and the number in the lower half of the page.

Q Where did it appear in the ledger?

A It appears second on here. My lord, all these entries which can be questioned in view of the fact they have other timber marks, if they were all totalled up, other than this timber mark Q-59, I found come to only about 1% of the total entered in Exhibit 21 there. The Q-59 entry in the total here in 1933, it shows that its amount was 36,017 feet.

THE COMMISSIONER: Q: That is the total of Q-59, is it?

A Yes.

Q For the one year?

A That's right.

Q Does it appear in any other year?

A No, it does not.

THE COMMISSIONER: You are putting in the Fox letter,

are you?

MR. BALDWIN: Yes, my lord. I believe my learned friend had this information by telephone but I haven't had it until this morning. We obtained this copy. In that connection I would like to point out that the claimant didn't have this detailed information as to what timber mark covered what area when he made up this exhibit 21, and it is since then my learned friend has raised this question, and we have checked it carefully,. We find that Q-51 is not one of the parcels.

THE COMMISSIONER: Yes.

MR. BALDWIN: This is a letter from the Chief Clerk in the Forestry office.

THE COMMISSIONER: This will be put in as an exhibit.

MR. BALDWIN: (Reading). You will observe my lord, that down thus far none of these have been issued in the name of Mr. Kagetsu, or the Deep Bay Logging Company, indicating the probability of the explanation they are boomsticks. (Completes reading letter).

(LETTER DATED NOVEMBER 20,1948, MARKED EXHIBIT No. 1388-27).

THE WITNESS: My lord, may I raise one point here?

THE COMMKSSIONER: Yes.

THE WITNESS: In looking through this ledger I discovered from 1938 on he has on many occasions made entries opposite which he has marked "Pee wee logs".

MR. BALDWIN: Q: That is the bookkeeper?

A Yes.

Q From what date on?

A From 1938 on.

THE COMMISSIONER: Q: And is there any timber marks shown opposite those peewee log entries?

A No; just the S. & R. account numbers.

Q Perhaps that relates to the matter of which your father spoke on F riday, to the effect that he was buying logs for export and they may have been included in the scale records which Mr. McPherson was examining upon. Is that a reasonable explanation?

A I don't think so, my lord. From all the information I have been able to have access to, I feel sure that nothing but his own logs were entered in here.

Q What is the suggestion about pee wee logs?

A I raised that simply to show that in 1938 he was booming a lot of small logs together and selling them as peewee booms.

MR. BALDWIN:Q: In this year 1938 that you mention, do any timber marks appear?

A No, they do not.

Q That practice was discontinued, wasn't it?

A Yes, it was.

Q When? A. 1936.

Q The years covered by Exhibit 21, who were the bookkeepers and what periods were they bookkeepers? for? A. In 1933 and 1934 Mr. Kazueta was bookkeeper, and from January 1935 right on to

the spring of 1942, Mr. Arikido was bookkeeper.

Q Where is Mr. Kazueta now, do you know?

A I don't know for sure. I think he is east somewhere. He certainly isn't in Vancouver.

Q When did this explanation in naming a lot of these timber marks boomsticks first occur, or who did it occur to?

A Mr. Arikido.

Q When was that? A. Just after the close of the session here the other night.

Q When did you first have the information of all the timber marks they weree operating under?

A Saturday afternoon.

MR. McPHERSON: My lord, I don't see that it is material as to whether or not the claimant had his evidence ready and what date he obtained it.

THE COMMISSIONER: It is explanatory of the fact that timber under marks different than those shown in Exhibit 21 was included in the record attached to Exhibit 21.

MR. BALDWIN: The claimant admits it was negligent; it was inadvertent. I merely tried to show your lordship there was nothing intentional in this matter.

THE COMMISSIONER: I appreciate that.

MR. BALDWIN: I think that is all, unless your lordship has any questions to suggest.

THE COMMISSIONER: No.

CROSS BY MR. McPHERSON:

Q Mr. Kagetsu, how old are you?

A Thirty.

Q When did you first become interested in the books of the company?

A Just after coming to Vancouver.

Q You never kept any books?

A No.

Q And you don't really know anything about the books of the company, do you?

A Not a great deal, but as far as these figures are concerned, I think I know as much about them as anyone else.

Q Am I correct that you first learned about those figures when I cross-examined your father the other day. Isn't that the first time you saw those figures?

A. Yes.

Q And as a result of my cross-examination and your further discussions with the bookkeeper you have reached the conclusions you are pointing out today, is that right?

A Backed by other information, yes.

Q And backed by reading the books?

A By books and S. & R. accounts.

Q What about these books. I understood when you were up there discussing with his lordship you explained it to him and produced certain documents which I haven't seen to establish that the boom sticks were not included in the books, is that correct?

A. Yes.

Q Would you say that is correct all the way through, that the boomsticks are not shown in the books?

A I would say so.

Q I understood my learned friend to ask you about the boomsticks and I understood you to say that Q-59, 36,017 feet, was probably boomsticks?

A I didn't make that statement.

THE COMMISSIONER: Q; What was the reference to Q-59?

A I said that the entry there represented logs that had been hanging around.- I don't know for what reason, just prior to 1933 they had lend logs out and they had not been formed into booms yet and there were old sticks lying in the booming ground, and that is the 36,017 feet.

Q Would you show me in the books or some record how you get the information there were logs lying around under Q-59?

A Yes, I have it right here.

Q What does that say. It just gives the figure?

A Yes.

Q But does that prove the logs were lying around?

A It doesn't matter whether they were lying around.

Q Why do you say they were lying around?

A They certainly hadn't been taken away.

Q I suggest to you that the fact there were logs around in your camp under Q-59 is evidence you were logging Lot 88 as late as 1933?

A I stated that in 1933 the total amount logged on 259 is only 36,017 board feet.

Q I suggest to you were logging 88 in 1933 -- you

were logging Lot 88 after 1931 on during 1932, and that is why you had a few logs left in the spring of 1943. Do you think that is possible?

A I think it is possible. My father maintains it isn't.

Q Would it be customary to log Lot 88 in 1931 and to keep logs lying in the water for two years before you shipped them out in 19 33?

A Yes, I remember from visits that they did have old logs lying on the ground for a considerable time. Just how long, I don't know.

Q How many logs were bought a year for export by your father and his company from other people?

A I don't know.

Q In 1933 am I correct that the first three entries are for timber mark Q-59?

A No, you are not correct.

Q Am I correct that Q-59 is included in the first entry of January 17th, it is included in the second entry, January 27th, and it is included in the third entry February 26th?

A I pointed out that the second and third entries are headed "wood logs" but that they have been lying out a long time in the booming grounds.

Q I agree with you for the purpose of discussion -- logs which are sold as wood logs?

A Yes.

Q What would you say about Q-59, February 21st, where they are not shown as wood logs?

A They are not boomsticks.

Q How do you know they are boomsticks. Would you show me from the books?

A I didn't say they were boomsticks. I said they wouldn't be boomsticks.

Q And what about May 19th, Q-59? Do you see an entry under wood logs?

A No.

Q Isn't it under "fir"?

A That's right.

Q And isn't it included in the total of the whole column? A. It is included in the 36,017 feet?

Q So I am correct that when there were wood logs they were shown as wood logs?

A Yes.

Q And when not indicated as to what they were, am I correct in assuming they are logs?

A No.

Q You think they are boom sticks?

A No, they could be either logs or boom sticks.

Q I thought you told his lordship you didn't include boomsticks in that. You produced some evidence to show his lordship they weren't boomsticks?

A I am saying there are five entries here I think, Q-59. Of those five just how many include loose logs on Q-59, I don't know. It might be that one of these marks as Q-59 were logs and the other entries are boomsticks. I don't know.

Q You agree with me that Q-59 applies to Lot-88 ?

A Yes.

Q Would you explain to me how, if your father finished logging Lot 88, by September 30th would be able to log under Q-59, as late as December 18th,1933. Would you explain why that is? A. It is a customary thing. I mean it is common practice for loggers in order to seek boomsticks to go and log areas other than the usual logging show. Moreover, I don't know how old these boomsticks were. They might have gone out to a mill and back again ten times.

Q With respect to timber mark M-31, the evidence given by my learned friend is that was issued in August 1941 and that it covered a part of Lot 88. I suggest to you that you wouldn't have had it cover part of Lot 88 unless you wanted to take some logs off 88, is that correct?

A I forgot to mention one matter there. There was Mr. Tominaga who was taking out logs contracting for my dad under the mark M-31. He was cleaning up those blocks down there, under those marks.

Q Now we have somebody else logging on 88, is that it? A. Yes.

Q But I suggest the logs were taken off 88 and recorded in your books, is that correct?

A I made the statement that some were and some were not.

Q Are you admitting that your books are not correct, or at least are not complete?

A They are complete.

THE COMMISSIONER: He said there were certain inaccuracies.

MR. McPHERSON: My lord, the problem of the government in this case is that if the government hadn't insisted in getting a breakdown of the claim by years, your lordship would have been faced with a claim for 98 million feet.

THE COMMISSIONER: I appreciate your point.

MR. McPHERSON:Q: Did you help to make up this breakdown, Exhibit 21?

A I didn't take the figures out. I did have something to do with it, but not a great deal.

Q Would I be correct if I made the statement that what happened is, you took your other production and then you credited against that Stasky logs of which your father had a record, and for the balance you just took it out of the air and assigned it to certain blocks.

A Absolutely not.

Q Did you use the books?

A Yes.

Q Didn't you know there were timber marks in the books before F riday?

A No. I said I had very little to do with them.

Q You made the statement to my learned friend when he was attempting to justify the late production of this evidence-- it wasn't till I cross-examined the claimant about these timber

marks and their possible application, I am suggesting to you that in order to prepare these figures you or Arikido studied the books. Would that be correct?

A Studied the records, yes.

Q And you didn't go to the trouble or Arikido didn't go to the trouble to break it down before I presented to his lordship the figures to determine whether or not it was a true statement of the facts? A: We have shown this morning these other marks, most of them have not been included even though they are shown here. Most of the ones that have been entered are insignificant.

Q I suppose if I start now to attack the Stasky figures, if I gave you sufficient time you could go out and justify them too. Are you sure the Stasky figures are correct.

I wonder, my lord, if this book should be put in as an exhibit?

MR. BALDWIN: I was going to suggest this morning, before my learned friend mentioned this book, I will put it in as an exhibit and I will give it to my learned friend so that he has the whole thing. He has inferred from time to time that the claimant only produced out of the book what he wants. The claimant is quite willing to throw the whole thing open to him. It is written in Japanese.

THE COMMISSIONER: The book is available to you. It

is not much good to me if it is written in Japanese.

MR.McPHERSON: The only part I saw the other day was not written in Japanese.

Q Could you give me a breakdown now, in view of your knowledge, of exactly what blocks 96,526,726 feet were taken off? Could you give me a list of the blocks? A:I can give you a partial breakdown, but unfortunately B.28, which is not marked, covers about five blocks and unfortunately those five blocks are the pertinent blocks in Exhibit 21

Q But what about Q.56, the Brooks-Iowa Lumber Company. How does that happen to appear in your books? A: Those were boom sticks.

Q I thought you told his lordship you didn't include boom sticks. You produced some evidence to his lordship to show the amount transferred and said the books left out the boom sticks.

A Yes.

Q Then how is Q.56 boom sticks?

A I said this morning these boom sticks, marked inadvertently, had been entered in the ledger; even though the scale had not been entered, the marks had been.

Q Do you know as a fact your father never bought logs from the Brooks-Iowa Lumber Company?

A No, I don't. Apparently he bought ~~EK~~ directly

or indirectly boom sticks.

Q How do you know he bought boom sticks?

A How else could he have them, unless he stole them?

Q How do you know those are boom sticks in that book? A: What else could they be?

Q I am asking the questions. You answer them. How do you know those are boom sticks?

A By a process of elimination.

THE COMMISSIONER: The witness has not said definitely they are boom sticks. He has put it forward as an explanation.

MR. McPHERSON: They have produced this man as a witness and they should produce somebody who knows something about it, such as the bookkeeper or Mr. Kagetsu, Sr. I don't suppose this man knows anything of this matter first hand. I don't see that I am going to get anywhere in continuing the cross-examination of this witness. But there is a general point, if your lordship would permit, I would like to speak on. I wonder if your lordship feels you could make a ruling that this time, in order that the Government may know what is and what is not a correct statement filed by the claimant to support his claim; that by lunch time this figure must be brought down by actual blocks. Your lordship did rule they couldn't file any further amendments, but any time I raise a point they want to amend.

THE COMMISSIONER: Have you given as much information

as you can from the records you have?

MR. BALDWIN: Yes, my lord, as far as I know the break down by years is all we have from this ledger.

Q You haven't got it by blocks, is that correct?

A Yes.

MR. BALDWIN: We do have now from the Forestry Office that letter from Mr. Fox which says which timber marks are applicable to which areas, and I suppose some sort of figure could be reached, but for my friend's purposes and your lordship's, I think all we need is a corrected total. We will assume for the purpose of this Hearing that any entry in which any timber mark appears here other than the ones referring to these areas covered in Exhibit 21 are to be taken as not coming from those areas.

THE COMMISSIONER: I would like you to give me that total. There is no purpose in my directing the claimant to furnish the information, as Mr. Baldwin now tells me that it is impossible to be furnished. So far as the discrepancy in the figures is concerned, Mr. Baldwin will appreciate, as no doubt you do, that in view of the weaknesses that have been shown in these figures, the same weight cannot be attached to the evidence as to quantity cut as it would have been prior to the cross-examination.

MR. BALDWIN: We wouldn't have gone to this trouble-- the weight of evidence we don't consider so important, but what I considered important was to

explain to your lordship the apparent discrepancy.

THE COMMISSIONER: I appreciate that. I do not see that you need pursue it any further. It is obvious that these figures are to a degree unreliable. Can you accomplish anything more?

MR. McPHERSON: No, except I would, somewhere along the line in this case, like to have a definite ruling from your lordship that the claimant must stop putting in figures which are not correct and which I can establish from Government evidence are not what he says they are, and I don't want to let him continue amending his claim.

THE COMMISSIONER: There is no request for an amendment. Mr. Baldwin has said simply he acknowledges the figure 96 million feet was excessive, and he is prepared to state later today the amount by which he concedes it was excessive. It is not a matter of amendment.

MR. McPHERSON: But in addition to that your lordship, I think, will appreciate there is no information on the documents from 1931 to 1932 and there is nothing after 1936.

THE COMMISSIONER: I think you have made your point.

MR. McPHERSON: I won't continue this cross-examination, but there is one point I would like information on -- and I know it is out of order from my point of view -- I would like an opportunity to find out from Mr. Kagetsu how much timber he bought for export or from other people, because he did mention it on Friday. Your lordship might

be interested in knowing that.

THE COMMISSIONER: I think the figures are now so confused that even although I have that information, it is not going to be very helpful.

MR. BALDWIN: I am quite willing to recall Mr. Kagetsu, my lord.

(Witness aside).

MR. BALDWIN: I call Mr. C. D. Schultz.

THE COMMISSIONER: This might be an appropriate time for a short recess.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

MR. BALDWIN: I am calling Mr. Charles D. Schultz with regard to the cruise he made of Block 195.

MR. McPHERSON: My lord, I wonder if before this examination-in-chief commences, my learned friend can tell your lordship whether or not he has been able to get the exact dates of those two forest maps, the dates they were drawn up to. You will recall that my learned friend was going to get information from the Forest Branch, which I was prepared to accept.

THE COMMISSIONER: Yes.

MR. BALDWIN: I am afraid I had overlooked that, but I believe at the time I got them, my understanding was, and I so marked the copy I gave my learned friend, that Exhibit 2 of the Deep Bay operation was up to the 10th August, 1948.

THE COMMISSIONER: I notice on Exhibit 1 it says to the end of July, 1948.

MR. BALDWIN: I didn't appreciate that was the date of

the map. That is what we believed the date, not of the original map but the date of the outline shown of the log areas, although you will recall we didn't put it in for that purpose.

THE COMMISSIONER: Where is the date you find on Exhibit 1?

MR. McPHERSON: On the face of the map at the top right hand corner.

MR. BALDWIN: I believe I put it on my learned friend's copy, but not on yours, my lord.

THE COMMISSIONER: What does it show?

MR. BALDWIN: It says under Timber Mark, 1C6 to the end of July, 1948.

THE COMMISSIONER: Yes. That is the information you wanted?

MR. McPHERSON: Yes, my lord.

CHARLES DAVIS SCHULTZ, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

MR. BALDWIN: My lord, before I begin the examination-in-chief of this witness, I would like to point out again that the claimant is only examining him with regard to Block 195. The cruise on the Deep Bay operation is not yet completed, and I assume that the cross-examination will be restricted to Block 195.

MR. McPHERSON: My lord, I would assume I am entitled to cross-examine on Exhibit 14, which has been filed.

MR. BALDWIN: That was filed, as you will recall, my lord, subject to be proved later and my learned friend asked for an adjournment and we thought we would have to go through without it.

THE COMMISSIONER: When are you going to be able to get the information in regard to the Deep Bay area?

MR. BALDWIN: We hope to have it, my lord, by Friday, I believe Mr. Schultz says.

Q Is that correct? A: Well, to put a definite date is difficult. It is a large area. We hope to have it done this coming week.

THE COMMISSIONER: Would it not be better, Mr. McPherson, to refrain from dealing with the DeepBay area until such time as Mr. Schultz has completed his present cruise?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: It would appear to me that we are going to be covering the same ground twice if you proceed to cross-examine him how.

MR. McPHERSON: Could I reserve my position on that until after the adjournment at lunch hour, so that I could speak to Mr. Smith?

THE COMMISSIONER: Very well. Proceed.

MR. BALDWIN: I think before I go on I would like to get this matter clear. The reason I am calling Mr. Schultz now is to facilitate the hearing. It may be this cruise comes in late. If there is any question of my learned friend corss-examining on matters on which Mr. Schultz has not

yet received full information, I agree with your lordship I don't think it serves any useful purpose, because the other was a reconnaissance only.

THE COMMISSIONER: Let's not worry about it in the meantime. I do not propose to deal with the question of the limitation of cross-examination at all at the moment.

MR. BALDWIN: Q: Where do you live, Mr. Schultz?

A 1176 West 12th Avenue, Vancouver.

Q And what is your occupation?

A I am a forester and forest engineer.

Q Are you a member of any socities?

THE COMMISSIONER: You can lead on these preliminary matters.

MR. BALDWIN: Q: You are a member of the Canadian Society of Foresters?

A Yes.

Q The American Society of Foresters?

A Yes.

Q The Forest Products Research Society?

A Yes.

Q The Engineering Institute of Canada?

A Yes.

Q And I und erstand you are registered under the Engineers Act of British Columbia as a forest engineer? A: That is correct.

Q And under the Forestry Act of British Columbia as a forester? A:That is correct.

Q Would you tell his lordship briefly of your experience in your business as forest engineer

and in the logging business?

A I worked from 1921 to 1931 as a logger and in the lumber mills. I obtained my log scaling licence during that time and lumber grading certificate; cruised timber and scaled logs. In 1931 I joined the British Columbia Forest Service as a forest engineer for the Forest Economic Division on Forest Service & Management plans. From 1936 to 1939, I was with the British Columbia Lumber Shingle Manufacturers' Association, and from 1940 to 1944 I was logging engineer for Bloedel, Stewart & Welch,Limited, and I started my own practice in 1944 and formed the C. D. Schultz Company, Limited, a short time later and have carried on since that date.

Q You are a graduate in forestry of the University of British Columbia?

A I graduated from the University of British Columbia in forest engineering in 1931.

Q I take it your experience in British Columbia has been pretty general, has it? I am speaking geographically.

A Well, I have covered most of the various parts of the province in my work, as I would naturally have to do in my capacity with the Forest Service and since. I have worked in all the forest administrative districts in the province.

Q And how does the Vancouver Island section of British Columbia compare with the others from the point of view of the worth of timber stands,

their accessibility to the market, etc.?

THE COMMISSIONER: We have coverdd all this ground before and I do not think it is really in issue.

MR. BALDWIN: Well, my lord, it is in issue to the extent that any other stumpage price, for example, whieh may be adduced from other sections other than Vancouver Island would be weighted by the evidence which is given as to the value of the Vancouver Island stands.

THE COMM SSIONER: We have had it from several witnesses already.

MR. BALDWIN: If my learned friend will concede it, my lord.

THE COMMISSIONER: I am simply pointing out to you that you have led evidence on this point and it has not been attacked particularly, as I have observed. However, it is for you to determine.

MR. BALDWIN: But my learned friend's case has not yet begun.

THE WITNESS: Am I to answer that question?

MR. BALDWIN: Yes.

A The timber onthe east coast of Vancouver Island, in my opinion, and I think it is generally conceded by most of those interested in the timber industry, is superior and lies on better ground, generally speaking, than timber in the remaining areas of British Columbia.

Q Would that comment also apply Cowichan Lake District and specifically to Block 195, which you cruised? A: Yes, I think

Block 195 is good ground and easy construction and had first-class timber on it from the evidence and on examination.

Q You made a stump cruise of Block 195 recently, didn't you? A:That is correct.

Q I show you Exhibit 13. Is this the cruise you made? A: Yes.

Q Of Block 195,in the Cowichan Lake District?

A Yes.

Q Would you like totake this page 1 of your cruise report and explain it to his lordship. Just go through it and explain what the basis of the examination is and exactly what you did.

A Well, we located ourselves through B.C. Land Surveys and used that as a control for the examination. The post location is shown by a double ring on the plan. We then ran examination strips a quarter of a mile apart to tally a half chain on each side, which would normally give us a 5% sample of the area. However, we had to break our tallies where construction had been carried on, where the stumps had been blown out. We stopped our tallies, which reduced the cruise to 4% -- about 3.99 actually. We measured all standing timber on this 4% sample tally at diameter breast high, and on the logged areas we measured the height of the stumps and the diameter of the stumps. The standing timber tallies were converted to volume through using the standard British Columbia Forest Service volume tables,

and taking the height and diameter measurements in the standing timber to apply the correct relative table to tally. In the stump tallies, we measured the height of the stumps and the diameter of the stumps and from measurements taken in adjacent standing timber, worked out taper tables to be able to convert the stump height diameter to d.b.h. We then converted the stump d.b.h. to volume through the same procedure as we had with the standing timber.

Q Before going any further, you should indicate to his lordship on the plan how much of this area was logged, where the felled and bucked was and where the standing timber was.

A The standing is shown hatched. At the time of our examination they were logging in area No. 4 and there was a cold deck pile logged in area No. 13, felled and bucked timber in areas 9 and 10. I think it is graphically clear.

Q These strips you ran, did you run them through the whole block?

A Yes, excepting in areas No. 4, where we had to-- they were yarding at the time and we didn't go under the lines of the rigging. So we had to move our strips over in that case.

Q And you actually measured the stumps that you tallied? A: Yes. Then on examination of the ground and the timber remaining, that is the evidence of timber remaining, and a study of the operation, I applied

cull and breakage factors; that is a factor for deduction from the standard for unseen defects that would have been there, from my experience. That is shown in "G". And also a factor for breakage -- to obtain the net volume that should apply to the area. I tried to make a liberal factor here, and that is my opinion; "G" is my opinion. The rest of it is by measurement.

Q You say that was a liberal allowance for breakage and culls? A:That is my opinion of it. We wanted to make a more intensive sampling,but didn't have time to do it, and as a check we then took the tallies from half the area and worked out the volume per acre on the basis of the west half and applied to the whole area and got the result. On completion we took the tallies from the whole area and reduced it to volume per acre and applied it to the whole area and got the same result, which is an indication that the area is fairly uniform. I mean, that the proportion of lighter stands to heavy stands would be uniform; and the density of the cruise is indicated as a result of that check, although normally on such an examination you would probably prefer an more intensive sampling, but recently sampling has developed so that we find we don't have to give the same density of tally as previously on working out average checks in that manner.

Q How would you say a cruise such as this, namely

a stump cruise, would compare in accuracy or estimation with a cruise made of virgin timber?

A In the case of virgin timber you would have more evidence of trees standing. As against that, you don't know the utilization. For instance, there is a great variation in management. For instance, you can make a cruise of an area and if the management is good, it will check out with your cruise. Some of this is going to get an over run or under run. That is where the cruiser has to judge and estimate what is going to happen. So there is a balance there to some extent. In the green timber, the cruiser has the advantage of seeing his timber and doing mensuration and measurement, but has to use his judgment as to what is going to happen.

THE COMMISSIONER: Q: When they come to log it?

A That is correct. A lot of good cruisers have been criticized where the cruise was quite satisfactory but the logger didn't log satisfactorily, or economic conditions were such at the time the cruise was made it had changed quite a bit when the area was logged.

Q Is it fair to say that you consider a stump cruise such as this would produce reasonably close to the same results as a cruise of virgin timber?

A I think so, because the mensuration of the stump--

Q All I want is your opinion.

A Yes.

Q That is your belief?

A That is my belief.

MR. BALDWIN: Q: What is the volume shown on your cruise here? A: The total is 55 million.

Q 55,474,000, that is the net volume after deduction for cull. A:That is correct. 474,000 is a small proportion of the whole 55 million. That is our result from our calculation -- 55,474,000.

Q If in your sampling you had to apply the samples from one half to the other, if you had found a difference, what would that have indicated?

A It would have indicated a great variation in the stand and we would have to increase our figures.

Q But you didn't find that?

A No.

Q And did that indicate to you that the density of the cruise was adequate for accuracy?

A Yes, that was the indication.

Q Who did you have with you on this occasion, Mr. Schultz? A: Mr. Bakewell and Mr. Urquhart and two other assistants -- four besides myself.

Q Did you have knowledge of any prior cruise when you made this one?

A No.

Q What was the chance, do you consider, in this Block? A: I consider it a good logging chance. It is good ground; no evidence of rot to any extent, and uniform stand;

no unbroken ground for heavy breakage.

Q What about the quality of the soil for road building? Was it good or otherwise?

A It has a heavy gravel content and it is similar to the Cowichan Lake region, as a matter of fact. It is easy road construction.

Q If you were considering buying that property, what other factors, if any, would govern your decision favourably?

A You mean the analysis of the stand area for purchase?

Q Yes. What about the accessibility of labour, for example? A: The Cowichan Lake area is a very favourable area to operate in, due to the fact you have small towns like Duncan and Cowichan Lake lying adjacent to the logging areas, and a ready labour supply. You are close to communication and transportation. In case machines break down, you get them into that area very quickly as compared with the north coast, for instance. The Cowichan Lake area has been considered for many years a very favourable operating area.

Q You mentioned your employment with Bloedel, Stewart & Welch as logging engineer. In that capacity, did you have anything to do with advising the company as to purchasing timber blocks?

A Well, that wasn't my function, although any time a purchase was made there was a good deal of discussion between the logging engineer's depart-

ment and the management. We knew what was going on.

Q And you were employed with them from 1940 to 1944?

A That is correct.

Q As a logging engineer, would you go out and assess a chance or a block that the company was considering purchasing? A: Yes. Before any purchase was made, it would be analyzed.

Q And you took part in that analysis?

A I actually did it from a cost of extraction standpoint.

THE COMMISSIONER: Q: Do I gather you were in charge of that feature of the work?

A For the Bloedel operation at Menzies Bay, yes.

MR. BALDWIN: Q: And in that capacity, did you have any knowledge of the stumpage values between 1940 and 1944? A: Yes.

Q What would you say would have been a fair stumpage value for a purchaser to pay for that block in June, 1943?

A Between $4.00 and $5.00.

Q You would also have knowledge of the log prices at that time, would you?

A Yes.

Q Can you tell the Commissioner if there is any rough ratio, or if there was at that time, between the log prices and the stumpage prices?

A Stumpage is always analyzed in each individual area, taking in all factors, at the same time following a number of sales and taking the run

as an average stumpage and the royalty on the east coast of Vancouver Island, say you made an investigation now and checked them, I think you would find they would run from 20% to 25% of your logs to the average value of the logs.

Q 20 to 25% of the average?

A I will ~~re~~larify that. That is stumpage plus royalty. That is on royalty paying lands, you would add what you considered for royalty, the percentage would be less than if you considered stumpage alone. Due to our law here, we have a royalty clause and a stumpage clause, both of which are stumpage. It is the value of the timber on the stump.

THE COMMISSIONER: Q: Do I understand the approach you make is 20 to 25% of the current log price?

A That is right, in general. If anybody can buy for less, they will do so.

Q Just applying that test, what was the market price of fir in June, 1943, do you know?

A I think No. 2 was around $20.50.

MR. BALDWIN: Our information is, my lord, -- I think Mr. Burks' evidence will bear it out -- $20.50. In June, 1943, the Timber Controller set it at $20.50, that is for No. 2. No. 1's were $2~~7~~.50, No. 3's, $15.50.

THE COMMISSIONER: My note is $22.50.

MR. BALDWIN: That was a slightly later date. I think you will find, my lord, that was March, 1944. Fir was $29.00, $22.00 and $17.00.

THE COMMISSIONER: That is right. In June,1943, there was a further advance of $1.00.

MR. BALDWIN: Making fir $27.50, $20.50 and $15.50.

THE COMMISSIONER: That is right.

MR. BALDWIN: And cedar, $1.00 higher on No. 1's and $2.00 higher on No. 2's, and the same on No. 3's.

THE COMMISSIONER: All right, proceed.

MR. McPHERSON: I wonder if my learned friend could give the price in May, 1943, which was when 195 was sold?

MR. BALDWIN: The sale date, I understood, was in June, 1943. June 28th is the date of the document, isn't it?

THE COMMISSIONER: Yes, the date of negotiation your friend is referring to.

MR. McPHERSON: Yes. The Government contends the date you signed legal documents has nothing to do with the value.

THE COMMISSIONER: When was the tender accepted?

MR. McPHERSON: Tenders closed in May, 1943, and the tender had been received at that time, so that the value had been fixed as of that time, and, of course, it was necessary to refer it to Ottawa.

THE COMMISSIONER: My note, Mr. Baldwin, is prices were pegged at $13.00, $18.00 and $25.00, an increase of 50 cents a thousand, and that was before February 1943, and in February, 1943, an increase of $1.00. So that would be $19.50 in February, 1943. Then on June 15, 1943, there was a further advance of $1.00. If you refer to

roughly $20.00 for the May figure, you will be fairly close.

MR. BALDWIN: My friend will contend that the relevant date is not the date of the execution of the document, but I think the document must be rebutted.

THE COMMISSIONER: I will hear argument on that later. You do not need to worry about it now.

MR. BALDWIN: No.

Q What was good utilization of timber limits in, say, 1940 -- down to what d.b.h.?

A Every effort was made to cut to 12 inches, except, you might say, on large cedar.

Q How long had that been the practice -- for several years or was it a very recent innovation, or how long had it been in effect?

A Well, there is a great deal of variation of management. I think keen management would go after that every time, because obviously if management buys an area of timber for a lump sum, every stick taken off is going to increase the over run to reduce the original stumpage price and make the operation more economical.

THE COMMISSIONER: What year are you fixing this at now?

MR. BALDWIN: I said 1940, my lord. The witness hasn't answered the question.

A There is a great variation of management. It depends who --

Q I said good logging practice. How long has it

been good logging utilization to take down to 12 inches d.b.h.? A: Well, as the value of forest products increased from the depression--

THE COMMISSIONER: Q: Can you not answer by naming the year rather than going into the details. If you cannot, all right.

A Well, I would say from 1936 on you get that trend of increased utilization.

MR. BALDWIN: Q: And an efficient operator took that diameter out? A: Yes.

Q Do you know of a block of timber sold near Nanoose by Charles McGarrigle to Allison?

A Yes, I examined that for the proposed purchaser before Allison bought it?

Q You examined that for a proposed purchaser?

A Yes.

Q What did you say as to the quality of that timber relative to the quality that was still stadding on Block 195 and as indicated by your stumpage?

A The quality of Block 195 was superior.

Q Superior? A: Yes.

THE COMMISSIONER: Before you open your cross-examination, Mr. McPherson, there is one question I would like to ask the witmess.

Q The top diameter of 10 inches is the equivalent of 14 inches d.b.h., is it not, roughly?

A 14 inches d.b.h. -- they go down lower than that.

Q I am asking you the question, what is the d.b.h. equivalent of a top diameter of 10 inches.

A I would say about 18 inches d.b.h.

Q 18 inches? A: 16 or 18.

Q I had been told by other witnesses that taking a 40 foot log, one takes it there is an increase from the top to --

A Oh, you are talking about a log, not a tree.

Q Yes. A: That is about right. I thought you were thinking of a standing tree.

Q So a 10 inch top diameter log would be 14 inches on the large end? A:That is correct.

Q I want to read you a statement by Chief Justice Sloan in the Forest Inquiry and have you comment on it. Reading from page 47 of his report, in reference to the Ladysmith Experiment, which I presume you are familiar with.

A Yes.

Q "The original logging produced approximately 6,405 cubic feet per acre and logs down to a top diameter of from 9 inches to 10 inches were recovered, indicating close utilization under present logging methods."

Do you agree that the recovery of logs 10 inches top diameter, which is 14 inches bottom, indicates close utilization under logging methods applicable in 1945, when this report was made?

A We were trying to get our fallers to cut to 6 inches at that time, but that was the general practice at that time.

Q What was the general practice at that time?

A Yes.

MR. BALDWIN: My lord, I have a question, if I may?

THE COMMISSIONER: Yes.

MR. BALDWIN: Q: In making this cruise of Block 195, in establishing your values in the northern part adjoining Block 403, I suppose you got an idea of the nature of the timber up there, did you?

A As much as could be seen from where we were working, we naturally got an idea of it.

Q And how did it seem to compare to you with the general appearance of Block 195?

A The area lying adjacent is the same elevation and appeared to be relatively the same stand.

THE COMMISSIONER: What is the area you are comparing 195 with?

MR. BALDWIN: 403, immediately adjacent, to the north.

Q On page 2 of your report, you don't break it down by grades, these various species, do you?

A We couldn't do that, because the best average for grades on that would be the scale returns.

Q I show you Exhibit 23 in this hearing, which is the scale return for this Block 195 and for 403, the southern portion of 403, that is the part adjacent to 195. On the over side of the page you will see on the very last line the percentages in the species. You will see fir grades, 11.53, No. 1; 62.89, No. 2 and 25.48, No. 3. What would you say as to those grades? Is it normal or above normal for No. 1 and No. 2, or below normal?

A It shows evidence of what we term a good stand, which is typical of that area.

THE COMMISSIONER: This is 403, is it? or 195?

MR. BALDWIN: Both, my lord. It is the scale for 195 and the southern part of 403, adjacent.

THE COMMISSIONER: I follow you.

MR. BALDWIN: Q: Would you say that 62.89 is high for No. 2 grade, that is to normal, taking the whole province?

A That is a high percentage of No. 2.

Q And what would you say as to No. 1, 11.53?

A That is a fair average for that type of stand. That is a good return for fir or saw logs.

Q In reply to a question by his lordship, you said you were trying to get your fallers to cut down to 6 inches. Top diameter, I take that to be.

A Yes.

Q And you said it was good utilization down to 12 inches d.b.h., is that correct?

A That is correct.

MR. McPHERSON: My lord, could I be clear on this, whether the witness did say to your lordship 6 inches at the top or a 6 inch tree.

THE COMMISSIONER: I understood he meant top.

THE WITNESS: Yes, 6 inch top.

MR. BALDWIN: Q: Do you know the block of timber lying immediately to the east of 195?

A I saw it.

Q Was it logged? I mean, the portion adjoining.

A No, it wasn't logged.

Q Down to what diameter did you find stumps cut on 195? A: We had measurements of 10 inch stumps. It surprised me, as a matter of fact.

MR. McPHERSON: Rather than start now, if it please your lordship I would prefer to adjourn for lunch and meet at 2 o'clock. I am ready to go ahead if your lordship wants me to.

THE COMMISSIONER: It is only 15 minutes in any case. Very well. We will adjourn and resume at 2 o'clock.

MR. McPHERSON: The only reason I suggest it is I find that one and a half hours adjournment for lunch is rather short.

THE COMMISSIONER: Very well. Would you prefer to adjourn to 2:15?

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Very well, 2:15.

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

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

Deputy Official Stenographer

Vancouver, B. C.,

November 22nd, 1948. 2:15 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

CHARLES DAVIS SCHOLTZ, resumed the stand, testified further as follows:

THE COMMISSIONER: Yes, Mr. McPherson.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Scholtz, how many days were you on Block 195?

A Three days.

Q And in that three days you did a four percent cruise on 979 acres?

A No. The rest of my organization was there also.

Q How long were they on?

A They were on six days.

Q That is including the three days that you were there, does it? A: That is right.

Q It isn't a total of nine days, but a total of six days, including the three that you were there? A: That is right.

Q During that time they made a four percent cruise of 979 acres?

A That is right.

Q And if you make the same cruise and arrive at the figure shown in your report, Exhibit 14, of approximately 55,474,000 feet, and you arrive at that figure on the basis of four percent, then I would be correct, wouldn't I, that your crew inspected 2,200,000 feet? That would be four percent of 55,000,000, wouldn't

it? A: Yes, whatever that is. That is right.

Q That would be 25 times two million, two hundred thousand feet. I suppose you would agree there is a possibility of error of a few one hundred thousand feet in a cruise of that kind? You might be one hundred thousand feet out?

A Oh, there is bound to be. It isn't like measuring pipe, or anything like that. There is a little difference.

Q There is a possibility of error?

A Yes, in all such analyses.

Q Do you think a reasonable error would be one hundred thousand feet on 2,200,000 feet?

A A reasonable deviation on work of that nature, on check, is around 10 percent.

Q What would that be on?

A That would be on the total, providing the intensity is as it was worked out.

Q Mr. Scholtz, would I be correct on the basis of a four percent cruise if you were short or over, up or down, 100,000 feet, that for every one hundred thousand feet that would represent 2,500,000 feet, wouldn't it? on a four percent cruise? A: No, it isn't that. The first basis is the accuracy of the sampling. Now, if there is a little human error in t taking the samples, there is bound to be, but I don't think you can go at it quite that way.

Q Now would you agree with me that any error that

exists in a four percent cruise, that it is multiplied by 25 times on the 100 percent?

A Any error would be multiplied by 25 times.

Q I suppose you will agree the price of logs was controlled until some time in 1945?

A Yes, it was.

Q Under the Timber Control?

A Under the Timber Control.

Q And would you agree that because the price of logs was controlled up until that time, that the price of standing timber didn't rise to any extent, because the sale price of the logs couldn't rise? A: That would affect it, yes.

Q Do you agree that logging costs have risen considerably since 1941?

A That is correct.

Q Have you any idea of what percentage it has risen, say between 1941 and 1948?

A Well, you take the differential in the No. 2 log; in 1941 it is -- well, that is something you have right in front of you, isn't it? You have the log prices. Whatever that differential is, that is what it is.

Q I don't know, my learned friend may have it. In any event, you agree with me that there has been a considerable rise in the cost of logs?

A Yes.

Q And a considerable rise in the cost of logging?

A That is right.

Q Did you see Exhibit 23, that is a Provincial Government sheet?

A That is the sheet that was shown me when I was examined this morning.

Q Did you see it at the time you made your cruise?

A No, I haven't seen anything.

Q On the basis of this statement, would you agree with me that, first, would you look at this statement of the percentages at the bottom here--

THE COMMISSIONER: This is Exhibit 23, you are referring to.

MR. McPHERSON: Exhibit 23, on the back.

Q Do you agree that on the basis of these figures that fir, cedar and hemlock for this operation is below No. 2 grade? The average is below No. 2 grade? A: Well, is there a recapitulation of average here? No.

Q No, the point, Mr. Scholtz, that I am making is from a logger's point of view if your No. 1 doesn't equal your No. 3 grades, then according to logging practice they call it a below No. 2 average, is that right?

A Well, you can have a case where you had -- no, I don't think you could take that.

The value of this stand is that your logging price, multiplied by these averages and divided by 100 percent gives you the average.

Q You wouldn't agree that this is what loggers would commonly call below No. 2 average?

A That is 62 percent No. 2? No, I wouldn't think so.

You see No. 2, 62 percent, and No. 1, 11, there. You have 74 percent one and two.

Q Yes, but when you come across to cedar you have No. 2, 51.55, and No. 3, 41.22, and when you come across to the hemlock you have No. 2, 13.11, and No. 3, 44.22?

A What we should do is work it out, and find out. I don't know what your final average is, but it seems to me I would think that is a good average for merch. type.

Q What would you call this stand of timber, No. 2 average then?

A Yes, about a No. 2 average. Although, before I ever went into any dollar valuation of it, I would want to know the exact result.

Q Do you agree with me that a purchaser buying Block 195 would take into account the size of timber which was then economical to market?

A Definitely.

Q In paying for that timber, and he would have to take into account the accessibility of the timber? A: Yes.

Q And take into account the increased cost of labour? A:. The increased cost of labour and supplies and everything.

Q You mentioned utilization this morning. Would you agree with me that the purchaser of this timber would have to take into account the cost of opening it up?

A Yes.

Q Would you just point out to his Lordship on Exhibit No. 1 how you got into the timber? Where did the road come from that you went in on? A: There is no road on this, is there? It is shown on my plan. The road is right on it.

Q The road is shown on your plan, Exhibit 14.

THE COMMISSIONER: Exhibit 15, is it not?

MR. McPHERSON: Yes, 15.

9A This is the main road, coming in on the north-east corner.

MR. McPHERSON: Q: I am correct, am I, that the people who opened up this timber didn't open it up from 403? They didn't come in over 403?

A Well, that is something that I would have to check myself. They might have used the same ground road, I don't know.

Q Didn't you come in on this road shown on your plan? A: That is right, but there was --

THE COMMISSIONER: Just excuse me one moment. The road shown on the plan is that which comes down the Bear Creek Valley?

MR. McPHERSON: Yes, my lord. It comes down here, and in this way (indicating).

A When we went up there, for instance, Mayo was using part of the road and Stoltz was using it. I don't know the history of the development.

Q You said this morning that you considered that

an accessible piece of timber, with easy road construction. Didn't you use those words?

A Yes, -- ground conditions.

Q Now the road you went in on, did you cross a trucking bridge over the Cowichan River?

A We came in on the Mayo Road and went out on the Stoltz road, but it has a bridge across it.

Q Did you know how far it was from the main road, that is from the main highway where the Stoltz Road starts to the edge of Block 195? How many miles? A: Not exactly.

Q I understand the Stoltz road runs to the rail head somewhere? A: Yes, it crosses the river, lower down this way (indicating).

Q Am I correct that the Stoltz road had to cross the river, and after it crossed the river it went to the railway, is that right?

THE COMMISSIONER: Which river are you referring to?

MR. McPHERSON: The Cowichan River, my lord.

A The Cowichan River.

THE COMMISSIONER: Q: What is your answer?

A I believe so. Yes, it must. They load those logs out by rail.

MR. McPHERSON: Q: Yes, they load those logs out by rail. Do you know how much it costs a thousand to ship logs over the C.N.R. line?

A I think it is around $2.00 or $2.50, somewhere around that. I don't know exactly.

MR. BALDWIN: Is that today, or at the date of the sale?

THE COMMISSIONER: You better fix your price as at the date of sale.

MR. McPHERSON: Q: What would you say it would cost to take them out over the C.N.R. in 1943?

A I don't know. That is a matter of record.

Q I suppose you would agree with me that a purchaser buying Block 195 and taking into consideration all the factors we have mentioned would take into account, in order to log this property, that he had to truck out to the railway and re-load and ship out the logs?

A Yes, he would take into account all those factors.

Q Do you know how many feet of timber you can put on a railroad car?

A Yes; it averages around 7,000 a car.

Q Would I be correct in saying the C.N.R., in setting their price in 1943, and even today, set their price on the basis of $2.50 a thousand as a figure -- the figure may not be accurate, but on the basis of $2.50 a thousand on a 7000 foot car? That is, no matter whether you ship seven thousand feet or not, you are paying for it, is that correct?

A Yes, they set a set rate.

Q Yes, and it doesn't matter whether you use the whole car or not. It is up to you when you load it? A: Yes.

Q Do you agree with me that when you load a railway car with logs, you can get more footage on with big logs than if you have small logs?

You get the point, Mr Scholtz, that a log scale of a big log will have less scale than the log scale of a log of little logs put onto a railway car? A: I wouldn't want to make a statement on that.

Q Well now, you have compared the McGargle timber down at Nanaimo with this timber up on Lot 195. Would I be correct in suggesting to you there is no comparison between the two blocks of timber, and their accessibility?

A No. The differences that I noted in the two were in quality.

THE COMMISSIONER: Q: Were in which?

A Quality.

MR. McPHERSON: Q: Quality.

A What hit me when I examined it was there was quite a high proportion of defective timber in the McGargle timber.

Q A lot of defective timber?

A Yes.

THE COMMISSIONER: Q: Excuse me, do I understand then you did not take into account the cost of delivery of the logs to the market?

A I didn't evaluate either stand. That is, I didn't give a definite figure when I was asked about stumpage value on 195.

MR. McPHERSON: Q: So would you agree with me, rather than your agreeing with my learned friend earlier this morning, that the chance, as you call it, of opening this up -- it is quite

a chance to open that timber up, isn't it, to build a road and bridge in and haul your logs out and put them on a train?

A No, I wouldn't say so, because you have smaller blocks being operated in that region in that way.

Q And you think the road building would be fairly easy? A: Oh, it was obviously fairly easy. That is one of the attractions of the Cowichan Lake region.

Q Would you agree with me if the road building wasn't easy you would value this timber lower than you have? A: That is right. I gave an opinion on the stumpage, I didn't value.

Q Your opinion is carrying some weight, Mr. Scholtz, when you have been qualified as an expert in this field?

A To evaluate a piece of timber it takes considerable analysis and investigation, which I haven't done in this case.

Q It probably avoids a lot of cross-examination.

THE COMMISSIONER: Q: I would like to know what you mean. Certainly your evidence in chief led me to believe that you were valuating this timber and comparing it with that at Nanoose?

A I compared them. That was my opinion, but I didn't analyze the length of road to go in there, and the cost of the road and opening up expenses against the cost of the road in the McGargle timber, and the opening up expenses

and the factors involved.

Q That would be a proper thing to take into account when considering buying timber?

A Absolutely, but my report there is a volumetric thing.

Q It is limited to the quality of the timber, and the volume? A: Just exactly what the front page of the report says.

MR. McPHERSON: Q: Do you know Mr.Hunter of the Lake Logging Company?

A Yes.

Q Did you know what Mr. Hunter sold the timber on Block 403 for?

A No, I don't.

Q Now in a statement you made this morning, you said that keen management would go after all the small timber, and you took a 12-inch D.B.H., as of 1936. That was your statement this morning?

A Yes.

Q And if it is 12-inch D.B.H., do you agree the top would be eight inches approximately?

A Eight or six.

Q Eight or six inches? A: Depending on the condition of the top.

Q So if the trend from 1936 on was to cut logs with eight to six inch tops, you would expect to find the Forestry scale records showing a heavy quantity of that small timber cut,

w wouldn't you, from 1936 on?

A There should be evidence of it.

Q You would think there would be, if that was the

trend.

A There should be evidence.

Q Now, if you have a tree 12 inches D.B.H. , how many logs would you get out of it , on the average?

A 12 inch?

Q 12 inch? Would you get one log?

A You would get one log, about 100 board feet out of it.

Q I am correct, am I, that a 12-inch D.B.H. being a small tree you get one log out of it, and that iswhy you have difficulty to get your fallers to cut small trees, is that right?

A We bonus them for it.

Q You say you tried to get the fallers to cut down to six inches top? That would be 10 inch D.B.H.? A: You must appreciate with some of this old growth and old timber, it is so limby that you can't do it, and you can't stick to the rule, exactly.

Q Wall it has been customary from 1936 on. When were you trying to get your fallers to cut the small trees? What year?

A Around 1940.

Q And in 1940, am I correct, in spite of the fact you have stated there was a trend from 1936 on to cut trees 6 and 8 inches at thetop, were you having trouble getting your loggers to cut trees that size?

A That has been because they don't get the scale

out of them, and you have to work out some basis that will be remunerative to them, to encourage them to do it.

Q Isn't that one reason why they were not cutting small trees in 1940, 1941 and 1942?

A I think it was largely -- what was your question again?

Q I am suggesting to you one of the reasons why timber owners were not cutting small timber as you have stated from 1936 on, and, in fact, weren't cutting it until 1944--

A They were cutting it.

Q They were having trouble with their loggers.

A We have instances where operators, even before 1936, in the Fraser Valley have operated in second growth timber successfully for years.

Q I suggest to you when you have second-growth timber, you can afford to cut second-growth because it is a small timber and you use small equipment; but I am suggesting to you when you go into a block like 195, it didn't pay in 1942 and 1943 to use heavy equipment to take out small timber, particularly when you had a railroad.

THE COMMISSIONER: Now you are getting these questions too involved.

A You see, it is just a matter of degree. You take a long log, say forty feet, down to a six-inch top. You can handle that in your actual salvage operations, and are taking the stuff

that is left, even after that.

MR. McPHERSON: Q: You agree with me that a tree with a six-inch top has only one log, is that right? A: That is correct.

Q All right. Now in the Fraser Valley they cut second-growth timber down to six-inch tops, or smaller? A; Just a moment. We are getting involved here. I am wrong there. You could have a three log tree and still cut the top down to a six-inch top, if the top was marketable.

Q All right, we will start at the other end of the tree. Say the D.B.H. of the tree is ten inches. That gives you a six inch cut.

A You are talking of small timber now.

Q I am talking of small timber.

A All right, take the 12 inch trees.

Q You get one log out of that tree, don't you?

A Yes.

Q When you raised the question of the Fraser Valley and said they were cutting in second-growth, one of the reasons they cut it is because they can use small equipment?

A I can clarify that. If you had a stand of a scattered grade, big trees with a lot of s smaller trees in between, you definitely would have to have two operations, one to take the small timber and one the large timber -- absolutely.

Q You agree with me, do you, if you only get one length -- in the forty-foot log which has a 12-inch D.B.H., and you can get a three out of

that, or say to twenty inches D.B.H., it is cheaper to log big trees?

A It is definitely cheaper to log big trees -- period. But you can fell logs down to a six inch top.

Q Now with respect to the cutting of small logs, would I be correct if I said as a general rule when you cut down in small logs to six and seven inch tops and below, they are sawn right on the property, or sold to a mill which is very close to the timber?

A Well, a lot of them are bundled.

Q They bundle them? A: It is common practice to bundle them.

Q Was it common practice to bundle logs in 1942?

A It would be limited in 1942. It was a limited practice.

Q Did Bloedell's do any bundling in 1942?

A No.

Q Did they do any in 1943?

A Bloedel's have been operating in big timber. Bundling is carried on mainly by operators who are handling small timber, and where you are handling big timber, I want to make it clear, utilization comes in cutting the long top and getting as much as you can out of the top, but they haven't the small stuff.

Q You have estimated 55 million feet as of November, 1948, on this property, according to your report?

THE COMMISSIONER: On Block 195.

MR. McPHERSON: On Block 195, 55 million feet, I believe, according to Exhibit 15--55 million, 474 thousand, that is right. Now, how much of that timber, of that 55 million, was standing at the time you cruised it?

A It is shown right on the plan.

Q It is shown right on the plan?

A Yes, not in volume. It is cruised right through.

Q It is the volume I would like.

A Well, we went after a total, and in it the average came out the way it was. It could be worked out, but I can't give it to you now.

THE COMMISSIONER: Q: There was comparatively little standing timber left?

A That is right.

Q As revealed from your plan?

A Yes.

Q It is in here. A: Yes, plus the cold-decked pile.

Q The cold-decked pile was not standing?

A No.

MR. McPHERSON: Q: You can't tell me, or estimate how much timber was standing?

A No.

Q Now on the basis of the acreage in that block, 195 had 979 acres, and taking your cruise at 55 million, 474 thousand feet, it works out at 56,764 feet to the acre?

A: Yes.

Q That is a pretty good stand of timber, isn't it?

A It is a pretty fair stand.

Q Now with respect to Exhibit 15, that is this map of yours, I take it that these are the boundaries of where the timber was when you saw the property in November?

A That is a great operation, yes.

Q Now, I show you Exhibit 1 here, and I take it that these are the boundaries of where the timber was in July of 1948.

MR. BALDWIN: The witness can't answer that question.

THE COMMISSIONER: What do you mean by "here" and "these"?

MR. McPHERSON: The lines shown on here, showing where the timber is now.

Q You can see the lines. Isn't that what you call these lines?

A Type lines.

THE COMMISSIONER: Eh?

MR. McPHERSON: Type lines, my lord.

Q The type lines don't show where the timber was, as you can compare it with this Exhibit, my lord? A: Well, I don't know the origin of this.

Q You can see from the spar trees where the timber was left?

A These insignias are Forest Service insignias. "Logged in 1944, burned in 1944".

Q The areas with the insignias in, they had been logged? A: I don't know the origin of this plan, but it looks like it

must have come from Government information. I don't know.

Q I asked my learned friend this morning if this was correct, and my learned friend answered me and referred to the date up here. That is the reason I wanted to be definitely sure, and have it definitely proved. I wanted to know for certain where these boundaries were before I cross-examined.

MR. BALDWIN: I think I also made it clear at the same time that that exhibit was put in by Mr. Norris and he stipulated that we put it in only for the boundaries, as we did in the other case. As for the dates, I did say these are the lines. We don't agree that these are correct lines, but that is the Forest Service date as of thedate of this map. That is what it purports to be.

THE COMMISSIONER: Obviously those lines purport to be the limits of the standing timber remaining in January, 1948.

MR. McPHERSON: July of 1948, my lord. The end of July.

MR. BALDWIN: This does, my lord, yes, part of it, and the logged areas.

THE WITNESS: May I ask a question, my lord?

THE COMMISSIONER: Yes.

THE WITNESS: Is this from the Forest Services information?

MR. McPHERSON: I don't know. My learned friend produced this.

THE COMMISSIONER: That is the information that I have.

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

THE WITNESS: I think this particular Forest ranger prepared the inspection report, and that is done -- these logging inspecting reports are done in an occular manner and theytype the line in, as best they can. They don't actually survey them. It is an idea of the situation, which is for administrative purposes.

MR. McPHERSON: Your Lordship will recall on Friday I pointed out my learned friend had filed two maps as Exhibits, and hadn't indicated whether or not the boundaries of the timber were correctly shown, and I requested that information, and I agreed if he got the information from the Forestry Service, I would accept it without question. This is very important from the Government's point of view, as to whether or not these lines are correct, and I understood this morning my learned friend pointed out the date at the top.

THE COMMISSIONER: I take it they are correct. Unless I hear something to the contrary. We have an explanation from Mr. Scholtz that these lines are put in by the Forest Ranger, not as a survey line but from his observation.

MR. BALDWIN: From occular observation only, I think is what the witness said.

MR. McPHERSON: Yes.

MR. BALDWIN: I wanted to clarify, my lord, when I gave those dates this morning that all I meant to do, and I think all I did was to say that the

date that my learned friend was requesting was the date that this plan purports to show. We don't say it is correct.

THE COMMISSIONER: Until I have something to the contrary, I am going to assume that the Forest Branch are describing conditions on their plans correctly.

MR. McPHERSON: Q: Now, Mr. Scholtz, with respect to the plan, Exhibit 15, where were they logging when you were in there?

A They were logging in No. 4. In about there, (indicating).

Q Now, if you will look at your plan and Exhibit 1, I would point out to you on Exhibit 1 it shows practically no timber at all left on 14 and 10. Is that right?

A 14?

Q No, on 15, I am sorry.

A That is this indication of this piece, is it? (indicating). I have never compared this, but I think that is probable, that this piece and this (indicating) is similar to that piece.

Q That is Exhibit 1 shows some timber left on Blocks 14 and 10?

A: That is right.

Q And it also shows some left on block 15?

A Yes.

Q And some timber down in the corner of 2?

A And when the Ranger was in there this might have been standing, and now it is felled and bucked.

Q Now from Exhibit 23, I suggest to you they

were logging an average of two million feet a month. That is from Exhibit 3?

THE COMMISSIONER: 23.

MR. McPHERSON: 23. That is the report of the Forestry Service.

A How many months is this for?

Q The last few months it works out to that.

A You want me to differentiate that?

Q I want you to tell me whether or not you agree it was approximately two million a month?

A Oh yes.

MR. BALDWIN: The document speaks for itself, my lord. I don't know that he should do arithmetic for my friend.

THE WITNESS: There is a half a million there. (indicating). There is two million a month.

MR. McPHERSON: Q: Two million a month, yes. Can you tell me on that map there --

THE COMMISSIONER: Which one?

MR. McPHERSON: Q: -- that map, Exhibit No. 1, if they were logging two million feet a month and they logged from the date put on by my learned friend -- they logged in August, September and October, that is six million feet in three months -- how do you get so much timber on your map?

A Does that show six million feet? That is July, August, and September. That is six million feet in three months.

Q Then, of course, you are taking July rather than October because that map is July.

A Apparently from that they logged six million feet in those three months, from July to the end of September.

Q How do you account for the amount of timber that you show as standing, compared to the amount of timber that a map in July showed standing, if youhave taken six million feet off? Where would you think the six million feet came from?

A Well that just didn't bother me a great deal, because this is an administrative map, and this is correct (indicating).

Q So you think it is possible it came from Block 403? A: No, I don't think so, because their operating roads are indicated through here (indicating).

Q I point out from Exhibit 1 they had finished part of 403 in 1947, as indicated by the Forestry map. 47 with a line through it means they had finished logging.

A It was logged in 1947.

Q And here they were logging in 1948 on 403 (indicating). A: That is in this area (indicating). That is correct.

Q Would you agree it is possible that some of the timber shown in Exhibit 23 under timber mark 1-C-6 may have come off here?

A This mark applies to both lots, and it could be on both, that is true.

Q I take ityou would agree with me if in view of

the quantity of timber shown on your map and a quantity shown on the Department's map, Exhibit 1, that if they have logged six million feet in those three months, there is either something wrong with the Department map or it came off 403, is that correct?

A It would have to. If you want me to absolutely verify that, we better go into a study group.

THE COMMISSIONER: Are we not getting pretty far into the realm of conjecture?

MR. McPHERSON: No, my lord, I don't think so. My learned friend has filed this exhibit with timber mark 1-C-6, and I assume he will argue that the timber shown in here or a large percentage of it, in view of a cruise of fifty-five million came off Block 195. The Government contends that large amount comes off 403 and you can't distinguish.

THE WITNESS: I don't think anyone can divide that up, when all the logs on the both blocks are covered by one mark.

Q You can allow the question to stand, then. The Government will produce evidence of where the timber came from.

A Yes, I think so.

THE COMMISSIONER: If you have such evidence, it is very much better than to ask Mr. Scholtz to guess.

Q I take it you cannot do anything more than guess. A: Well, I can take

the timber boundaries, but I don't think I can do much here, You can take the timber boundaries as shown and take the timber boundaries as we have mapped them and find the area and take the timber that came off in that period and see whether it makes commonsense or not. If those boundaries are close enough. I would have to consult with the ranger in order to verify it.

THE COMMISSIONER: I understand the Government has concrete evidence in the nature of direct evidence on it. I would prefer that.

MR. McPHERSON: We haven't direct evidence, but we have evidence to show they were logging the other block when they were logging it.

THE COMMISSIONER: That will be close to the mark, in any case.

MR. McPHERSON: Q: When you were arriving at your gross figure of 55 million, could you tell me what percentage of your cruise included trees below 12 inches D.B.H.?

A Not exactly. I can work it out and produce it to the Court, if you want it, because we have all the records.

THE COMMISSIONER: Q: Are you able to say, roughly, whether there was ten percent, or what?

A I will get my field book.

MR. McPHERSON: I think I should point out to the witness that in the report he shows it as 12 inches or over. I was trying to find out if there was any under 12.

THE COMMISSIONER: It will take a little time, so we

will recess for a few minutes.

(PROCEEDINGS RESUMED AFTER A SHORT RECESS)

CHARLES DAVID SCHOLTZ, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Scholtz, do you think you could get figures for his Lordship to show the amount of standing timber that you have included in your estimate?

A Yes, I can.

Q Would you also get figures for his Lordship to show what percentage of timber was included in your estimate that would be from 12 inches D.B.H. to eighteen inches?

A Yes.

Q All the rest of it would be above that, I assume?

A Yes.

Q Mr. Scholtz, would you agree with me it is standard practice among timber cruisers to cruise only down as low as eighteen inches D.B.H.? A: It has been in the past, yes.

Q Would you say that was the policy in 1942?

A Well, that was during the period of change.

Q That was probably the transition period.

THE COMMISSIONER: Q: Just a moment. Let us see what that means. 1942 was the transition period, was it?

A We decided on 1936. We will say from 1936 to 1942 there was a gradual change of methods. They are still changing them.

Q There was a gradual change between 1936 and 1942?

A It is better to say a gradual change from 1936 to date.

Q From 1936 to date? A: Yes, but 1942 would be six years during which there was a great change even then in the six years. The timber was looked at and valued.

Q Suppose you had been called upon to cruise this particular timber in the spring of 1943, what minimum would you have applied?

A I would have shown my figures, 12 to 18, and 20, and 18 and 20 inches or over.

Q You would have shown your smaller timber separately?

A I would have shown it there, yes.

Q Was that a common practice among timber cruisers, to your knowledge, at that time?

A It was, with some. For instance, the Lacey Company have done it for years. They are not active still, but their old cruises show it and incidentally -- well, that is off the subject, but it came into quite a bit of difficulty because loggers would look at it, at the total volume, when they were not utilizing it and criticize the Lacey cruises , whereas it showed the true picture.

Q What was the common practice in 1943 from a cruiser's point of view? Did they show below eighteen inches D.B.H., or below what figure?

A A considerable number of cruisers would cruise eighteen inches and over. An equal number would

cruise the other way. Anybody with forest experience -- forest service background, would be inclined to show the lower limits of the possible utilization.

MR. McPHERSON: Q: When did you leave Bloedel's?

A 1944.

Q Do you remember Bloedel's buying some timber from the Custodian in the Port Alberni area?

A No, I don't remember. I was on the east Coast.

Q You were on the East Coast. Now, I gather from your evidence this morning that the cruises you made in your reports were the basis on which the Bloedel company bought their timber?

A No. They had a cruising department. I was on logging engineering and valuation. The cruises were made by Mr. McFarlane.

Q Mr. McFarlane. So you weren't doing cruising for Bloedel-Stewart? A: Not for purchase purposes, but even at that there would be considerable cruising carried on in operations for certain checks and operating purposes.

Q How long ago was it that the minimum figure of 22 inches D.B.H. was customary amongst timber cruisers? A: Well, I think you would only use 22 inch D.B.H. if you were cruising for someone who was interested in purchasing lumber cedar, or something like that. They would be sent in with those instructions, because that would be the basis on which the buyer would be interested.

Q When did you first cruise timber yourself?

A I first cruised timber myself in 1926.

Q Do you remember if the cruise was for a sale, or was it to buy it?

A Well, we always cruised, as you see, irrespective of that, but the specifications come from the party who employs you. That doesn't change the actual result, but it might change the specifications from which you analyze the stand.

Q I would be correct that a timber cruiser cruises timber -- when a timber cruiser cruises timber for a buyer, the timber cruiser in making the cruise takes into account the utilization that that particular buyer can put that stand to?

A Yes, that is correct. For instance, he might receive instructions that the buyer wants a cruise showing the number of number 1 logs and the peeler logs and No. 2 and is not interested In No. 3. Those are the specifications of the cruise. Such a specification doesn't necessarily mean that that is all the timber in the area, because it wouldn't be. It is only for the purpose of the party who employs him.

MR. McPHERSON: My lord, I have completed my cross-examination on Block 195, and I feel that I should be permitted to continue my cross-examination of Exhibit 15. I have looked up the transcript, and I have the transcript.

THE COMMISSIONER: Exhibit 15?

MR. McPHERSON: This is the Deep Bay, my lord.

THE COMMISSIONER: 15 is Block 195.

MR. McPHERSON : Exhibit 14, then, my lord. We seem to have got our numbers confused. It is Exhibit 14.

THE COMMISSIONER: No. 14 is Mr. Scholtz's estimate of Deep Bay, is it?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: If youwere to proceed with cross-examination on that document now, you are going to be covering the same ground over again when you get the new cruise?

MR. McPHERSON: No, I don't think so, because I don't expect to be here by the time we get the new cruise.

My submission is this document here, Exhibit 14, is the basis of their claim at the present time before your Lordship for the timber at Deep Bay. This is the cruise upon which they base their claim, apparently, and the other cruise, as your Lordship knows, was supposed to have been in some time ago, and there has been a delay but presumably it may be in by the end of the week.

I am going to be in the unfavourable position of finding myself having to put in the Government's case, probably starting Wednesday at the latest, and having to put Mr. Eustace Smith in the box before I have been able to get the story out of my learned friend's witnesses as to how they build up their claim.

THE COMMISSIONER: Yes, I can appreciate your

difficulty.

MR. McPHERSON: I don't intend to go into the features of the Deep Bay case at the moment, but I feel my learned friends having filed this as an exhibit, and there was no reservation in respect to that, that the exhibit would be proved later when Mr. Scholtz was called.

I know the new cruise may affect this, or may not. At least, I don't know whether it will, but Mr. Scholtz is here and I feel I should be given an opportunity to cross-examine on this exhibit.

THE COMMISSIONER: What is your submission about the new cruise, when it does become available, that you either must make up your mind now whether you are going on now and put in your case after the new cruise comes, and you cannot wait until afterwards.

MR. McPHERSON: Yes, I can't wait until afterwards, but I can assist my brother counsel, Mr. Hunter, considerably by cross-examining on this and Deep Bay.

THE COMMISSIONER: In those circumstances, what have you to say, Mr. Baldwin?

MR. BALDWIN: My lord, I think it all indicates that it would better have been had we stood the whole thing over.

THE COMMISSIONER: Most of the difficulty arises from your side.

MR. BALDWIN: The point is this, my lord, the witness hasn't been examined in chief on that feature

of it. We have restricted this thing to 195 and that was my understanding of the arrangement at the end of the adjournment last week. When I spoke to my learned friend the idea was if the new cruise wasn't ready on Deep Bay, we should go ahead at least with 195, and that was the basis on which Mr. Scholtz was called.

THE COMMISSIONER: I do not think there is an understanding. This difficulty arises because of the fact your people were not ready when you should have been. I am giving you the opportunity to get ready. In the circumstances I do not feel I should penalize the government by denying them the right to cross-examine on this Deep Bay feature, having in mind we have known all along that Mr. McPherson's time was limited. He may not be available after the end of this week. So, in the circumstances, I propose to allow him to cross-examine onsuch features as he finds in Exhibit 14, and that, of course, will not deprive you of the right to examination in chief, as well as re-examination of the cross-examination by Mr. McPherson.

MR. BALDWIN: I don't think it makes very much difference.

MR. MCPHERSON: My lord, in fairness to my learned friend, if he desires to do it, I would have no objection to him standing Mr. Scholtz down at this time and he could examine him in chief first thing in the morning on it, or he

could consider the situation and I could cross-examine after he has proven the Deep Bay end.

THE COMMISSIONER: I would prefer that.

MR. BALDWIN: I think I would, because I haven't given this matter consideration. I had intended to call Mr. Scholtz later on it.

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

Q You will be available at 10 o'clock in the morning, Mr. Scholtz?

A Yes.

Q You will have your other figures available then?

A Yes.

(Witness aside)

MR. BALDWIN: My lord, we have lost Mr. Brown. In that connection, and before Mr. Scholtz leaves, I had intended to call Mr. Brown in the morning and not quite anticipating the course this would take, I suggest perhaps Mr. Brown could be disposed of first thing in the morning and then we could go on with Mr. Scholtz afterwards.

THE COMMISSIONER: I understand Mr. Brown is a comparatively short witness.

MR. BALDWIN: I hope so, my lord.

THE COMMISSIONER: Very well. Have you anyone else to go on with?

MR. BALDWIN: I have Mr. Swanson here.

THE COMMISSIONER: Yes, all right.

ROBERT EUGENE SWANSON, a witness called on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Swanson?

A Vancouver, B.C.

Q And what is your occupation?

A Chief Inspector, Department of Railways.

THE COMMISSIONER: You may lead the witness, on his qualifications, Mr. Baldwin.

MR. BALDWIN: Q: And in that capacity have you visited the operation at Deep Bay, of the Deep Bay Logging Co.?

A I visited it. Which year?

Q Have you been in the habit of making annual inspection visits to this railway operation?

A Yes.

Q And when was the last one you made?

A The last one I made, as best I can remember, was around 1942. 1941, or 1942.

Q And you had been doing this? It had been your custom, for several years prior to that?

A I joined the Department in 1940, so, to the best of my recollection, I made two inspections of the right-of-way, and probably three or four inspections of the equipment.

Q And would you tell the Commissioner what condition you found the right-of-way in, in 1942? Did you pass it?

A Oh, yes, it passed inspection. I will have to speak strictly from memory, because I haven't my files to look at, but as I remember it I made an inspection,

I think it would be around '22. They were operating there at that time. I went over the road with a speeder, out into the woods where they were logging. I know there were one or two places I had them put ties in a little closer over culverts and realign the ties on bridges where they had crept together. The approach to one or two bridges was low, and it had to be raised. The switch packings probably needed a few blocks put in, which is customary, so people don't get their feet caught in the switch joints, you know.

As I remember it, the right-of-way required a little slashing out in places where alders had grown up on the curves, but otherwise the road was in good condition for a logging road at that time.

Q Was it as good as any other logging railroad that you would see in the course of your inspections?

A Oh, I wouldn't say it was in the class of probably Bloedel's main line, or the Victoria Lumber Company, but for a small outfit it was just about what you would expect.

Q Now, the bridges. Were the bridges in good shape?

A As I remember it, the bridges -- mind you, I am using my memory here -- the bridges all passed at the time. We allowed them to operate. There was no renewal required. During the inspection, outside of some of the bridges probably required the ties to be re-aligned and in one or two places, the ties had crept out on the small culverts.

Q Now would you classify that as --

THE COMMISSIONER: Let me remind you, this is your witness, Mr. Baldwin.

MR. BALDWIN: Q: Would you classify them as minor or major repairs? A: They were not major repairs. They were average. We get them all the time.

Q Would you say this is just maintenance?

A Yes.

Q Now, from your recollection, how much of a railway would be through low land. How many low parts in the system would there be? Were they frequent? I don't mean you could give an exact figure, but your general recollection of the system.

A I take it you mean in valleys?

Q I mean places where there would be in the construction of the road -- if you made it absolutely level, a fill would be necessary.

A My lord, may I answer it a little differently than a straight answer?

THE COMMISSIONER: Q: Yes.

A As I recollect this road, and mind you it is six or seven years since I was over it, I believe it left Deep Bay, crossed the ~~Ai~~ Island Highway over common track with the Victoria Lumber Company, and then it went up a 7% grade.

Q I show you Exhibit 13, which is a sketch map of the operation. It may refresh your memory. There is the E. & N. Railway running down across the right hand upper corner, and this is the railway

coming up. A: I think they were logging up in here (indicating) when I was up there.

Q That is correct. A: Well, after they left the 7%, I think they went over two low bridges that were built out of logs, and if I remember correctly there were some new ties required at that time on those low bridges, and I don't think there was much muskeg or heavy swamp country there. It was mostly the average grade that you encounter in a logging camp where there are rock cuts and gravel fills.

Q What was the nature of the soil where the railway had gone through? Was it mostly gravel, or what? Would it be cheap or expensive road construction country? A: The only thing I can answer is that I don't remember that, but we did construct a road into Fanny Bay, which was adjacent to that property. I would say there was some rock work and gravel work, mostly done with the shovel and bulldozer, but the country on Vancouver Island can vary 150 feet and run from rock to gravel.

Q Would it have cost very much to convert the right-of-way, with the rails removed, to a truck road?

MR. McPHERSON: I don't recall that this witness has been qualified as a construction engineer. I think he was a railway inspector. Now we are discussing the construction of roads.

THE COMMISSIONER: Q: Have you any qualifications in

relation to the construction of truck roads?

A I am not a civil engineer. I am a mechanical engineer. I do inspect the roads on the Pacific Great Eastern, and that sort of thing, but I am not here to set myself up as a civil engineer, on the cost of construction.

THE COMMISSIONER: Well, you can get that from someone else.

MR. BALDWIN: Q: Do you know of other railway shows where the logging right-of-way has beenconverted to a truck road?

A Oh yes. There are considerable instances where they pull up the steel, or bulldoze off the steel and convert it to truck roads, but they don't come under my jurisdiction.

Q Now, just very briefly, what was your opinion of the equipment? Was it in good shape, above average, or lower than average? I mean the rolling stock. A: As I remember it, the equipment was in such a condition that we could let it run. I wouldn't say that it was high class equipment. It was average for logging equipment at that time.

MR. BALDWIN: Thank you, Mr. Swanson. Your witness.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Swanson, did you turn down the Royston Railroad in 1944? Do you remember the property at Royston? A: Yes.

Q Did you condemn the railway operation there?

A I made an inspection trip over that railway, and several of the bridges at the Royston operation were not fit to be put back into service. When the new company took over, then a gentleman by the name of Mr.Wray and Mr. Stewart,of the Department of Railways, made a further inspection, after my inspection. That was at Royston.

Q Yes,but you turned it down.

A Yes, I came in and said it required certain bridge renewals and repairs at that time.

Q Now, that railway had passed in 1942. It was operating in 1942, wasn't it?

A At the Royston operation?

Q Yes.

A: I believe it was operating in 1942, yes.

Q And it was in 1944, wasn't it, that it was turned down?

A: I can't remember the exact date.

Q After it had been sold, and the purchasers had bought it.

A: I believe, my lord,if I may deviate a little, I believe a new company took over. I was sent in to look the road over, and I told them they had to make certain renewals on the bridges before they could operate.

Q Would you agree with me that a logging railway in that part of Vancouver Island requires continuous maintenance?

A Yes.

Q And if it isn't maintained,it deteriorates very

badly? A: Yes.

Q Would you agree that is what happened at Royston? In 1942 they had a certificate to operate, and in 1944 a certificate was refused.

A That is correct.

Q With respect to the Deep Bay Logging railway, you passed it in 1942 when it was operating?

A That is right.

Q That would be some time before the evacuation of Mr. Kagetsu, which was in March, I believe, and if I told you that railway hadn't been operated and wasn't maintained from March, 1942 to August of 1943, which is approximately one year and a half, would you say it would require considerable maintenance to put it in shape?

A Yes, there would be considerable maintenance, but I couldn't say how much until we made an inspection.

Q You went all the way up in the timber on this railroad, I understand, in 1942.

A Yes.

Q Was the track getting pretty high in the timber?

A Yes, there were some steep grades, and some switchbacks, as I remember, too.

Q Without going into the qualifications of yourself to build trucking roads, with your knowledge of railway operation would you say that railway roads converted to truck roads, that they generally follow the railway grade, or do they take short runs? A: As a rule. My

lord, if I might deviate again a little. As a rule, they might follow the railway for a short time, and when they come to a bridge they may not bother with it but may go around it. With the railway logging road, they have to work on the curvature, but oftentimes they will move away from an old bridge and more or less skirt around it.

Q Am I correct that they generally avoid railway bridges, if they can, in building a trucking road?

A Oh, yes. The idea is to avoid or cut off the future maintenance.

MR. McPHERSON: Thank you, Mr. Swanson.

THE COMMISSIONER: Any re-examination?

MR. BALDWIN: Yes, my lord.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q Mr. Swanson, had the Deep Bay Company ever failed to follow your recommendations for maintenance?

A Not that I can recollect.

Q What is the life of the average railroad bridge, that is the type of bridge that you found on the Deep Bay operations?

A The standard construction, 15 feet vents, piling and 10 feet -- 10 x 16 springers, the average construction, on that we start looking for renewal around 10 to 12 years on Vancouver Island. Up around the Clinton country, you can sometimes get 25 years, but Vancouver Island country we figure after 10 to 15 years is time to renew.

Q In the case of a bridge in place that was new and

you had ten years' operation ahead of you, it would be useful to use the bridge rather than circle it, as you told my learned friend.

THECOMMISSIONER: That is, in the case of a truck road?

MR. BALDWIN: Yes. My point is to utilize the railway bridge.

A If the bridge had ten more years, it would be a case of economics; how long you were going to use the truck road and whether it would be cheaper to fix the bridge and put a wider deck on it, or take a bulldozer and get around the bridge. I mean, you would have to work that out in the individual case. It might pay you to use the bridge, or to go around it, but with a railway we get away from a bridge wherever we can, because maintenance comes in.

MR. BALDWIN: Thank you, Mr.Swanson.

THE COMMISSIONER: Thank you, Mr. Swanson.

THE WITNESS: May I go now?

THE COMMISSIONER: Yes.

(Witness aside).

THE COMMISSIONER: Shall we adjourn now?

MR. BALDWIN: In the shuffle, my lord, Ihave no more witnesses.

THE COMMISSIONER: Very well. We will adjourn now until 10 o'clock tomorrow morning.

(PROCEEDINGS ADJOURNED UNTIL (NOVEMBER 23,1948, AT 10:00 A.M.)

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

J. P. Harrolem

Deputy Official Stenographer