JAPANESE PROPERTIES CLAIMS COMMISSION

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

Wray. cross 777-785
re-exam 879-884
Eustace Smith chief 785-836
cross-836-863
re-exam-863-865.
Skelding chief 869-875
cross-875-879

Vancouver, B.C.

November 25th, 1948.

CLAIM No. 1388

DEEP BAY LOGGING COMPANY

(Pages 777 to 884)

The Commissioner.

Vancouver, B.C.

November 25th, 1948.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

R. F. WRAY, resumes stand.

CROSS EXAMINATION CONTINUED BY MR. BALDWIN:

Q Now, Mr. Wray, when you prepared Exhibit 39,-- have you your copy there?

A Yes.

Q Paragraph 3? A. Yes.

Q It says, "On Forest Department Figures".

A Yes.

Q Now are you sure those are the Forest Department figures that appear in that paragraph?

A W ell, that is based on Block 195 where I built up to that figure from the Forest Department figures.

THE COMMISSIONER: Which exhibit are you dealing with now, Mr. Baldwin?

MR. BALWIN: Exhibit 39, my lord.

Q That is built up from Exhibit 38, is it?

A Yes, 38 shows those figures and it is a repetition of those figures.

Q I see. Well you don't really mean that these are the Forest Department figures, do you?

A Well, actually speaking those two were on one sheet and they were separated, and probably I should have made an amendment referring to this table here -- 195.

THE COMMISSIONER: Let me follow you now, Mr. Wray.

You are refering now, I take it, to Exhibit 39 -- paragraph No. 3? A. Yes.

Q Which are the Forest Department figures that you are referring to?

A Yes.

Q Which are they? A. Actually speaking, to clarify that, I would suggest on Exhibit 38 --

MR. BLADWIN: This is 39?

A Pardon me -- on Exhibit 39 we should refer to the table appearing on table 3 on Exhibit 38. These were on one sheet at one time.

THE COMMISSIONER: Q; And it is the Forest Department figures as appear on Page 3 of Exhibit 38?

A That is right.

MR. BALDWIN: Q; My only point is this : On exhibit 38 the figures appearing there -- all the figures there are in the Forest Department figures in paragraph 3? A. The "less 25%" is not a Forest Department figure, no.

Q No. Now, Mr. Wray, you compiled Exhibit 33, I understand? A. Yes.

Q That is the summary of operating profits and losses? A. Yes, as shown by the ledger.

Q Yes. Now you are quite familiar with that ledger I take it now? A. No, not particularly, no.

Q Well, is there any record in that ledger of Income Tax, or excess profit tax being paid by the company? I can perhaps assist you?

A Perhaps you can if you would.

Q Here is one? A. Yes.

Q Can you tell his lordship what appears on that? That is in 1937?

A In 1937 it shows two items of Provincial Taxes of 404.96 and $223.76.

Q And in 1936, on the same page, what is shown for Dominion Income Tax?

A Dominion Income Taxes are in 1935 $25.36.

Q And paid to the Provincial collector?

A P aid to the Provincial collector re block 276, $231.55.

Q Yes, those are not Income Taxes apparently.

THE COMMISSIONER: Well, these are income tax payments that you are referring to, Mr. Wray?

A Well, this is the first time I have examined the sheet to any extent, but whem I referred to 1937 a minute ago, I gave you a total of $628.72. Item 37 is, $404.96 and it is marked in pencil, '35 and '36 and the next item making up the total is $223.76 land taxes.

MR. BALDWIN: Q; That is also in pencil?

A Yes, that is also in pencil.

Q And this item I do not think you told his lordship about -- yes, the $25.86?

A Yes.

THE COMMISSIONER: What is the inference-- that those items do not relate to '37 or the land tax?

MR. BALDWIN: Well, I just saw "provincial tax".I don't believe by reason of these pencil entries

that they are income tax. They are land tax, but the other item Mr. Wray read to your lordship was.

THE COMMISSIONER: Which is the one item that show any income tax having been paid. You see, Mr. Wray, you have the document in front of you and I have not.

MR. BALDWIN: Yes, my lord. Dominion Income Tax for 1935, the entry is dated April 1st, 1936, and the amount is $25.86.

Q Mr. Wray, you are more familiar with these things. Is there any other thing there indicating Income Tax or excess profits on that page?

A No, there is nothing further that we have not referred to.

Q Now there is also an entry here, dated December 30th, "Transfer to E. Kagetsu" --

A Yes.

Q -- "$724.18"? A. Correct.

Q Now would you indicate to his lordship the basis of Income Tax, either Provincial or Dominion, appearing on the page -- the items being in September 1933 --

A Well,

THE COMMISSIONER: Well, now, is that of any help, because we have not any records in Exhibit 33, for the period of 1928 to 1934.

MR. BALDWIN: No, but I gather the purpose of introducing this exhibit is to show that the company was not making any money and I think if the 1933 shows Income Tax payments or excess profits --

MR. McPHERSON: I think the statements should be restricted to the times when the company was making any money. We do not know whether they were making any money or not.

THE COMMISSIONER: That is so. The effect of Exhibit 33, is to show that in 1925 and '26 the company operated at a loss and in 1927 it made a profit of a little over $1,000, and from the period 1935 to 1941, according to Exhibit 33, it shows the company made losses in each year.

MR. BALDWIN: Yes.

THE COMMISSIONER: Q; And the government's contention is, as I understand it, as relating to those years alone, there was no profit made except in '27 and they say nothing as to the period from '28 to '34, because they have had no evidence with regard to it.

MR. BALDWIN: No, but they have had this evidence longer than we have, and I think it should have been brought before your lordship.

MR. McPHERSON: The government does not assert the company made money or did not, and what these ~~tax~~ entries are I have no way of knowing what the tax returns are.

THE COMMISSIONER: It is open to Mr. Baldwin to show in the period 1928 to '34 the company paid income tax and have paid excess profit tax notwithstanding you do not say anything in relation to those years.

MR. McPHERSON: Yes.

MR. BALDWIN: Q: Will you read to his lordship any such items appearing on that page beginning on--

A Well, first of all there are numerous cheques to the Provincial Collector, and unless they are marked "Income Tax", I don't suppose we can assume they are income tax.

Q Well, take the ones that are clearly marked?

A March 31, '34, Provincial Collector, Income Tax--'33, $20.78; April 12th, Provincial collector, Income Tax '33, $48.11. The next item refers to Dominion Income Tax, but there is no year given. The April 30th,1934 it could be 1933 taxes. At that time that was the last day of payment-- Dominion Income Taxes, $286.87.

THE COMMISSIONER: Q; And your suggestion is that that item could relate to 1933 Income Tax.?

A I would say it is likely, yes, sir. February 2/35 inspector of Income Tax, Dominion. It was '34 changed to '33 ,$188.68; April 29th, 1935, Receiver General of Canada , Dominion Income Tax, $297.07.

THE COMMISSIONER: Presumably relating to '34?

A That is likely, I would say. August 22nd, Provincial Collector, marked "Provincial Inc." I presume that is Income Tax-- $1087.70.

Q What year was that?

A August 12th, 1935 it was paid.

Q And I presume that would relate to '34 or is there

anything there that would help you?

A There is nothing there that would help me.

MR. BALDWIN: My lord, I am not concerned in this unless your lordship is, as to the specific years these taxes relate to. I am only concerned that these taxes were paid.

THE COMMISSIONER: Would it have this significance -- Exhibit 33, shows the company made a loss in 1935, and under those circumstances, what are they paying taxes on.

MR. BALDWIN: Well, that is what I am at a loss to understand, the accuracy of the ledger.

MR. NORRIS: Or it might have been an excess of generasity.

THE COMMISSIONER: That is a possibility.

MR. McPHERSON: Well, I am listening to this cross-examination and taking it in, not as government counsel, but as one who has some knowledge of the Custodian's work. Now Mr. Baldwin's question, I do not know whether it is in the Royston or Deep Bay -- if my memory is wight, there was some dispute with the people after Mr. Field took over, and if there was suc h I think Mr. Wray should inform your lordship on that point -- that there was a dispute -- I think it was in Royston -- they paid an Income Tax in '44 or '45, but in fairness to your lordship on this point if Mr. Wray has any recollection of it or Mr. Field, who was in the box the other day, he might tell us, because no one ever thought to

ask him if they did pay any tax to the government. I think it happened in Royston, but I don't know if it happened in Deep Bay.

THE COMMISSIONER: You have heard counsel's statement -- if you know of anything in the record regarding Income Tax, I would like you to say so?

A With regard to this company and Mr. Kagetsu, there was an adjustment of taxes. Now whether the tax was lifted, I could not say, but I can obtain that information from our files and give it to you later. As a matter of fact, Mr. Field handled that question.

THE COMMISSIONER: All right, if you will do that.

MR. McPHERSON: Q; In regard to this question, I am not suggesting it has any bearing, but I think in view of my learned friend's line of cross-examination it is possibly indicated in the correspondence and files -- when Mr. Field was dealing with it.

THE COMMISSIONER: Mr. W ray is going to get that information for us.

MR. BALDWIN: Q: Now will you turn, Mr. Wray please, to the surplus and loss account?

A Yes.

Q I think you will find it over here?

A Yes.

Q Will you tell his lordship what you find under December 31/42?

A Dominion Income Tax, 1941, $1954.93.

Q Now could you tell his lordship what taxable income

that would be likely to represent -- that tax payment at that time?

A 1941?

Q Yes? Perhaps this would help you?

A The rates were changing so quickly at that time it is hard to say. I think it was around 30%.

Q Yes, that is the information we have,-- 18% for Income Tax and 12% for excess profits. Is that of any assistance to you?

THE COMMISSIONER: Whatever it was they apparently were paying taxes in a year when they took a loss of $104.00? A. I think that would represent a taxable income of $6,000, plus interest. There is always interest added on if the tax was not paid at the time.

Q Would you suggest any explanation in Exhibit 33, of a loss of $104.00?

A That is a loss according to the company's statement here. That is probably the reassessment that Mr. Field handled. I could get you particulars of it.

MR. BALDWIN: Thank you, Mr. Wray. MR. McPHERSON: I will now call Mr. Eustace Smith.

(Witness aside)

EUSTACE SMITH, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McPHERSON:

Q I assume, my lord, it is unnecessary to qualify Mr. Smith?

MR. NORRIS: We will admit he is a timber cruiser of

long experience. Is that what you want?

MR. McPHERSON: I would like to file a statement of Mr. Smith's qualification, which Mr. Smith has identified personally.

Q Is this a statement of your qualifications, Mr. Smith that you have handed to me?

A Yes.

Q I would like to file it as an exhibit, my lord. I take it on the basis of that exhibit it is not necessary to go into a history of Mr. Smith's experience.

THE COMMISSIONER: No, I think not. It is open to your friend to cross examine on it if he questions it.

MR. McPHERSON: Q: Mr. Smith, you were retained by Mr. Fredrick Field, were you, to make a report on Block 195?

A Yes, I was.

MR. NORRIS: Just before this goes in, I notice there are some statements on the bottom of it that have no relation to his qualifications.

MR. McPHERSON: Mr. Smith, this statement containing your qualifications -- what can you tell his lordship about the logging industry and the sale of logs generally; and your experience -- and I draw your attention particularly to the last paragraph which my learned friend has commented on? A. What was the question?

Q I was just wondering if you could explain to his

lordzhip, something in respect to the last paragraph of your memorandum. I had intended to ask you about this later?

A I did not notice that at the time.

Q But in order to put in the exhibit --

THE COMMISSIONER: What is it?

MR. McPHERSON: I had intended to ask you some questions concerning your opinion of logs later -- but it is the last statement of your qualifications and it does not relate to your qualifications?

A No.

Q And in order not to destroy the exhibit I want to put in, I will ask you the question now with respect to the last paragraph.

A Just the remarks, you mean?

Q Yes? A. Well, " I had been through the periods when it was almost impossible to sell timber at any price, and other kinds when there was far more work than it was possible to undertake in connection with timber sales, and during the past three years the abnormal demand for lumber and the shortage of logs has caused an unprecedented rise in the price of stumpage.which was warranted if the timber was economically accessible and could be liquidated in time to obtain the prices current today".

THE COMMISSIONER: That is a description of the market during those years, is it?

A Yes, over that period. I don't know why I put

that in, but it wwas just a comment.

MR. McPHERSON: I would like to file that as an exhibit.

(DOCUMENT MARKED EXHIBIT No. 1388/51)

Q Now with respect to the work you did for Mr. Frederick Field on 195, I show you a letter dated February 5th,1943. Is that the report that you made to Mr. Field?

A Yes.

Q And you will notice attached to that is a memorandum dated April 5th,1943, signed by Mr. P. F. Sheehan?

A Yes.

Q I won't file this as a separate exhibit, my lord. It is already in as Exhibit 36, my lord.

THE SECRETARY: This exhibit is No. 52.

MR. McPHERSON: Have you got another copy of this?

A I don't think so.

(REPORT MARKED EXHIBIT No.1388/42)

Q This is Mr. Smith's report -- will you just look at this report and refresh your memory -- it is Mr. Sheehan's letter and memorandum and tell his lordship something about Lot 195.

A Something about it you say?

Q Yes, Mr. Smith. First of all I show you a map of Block 195. Is this one of your maps?

A This is, yes. This was made for the E. & N. Railway -- in the original cruise.

THE COMMISSIONER: Q; Is that in already?

MR. McPHERSON: No, my lord. My learned friend loaned me this map. It is a map showing the elevations

of the land, but it is signed by Mr. Smith?

A It was a map I made for the E. & N. in 1923.

Q I do not think it is necessary to put it in, but on the basis of this map --

A The description of the timber, do you mean?

Q Yes, will you tell his lordship about the description of the land and the description of the timber?

A At the time I cruised this first it was pretty well out of the -- it was not accessible at that time. It was looking to the future the people who bought it, and I made this cruise for Mr. Kerr, who was then at the head of the timber department,

THE COMMISSIONER: Q; Of the C.p.R.

A Yes, and I put a valuation on it for him at that date.

Q What year would that be?

A That would be '23, and then I checked --

MR. McPHERSON: Q; Were you over on the property again after '23? A. Yes, I was over it in '40.

Q What did you do in 1940?

A Well, we checked over about one-third of it to see how it worked out with the original cruise and we found we had been a little low in the first one, and we raised it to 31 million, and I was over it again before it was sold.

THE COMMISSIONER: Q; What did you cruise it at in 1923. What did you cruise it at?

A The total cruise was practically 30 million.

MR. McPHERSON: I think that is shown in the exhibit -- in the report. The cruise, Mr. Smith explains in his report -- the original cruise was 29,921.000 and the second one was higher.

Q And then were you over on this property again?

A I went over with Keith Shaw -- that would be in the fall of '43, I think, or the spring of '44, I would not be sure, and we checked to see if there were any peelers.

QTHE COMMISSIONER: By the way, what is a peeler, Mr. Smith?

A Well, it used to be a log that was over 30 inches in diameter and No. 1, and would make a good peeler, and it was supposed to have no marks on it or pitch in it, but they have cut that down now, and they have a new peeler that will take as low as 26 inches.

Q They are used in the manufacture of plywood?

A Yes.

MR. McPHERSON: Q; I asked one of my learned friend's witnesses the other day -- I believe it was Mr. Pretty to look at this exhibit 23?

A Yes.

Q And I suggested to him that the fir was running below a No. 2 average; that the cedar was running below a No. 2 average and the hemlock was running below a No. 2 average, and he disagreed with me?

A Well, that is correct.

Q Well, how would you explain that to his lordship on the basis of Exhibit 23?

A Well, the average logger looks at it this way:

he says if the No. 1 logs exceed the No. 3 -- it goes over a No. 2 average, he says, and if it is lower than No. 2 -- it is less than No. 2. This timber is good merchantable timber and sound, and it does not run No. 1, and it runs to No. 3, particularly the way they are logging today.

Q Well, would you agree then that it runs less than a No. 2 average for fir and for cedar?

A Less than No. 2 in fir and a great deal less than No. 2 in cedar.

Q And what about hemlock?

A The hemlock carries a great deal of pulp,-- and is poor quality.

THE COMMISSIONER: I am sorry, I did not hear you?

A It carries a lot of poor quality, but the fir is a very nice merchantable stand.

MR. McPHERSON: Mr. Schultz said --

A May I qualify that? There are very few grades of timber that average No. 2. A logger figures he has a very high grade of timber if he averages No. 2.

THE COMMISSIONER: Before you proceed, Mr. McPherson -- I don't know if the witness said wha t was the result of his check with Keith Shaw in 1942.

A No, we didn't not check it at that time. We just looked over it for peelers.

MR. McPHERSON: Q: What kind of cedar was on the property?

A Well, it was poor grade.

Q Now with respect to the quality of the timberon this 195, your cruise as shown in the Exhibit

is approximately 31 million, and Mr. Schultz, called by my learned friend, made what he called a stump cruise -- a 4% stump cruise -- that has been filed as Exhibit 15; and he has stated that this stump cruise was made for the purpose of these court proceedings?

A Yes.

Q And that it was a 4% cruise?

A Yes.

Q And that it took six days to make it; that he himself was there for two days and there were four other men there for the other six days, at least that is my recollection of the evidence.

Q Now if you were making a stump cruise for a Commission of this kind, what would you do?

A Well, the only one I have been on in stump cruises was where the area was not so large and we measured every stump.

Q You measured every stump?

A Yes, although a good careful percentage should show reasonably close, if his judgment is good.

THE COMMISSIONER: Schultz' cruise is Exhibit 15, is it?

MR. McPHERSON: Exhibit 15, yes, my lord.

MR. MCPHERSON: Exhibit 15. Now how do you account for the difference between Mr. Sheehan's original cruise, of approximately 45 million, as indicated in your report, which is in Exhibit 36, my lord-- and your cruise of 31 million. Could you comment to his lordship on Mr. Sheehan's memorandum?

A The only thing that I can say for that is, he took a great deal of small timber that I did not count, and poor hemlock. The hemlock was very poor on the market and would not sell and I was naturally affected by that in my judgment.

Q Did he suggest anything in his report?

A Well, he figured he would put in a small mill operation -- it seems to me and he would cut the timber on the ground.

Q Well now, with respect to Block 195 and Block 403-- I understand that Block 403 is an adjoining block?

A That is right.

Q And in some way -- eithr in cross examination or in evidence in chief here, some witnesses have indicated that that block was originally owned by the Ocean Timber Company and was subsequently bought by the Lake Logging Company, and was at least partially logged. I wonder if you could tell is lordship anything about Block 403?

A Well, Hunter is the man who bought out Ocean Logging Company, and he had a railroad developed into 403, and he reached the height of the land -- there was quite a heavy ridge between that and 195, and he found it was not feasible or economical to haul those logs out over the road he already had and about 20 million were left on it.

THE COMMISSIONER: Q: On 403?

A On 403, yes.

MR. McPHERSON:Q: I show you Exhibit 1, Mr. Smith. This

is Block 403 youare talking about?

A Yes.

Q Lying to the north of 195?

A Yes, that is right.

MR. NORRIS: Is that Exhibit 1?

MR. McPHERSON: Yes.

Q Now, Mr. Smith, with respect to the timber that was left on Block 403 after Mr. Hunter finished logging it, have you had any connection with that timber?

A Yes, I cruised it.

Q And would you just tell his lordship the result of that?

A I cruised it for the McMillan Company and for Harold Hunter who owned it at that time.

Q That is, you were retained to cruise it by both parties, were you?

A Yes, my bruise was used as a basis of valuation.

Q When was that approximately?

A That would be well on in '44, I guess.

MR. McPHERSON: I might explain, my lord, that Mr. Smith cruised this for private interests and therefore I do not feel that I can put in his cruise.on 404.

THE COMMISSIONER: On 403.

MR. McPHERSON: On 403, my lord, because it was done for private interests and that is why I am not attempting to put in any map or cruise for 403.

Q But Mr. Smith, could you tell his lordship with respect to 403 -- what the total amount of

your cruise was?

A Yes, I think I could do that. It was 20,800,000 and some odd, I don't remember the exact figures.

Q Have you some notes on it?

A It was a little less than 21 million.

Q And for the purpose of the record, could you tell his lordship what quantities of the different species there were?

A I have not got those notes here -- just wait a moment, I may have it here.

Q Mr. Smith, I understand that these are -- these papers belong to you and I don't wish to put them in because they contain confidential information, but can you te,l his lordship what those papers are? A. Those are our cruise sheets--our estimate sheets.

Q Did you prepare those?

A Yes.

Q Will you tell his lordship what the quantities and species of timber are on 403?

A Fir was 8,486,000 and cedar 1,768,000.

MR. NORRIS: What is the cedar?

A 1,768,000; and hemlock 5,431,000; balsam 3,369,000; pine 256,000; cypress 304,000, total of timber over 20 inches 19,654,000; small fir, that is 14 to 19, 720,000; small hemlock 460,000, making a grand total of 20,834,000.

MR. McPHERSON: Q: Does that indicate the date of the cruise? A. Yes, October, '43.

Q O ctober , '43. And was your cruise -- well your

cruise I take it was used as the basis of the deal between the McMillan Company and the Humter interests? A. Harold Hunter.

Q Can you tell his lordship what the stumpage paid was? A. Well, I don't know exactly.

Q Haveyou any information at all?

A Well, I have heard that the price was $55,000. Now it would have to be checked because I don't know, it is only hearsay for my part.

THE COMMISSIONER: Well, I think since you are talking like that we had better not pay any attention to that evidence. Did you say there was 7 million of small fir?

A No, just 720,000.

Q 720,000? A. Yes.

Q And what was the other figure after your small figure?

A It was 20,834,000

Q What was that? A. That was the total.

Q 2 million? A. No, 20,834,000.

Q 20,834.000? A. And I think the average throughout was 21.6

MR. McPHERSON: I think your lordship is thinking of the small figure which was hemlock.- 460,000.

Q What do you say as to the quality of timber on 403 as compared with the quality of the timber on 195? A. Very similar. Very much the same.

Q Now with your experience in British Columbia in

the logging industry, and as a logging cruiser, would you have logged Block 195 to Cowichan Lake?

A No, I don't think that I would.

Q What would you have done?

A It was a question of getting a grade -- if Hunter had been able to reach that he would have taken it out to Cowichan Lake, because his road came to the top of the lake and he could not handle it economically.

108 Q And how does it come out?

A It comes out by a truck road where the Scottish Company is operating -- on a truck road and loaded onto railway cars and shipped to Cowichan Bay.

Q Would that be five miles of truck road from Block 195 to the railway?

A Yes, approximately that. I could not be exact.

Q That mileage does not include the roads in that block? A. No, that is development work in any case. You don't count it.

Q And I take it when you cruised it it had not been opened up at all?

A No, and it took us about three-quarters of a day to pack into it from Cowichan River.

Q Now with rsspect to Exhibit 23, which has been given in evidence here, that timber mark 1-C-6 as shown on Exhibit 23, applies to the timber coming off both blocks 195 and 403?

A Yes, that is right, I guess.

Q And on the basis of your figures in the Exhibit 36,

my lord, -- Mr. Smith's cruise on Block 195, it is 30,996,000 and if you add the cruise figures he has given for 403 that gives a total of 51,830,000 on the two blocks. Now, Mr. Smith, if you will look at that exhibit, you will notice that it indicates that 58,752,000 feet of timber has already been taken off.

A Yes.

THE COMMISSIONER: I didn't hear your question.

MR. McPherson: I was just stating the fact. I was just drawing Mr. Smith's attention to the fact that Exhibit 23 indicates that 58,752,000 had already been taken off under that timber mark 1-C-6. Your lordship will see it in the lefthand column over at the bottom.

THE COMMISSIONER: Yes.

MR. McPHERSON: And that, my lord is up to the end of September.

Q Haveyou any information, Mr. Smith, as to the amount that is estaimated, the total amount that is estimated will be taken off the two blocks.

A Well, it is only what I have heard. It would not prove anythng. I understand they hope to cut out 70 million.

Q And of course, nobody can say how much they will cut out until they do cut it out? Is that right?

A No t exactly.

Q So that figure is only an estimate?

A Yes.

Q Now, Mr. Smith, for the purpose of this examination,

if we take the 70 million as the figure -- Mr. Schultz in his stump cruise, exhibit 15, estimates as on Block 195 only 55 million, 47½ thousand feet--

A Yes.

Q In other words if you take 70 million as the figure-- Mr. Schultz is saying there is only 15 million total on block 403 --

A It would look that way, yes.

Q Now, I want to ask your opinion on something, but I would like to give you some figures so you can give his lordship an estimate -- on the basis of Mr. Schultz' cruise of 55 million on ,195, and on the basis of your information that they hope to cut 70 million feet out of the two blocks-- that leaves 15 millon feet for 403. Now Mr. Schultz' cruise is 82% of the overrun from your cruise, that is 55,million against your 31 million. He goes 82% over your cruise on block 195?

A Yes.

Q But taking his figures on block 195, and an estimate of 50 million for 403 -- I find that means Mr. Schultz is saying that your cruise is 40% under on 403?

A It is 40% over.

Q Yes, there will be an under run of 40% on 403?

A Yes.

Q Now does this appear reasonable to you?

A No.

Q Now taking the figures which are before his lordship -- if you take the two blocks 403 and 195

and you take your cruise and take a total of 70 mil ion as an estimated recovery from the two blocks, that means that the people who are logging it estimate that they will get an overrun of 18 million approximately which is approximately 34% overrun of your cruise?

A Yes.

Q Now on the basis of your cruise that you gave to Mr. Field in 1933 concerning this block of timber, how could you account for that large overrun? A. Well, apparently from this scale sheet, the entire overrun -- nearly all the overrun is in Hemlock, which is very poor grade, and whihh I did not count when I was cruising that timber.

Q Well, in 1943, wouldn't you count that hemlock?

A No, because it was poor grade.

Q Was there any market for hemlock in 1943?

A It was just starting to come in. There isn't market today even for poor hemlock.

Q Now what about the question of logging methods-- would different methods of logging have anything to do with the overrun?

A Yes, they would cut a lot closer today. They would improve the methods a great deal.

Q Would they take out any logs that you would not consider merchantable?

A They would take out top knotty logs that I would not consider in the cruise and logs that I would

consider too small.

Q Would you say -- there has been evidence given here that your cruises -p I think Mr. P retty gave that evidence, that your cruises were known to be low. Would you care to comment to his lordship whether timber cruises are generally low or high? A. Well, they vary a great deal. James D eLacey did a lot of cruises here and some of them were found to be high, but some of them are cutting out because they are cutting so much closer.

Q Now with respect to Mr. Pretty's evidence and talking about your cruises, he stated that you had cruised some timber that McMillan bought in North West Bay. Do you recall that timber?

A Yes, Lot 442. but I did not cruise it for McMillan.

Q He stated that your cruise was two-thirds of the cut? A. Yes--how does he know, it is not finished yet, is it?

Q They have not finished logging that?

A No, I wouldn't think so.

THE COMMISSIONER: You put the question to Mr. McPherson, what comment he has to make on it. We are on rather tender ground now.

MR. McPHERSON: Q: What comment would you make as to M r. Pretty's evidence, that your cruise of that timber was one-third below the cut?

A There is a great deal of small timber there and Mr. McMillan is what we would call a crank in

sofar as to logging down to five or six inches. He is very keen on close logging whether it pays or not, and undoubtedly they are cutting very much closer. It makes quite a differente too how the market is. Up to six months ago you could sell any kind of a log that was reasonably sound. It would not matter what the quality was, and consequently they took out a lot of timber that they did not take out before.

MR. McPHERSON: Now with respect to the Deep Bay Logging Company.

MR. NORRIS: Are you through with 195 now.

MR. McPHERSON: Yes, I am going to Deep Bay. Does my learned friend wish to make any comment?

MR. NORRIS: No, it is just for my notes.

MR. McPHERSON: I may come back to it later.

Q Mr. Smith, with respect to the Deep Bay Logging Company -- I take it my learned friend will not object, if I lead on the formalities of it. You were requested by Frederick Field to make a report on the Deep Bay Loggign Company?

A Yes.

Q And you made three reports -- one in August1943, and one in September, 1943, and one in October, 1944, is that correct?

A Yes.

Q And all of these reports are concerned in P.S. R oss & Sons report of March 15th,1945, which is Exhibit --

MR. NORRIS: 37, is it not?

MR. McAPHERSON: 35.-- it is 37, my lord, Exhibit 39, I think it is -- that is the Deep Bay.

MR. NORRIS: No, 45.

MR. M cPHERSON: We should have tht correct. P.S.Ross' report on Deep Bay, -- it was marked --

THE COMMISSIONER: 195 was 37, -- 45.

MR. McPHERSON: Q: All of the reports of Mr. Smith are in Exhibit 45. Now, Mr. Smith, with respect to the Deep Bay Company, what were your instructions from Mr. Field?

A To make an examination of the timber and the equipment. He asked me to get somebody who knew better than I did about equipment, which I did, so I just dealt with the timber and the output.

Q And who did you retain to advise you on the equipment? A. Which?

Q Who did you retain to advise you on the equipment?

A Mr. Skelding I guess it was, yes.

Q Now would you tell his lordship something about the Deep Bay Logging operation generally?

A Yes.

Q Looking at it as a whole, just what you found?

A Well, the Deep Bay Logging operation had been running a good many years and there was never a heavy production, but it was run by the Japanese there and is what we would call a small logging operation. They reached back up to five and six miles altogether I think it would be, and had taken all the heart of the stand out at this

time when I was there.

Q Can you tell his lordship anything about the railway? A. For them the railway was working fairly well, but it was run down very badly and it was not suitable for a railway operation.

Q Why do you say it was not suitable for a railway operation? A. Mostly because they had high land at the back and they had very heavy grades and heavier than they could afford to take with a railroad and raise up.

Q I will show you a copy of Exhibit 13, which has been filed as a copy of the Deep Bay property?

A Yes.

Q Am I correct that the green shown there is the green that you put in?

A That is approximately where the timber lay, yes.

Q Now what can you tell his lordship with respect to the timber on Lot 504 colored green on the north side.

THE COMMISSIONER: Which exhibit.

MR. McPHERSON: Exhibit 13.

THE WITNESS: It was mostly fir and I went through that and figured there was about 3 million feet on it -- on that particular piece -- I think that is right.

Q Can you tell his lordship antyhing about the terrain? A. Well, the terrain on that was below the level of the railroad and there was quite a steep bank running into it -- just that

one piece alone.

Q Well, on both pieces?

A Well, the other piece raised up quite high -- for instance, 504, it ran up from 2000 to 2100 feet-- I know one was about 2100 above sea level.

Q What would you say as to the height of the land on Block 566 and 617?

A Well, 566 is right at the foot of 617. I mentioned that as being 2,000 feet high.

Q I refer to your report contained in .PBS.Ross'Sons letter and their report. You might look it over to refresh your memory.

A Well, both of those blocks are off high altitude, 504 is 2000 feet above sea level.

THE COMMISSIONER: Where is the timber in relation to the right of way of the railway?

A There is one spur into where they had some felled and bucked timber at that time.

MR. McPHERSON: Q; Am I right that the railway was no in 217? A. No, it wasn't, it shows it here.

Q Mr. Smith, Mr. Nagetsu stated in his evidence at page 198 of the transcript that most of the accessible timber had been removed?

A On the show as a whole, do you mean?

Q Yes? A. Yes, it has.

Q You would agree with that?

A He had been logging there for years.

Q And he stated as reported on page 122 of the

transcript that if he was not able to obtain the timber behind the D eep Bay operation, that is the E. & N. timber behind that, he would have used trucks to take the timber out of block 504.

MR. NORRIS: My friend points out that waht Mr. Kagetsu said at that time was, the most accessible timber had been removed.

THE COMMISSIONER: I will get the transcript.

MR. McPHERSON: That is correct, I stated it from my notes, he had removed the most accessible timber.

THE COMMISSIONER: It does make a difference.

MR. McPHERSON: Mr. Kagetsu stated he had moved the most accessible timber. Would you agree with that?

A Yes, certainly.

Q Now with respect to Block 504, Mr. Kagetsu said he would use trucks to take the timber out of Block 504, if he did not get the available timber behind? A. It would be a very natural thing for him to do, because it would make a good trucking proposition.

Q And Mr. Kagetsu stated with respect to 617 when I asked him about the rivers he had to cross and the bridges he would have to build for the rail way, he stated he would use trucks to haul the logs from the woods to the railhead. Do you think that would be very practicable?

A W ell, it would not be very economical in my opinion.

Q What do you say generally about this Deep Bay operation as a railway operation?

A Well, conditions are changing all the time. The railroads are going out of commission, and they were not found to be suitable to climb to high elevations, and consequently trucking was coming in more, and more of it every year, particularly since we got the inflated tires.

Q Well, keeping in mind the evidence that has been given, the timber behind was not available to either Mr. Kagetsu or to the liquidator, Mr. Kagetsu is claiming 50 cents on the timber as the increased value of his railway. Now, what would you say as to that claim?

A Well, I would say if the railway was used to take out the timber, and was actually used for that timber, it would not be out of the way, but in this case I did not think it was of any value at all.

Q Does that include the timber at Deep Bay or the timber behind Deep Bay?

A Well, it would include what they had then. Of course it would be better if they had more behind.

THE COMMISSIONER: As I interpret your answer, you mean this: If he were using the railway to take the timber out at Deep Bay, it would be worth 50 cents a thousand more?

A Yes, it would.

MR. McPHERSON: Q: Was it feasible to use that railway, Mr. Smith?

A: In my opinion it was not.

Q Mr. Smith, if you had the timber that Mr.Kagetsu has referred to -- I think you put it at thirty million feet behind -- there was a lot more than that, as I understand from his evidence, but he did talk of 30 million -- if you had that timber behind, would that add considerable to the value of the railway?

A Yes, it would, if he used the railway. That is, the thirty million I cruised, which I guess was behind there.

Q Well now that you have mentioned the thirty million you cruised behind there, in my cross-examination of Mr.Kagetsu, Mr. Kagetsu stated that the timber behind, running across the south valley of the Tsable River was more accessible to him than the V.L. & M., which was up in that district, and in cross-examining him I suggested that there was, or had been, a railway, or roads down into almost the top of his Block 504?

A Very close to it.

Q And Mr. Kagetsu denied that. Now, can you tell his Lordship anything about that situation up there?

A The railroad? The V.L. & M. railroad, you mean?

Q Yes, which property was more accessible to him?

A They had a road right up to their own line -- 634, and the road was right to the edge of the timber. That was the new piece taken up and that is the 30 million we are talking about.

Q And Mr. Kagetsu's railway, as this Exhibit 13 shows, came down here -- (indicating on map)?

A Well, here is the end -- here is the new block and here is #34 that was logged off.

Q And you say the road was right up to here?

A Yes, they were within 600 feet of the lineof the new timber.

THE COMMISSIONER: Will you indicate on the map a line where these roads were?

A There is one that shows a new cruise.

MR. NORRIS: It was originally shown on the Government map -- the coloured map.

MR. McPHERSON: I will use this map.

THE COMMISSIONER: Which one are you referring to?

MR. McPHERSON: If my learned friend does not object, Exhibit No. 2.

Q Exhibit No. 2 is a map of Deep Bay, Mr. Smith, and it shows the railway coming in here?

A Yes.

Q The railway grade, I presume?

A Yes.

Q And is this the block you are talking about in here, in the upper hand top corner -- the left hand corner? A: Yes.

THE COMMISSIONER: That is 34, is it?

MR. McPHERSON: Yes, that compares with 13.

THE WITNESS: These maps don't show enough to show what I have been stating there.

Q But it is up in this area?

A Yes.

Q Now, from your observation and your opinion, was this timber that we are discussing back of

Deep Bay more accessible to the people to the north-west or to Mr. Kagetsu?

A Well, it would be just as accessible either way. There would be an easy grade into it, because there is a railway grade along there.

Q Well, you just told his Lordship that this road was within 600 feet of the timber?

A Yes.

Q How far was Mr. Kagetsu from the timber?

A Well, that wouldn't be very much different. The grade would be a great deal better in this way.

THE COMMISSIONER: Better which way?

A In by the V.L. & M. Road, but I would not be quite sure of that.

MR. McPHERSON: Q: Now, Mr. Smith, with respect to the buildings: Mr. Kagetsu is claiming $4000.00 as the value of the buildings. What do you say about the construction of the buildings?

A Well, they were just small living quarters built mostly for the Japanese, because the bunks were short and they would not be considered today as at all habitable for loggers.

Q Now what can you tell his Lordship with respect to their claim of $4.00 a thousand for the timber, including the foreshore rights, bridges, cold-deck beds, etc., and etc.? They are claiming $4.00 a thousand. I endeavoured to get Mr. Kagetsu to break it down, to give a figure on the timber, but he could not do that. What would you say as to the value of all these other

items? A: Well, I wouldn't say.

THE COMMISSIONER: Would you start it the other way: Is this witness able to put a price on the timber?

MR. McPHERSON: Yes, my lord.

THE WITNESS: By itself.

MR. McPHERSON: The witness has put a price on the timber in his report.

THE COMMISSIONER: Well, let us get it again then.

MR. McPHERSON: Q: What was the price you put on the timber, Mr. Smith?

A I think it was $2.00.

Q $2.00 a thousand? A: Yes.

Q And what did you put on the felled and bucked timber? A: I included that in the total amount of timber because it was deteriorating very fast and I did not think it had very much value.

Q Well, what was the valuation you put on the felled and bucked timber -- do you remember how much a thousand -- do you remember that?

A No, it was included in the standing timber.

THE COMMISSIONER: There was a figure of $4000.00?

A I don't remember the figure.

Q Well, we are short of copies of P.S. Ross & Sons' report, and I am asking, without any report, on my recollection of the report is that it was not included in the standing timber, and there was a figure given of $3000.00.

MR. NORRIS: It is in the report of September 9th.

THE COMMISSIONER: It is in the report of September 9th-- total value on standing timber, $28,000.00, calculated at $3.00 per thousand; felled and bucked, if removed soon $4500.00; total $32,500.00.

MR. NORRIS: $2.00 for standing timber, I think.

MR. McPHERSON:Q:Well I think my statement is correct. You stated that the felled and bucked timber was $3.00 a thousand, and standing timber $2.00 a thousand?

A Yes.

Q And you placed a total valuation of $35,000.00?

A That is right.

Q Now with respect to the purchasers of this property, Mr. Smith, do you know -- I show you Exhibit 13, and I show you Exhibit 2, with respect to the roadway that is now in. The truck road shown on Exhibit 2, didn't you draw a line?

A On one of these maps, yes.

THE COMMISSIONER: I have the plan here.

MR. McPHERSON: Your Lordship, can I see your Exhibit?

Q I show you his Lordship's copy of Exhibit 13, and you will notice this railway line here and the line marked, "Present logging railway", and a new truckroad built to clean up the balance?

A Yes.

Q That is where the -- A: They used part of this railway at this point--only this road goes out to Mud Bay -- and not to Fanny Bay. The outlet is the booming ground.

Q They did not use the booming ground?

A No, not at Fanny Bay.

Q They did not use the log dump?

A No.

Q Mr. Smith, evidence has been given that Mr. Kagetsu -- at page 36, and at page 332 of his examination in chief -- no, of his cross-examination, I think his second reference said he had from 70 to 75 employees --

A Yes.

Q --working on this operation?-that was the average; and Mr. Wray has testified the books show a total production of 70,950,000?

A Yes.

Q If you take an operation of eleven months, allowing for the closing down periods, it works out approximately at 34,000 a day -- that is 25 working days a month, and that is a production of 35,000 a day for 75 employees, and Mr. Allison, called by my learned friend, told his Lordship, as reported at page 379 of the transcript, there is a general rule that you should get a thousand feet per day per man. Would you say that was a general rule when Mr. Kagetsu was operating his property?

A Yes, it would be at that time, but it would not be now.

Q Well, when you say it would not be now, how do you account for that?

A Well, because labour is so poor, and they don't work like they used to, and the costs are higher. I think the average now is about

600 feet to a man -- that is the average production.

Q Mr. Smith, I have prepared a chart of a comparison of your druise to the log scale of the Deep Bay property -- the log scale of the Deep Bay property is Exhibit 22, my lord. This is Exhibit 22. And if we take the log scale down to the end of September, what does that show with respect-- taking your figures -- have you your cruise report in front of you?-

A I think you gave it to me.

Q Here is the breakdown of your cruise contained in this exhibit in the P.S. Ross report of March 15th, 1945, -- Exhibit 45 -- at the back page is Mr. Smith's breakdown by blocks of timber, showing his cruise of 14,535,000, plus the felled and bucked, my lord. Now you will notice, Mr. Smith, that your cruise shows 10,713,000 fir?

A Yes.

Q And Exhibit 22 shows a recovery of 10,512,000.

THE COMMISSIONER: Where is that figure?

MR. McPHERSON: No -- it shows a figure -- the grand total on the first page of Exhibit 22, my lord. If you will look down the page you will see the grand total to the end of 1948 -- to the end of September, I take it. It shows the grand total of 7,742,000. Do you see that there, under fir?

A Yes.

Q As against your cruise of 10,713,000?

So at the present time the cut is 2,791,000 below your cruise?

A Yes, but they have more to log.

Q And that would figure out 27.7 percent below your cruise at the present time?

A Well, you could not very well use that, I don't think. Of course the higher parts of this upper limit here -- what is that number?

THE COMMISSIONER: 617.

THE WITNESS: Yes, 617 -- well, it runs very heavy hemlock and other timbers.

MR. McPHERSON: Q: Would that account for the high hemlock in 1942?

A Yes, they are taking out hemlock that I would not count.

Q Now, on your cruise you show the cedar at 1,760,000? A: Yes.

Q And Exhibit 22 indicates a considerable over-run of cedar at 3,799,000, which is about 115 percent of your cruise?

A Yes.

Q Well then, with respect to spruce and cypress it does not really matter.

THE COMMISSIONER: Could you get some explanation of that very extensive over-run?

MR. McPHERSON: I will, my lord.

Q Now, with respect to hemlock and balsam, your figures show that you cruised it at 1,135,000, and the log scale indicates that they have recovered three million, which shows a considerable

over-run of 106.42 percent?

A Well the only thing I can say is that they have taken out timber that I would not count in when I was cruising it. I did not like the quality of it.

Q Now why wouldn't you have counted in that timber in 1943 when you made the cruise for the Custodian -- for Mr. Field?

A At that time it was not saleable.

Q Will you tell his Lordship anything about any deals that you were involved in with respect to over-run? The other day there was evidence given here by my learned friend's witnesses with respect to a deal -- there was some evidence given of a timber sale at Nanoose.

THE COMMISSIONER: That was the McGargle timber.

MR. McPHERSON: Yes, that was the McGargle timber, thank you, my lord.

Q Can you tell his Lordship anything about the changing of logging methods in the McGargle timber?

A Well, I knew the timber. I cruised the adjoining block, 203, a Crown granty block, to a Chinaman.

Q And what has happened to that timber; can you tell his Lordship?

A Well it was logged.

Q Who logged that? A: The A.B. Fraser Logging Company.

Q Do you know when he finished loggihg -- approximately the year?

A He finished in '43 or '44, I think it was.

Q And then what happened to that timber area?

A Well the ground was held by Mrs MacMillan, and they have taken off logs since. I will tell you what happend on that. I had a cruise of 45,191,000 which they said was too high, and they took off 42,786,000.

MR. NORRIS: Q: Who took this off?

A Mr. Fraser.

THE COMMISSIONER: I cannot hear you, Mr. Smith.

A The Fraser Logging Company.

MR. McPHERSON: Q: And you think they finished some time in '43 and '44?

A Yes.

MR. NORRIS: What knowledge has this witness of that?

THE COMMISSIONER: Well that is a matter of cross-examination. Perhaps you can show he hasn't any.

MR. McPHERSON: Q: Will you continue to explain about this timber? You cruised this timber?

A Yes. Since they held the logging operation, they have taken off about twelve million feet, so it has over-run quite a lot.

Q Now in order to make it clear, Mr. Smith, am I correct that you cruised this timber?

A Yes.

Q And you were interested enough to find out how your cruise ran; and that is how you got your figures?

A Yes.

Q And you know what these people took off?

A Yes.

Q And the timber was sold and re-logged?

A Yes, MacMillan owns the land now.

Q And when did they re-log it?

A They are still re-logging it today.

Q And how much have they taken off?

A The report on it is between eight to ten million.

Q And that is in excess of your cruise?

A It is, but it is not very good timber.

Q Well, how do you account for the fact the logger who was logging there in '43 and '45 did not take off this timber?

A Because it was not saleable. It was not profitable.

MR. McPHERSON: If you would adjourn now, Mr. Commissioner.

THE COMMISSIONER: Yes, but I would rather not leave this proposition as it is now. In this instance we have the Fraser people closing their operation in '43, is that correct?

A '43 or '44, I would not be quite sure of that.

Q Are you able to say when the change was in logging methods by applying much closer utilization took place?

A I would say about '44. It was a gradual change.

Q Did you testify before the Sloan Commission?

A Yes, just for the Canadian Pacific Railway only.

Q In regard to the E. & N. lands only?

A Yes, just as to what was left there.

Q I recall that Chief Justice Sloan in several parts of his report has referred to utilization down to ten inch tops -- nine to ten inch tops?-

A Yes.

Q --as being close utilization?

A Yes.

Q He made that report particularly in relation to the Ladysmith experiment?

A Yes.

Q Now I would like your comment on that term.

A Well, I think that that is right. That is about what I would think.

Q As at what date? A: Let me see -- his report came out in '44.

Q I think it was '45. A; '45. Well I know the operation at Ladysmith where they tried that out for the Powell River Company, and a combination of thatwith the Comox Logging and the Powell River and the Government, I think. They were just taking out from an area that had already been logged for the big timber.

Q Well, of course, the Chief Justice's remarks, I should tell you, in regard to close utilization referred to the earlier operations?

A Yes, that is right. They have taken out smaller since.

Q And it then referred to utilization down to ten inch tops as close utilization. I wish you would direct your mind to that comment.

A It is which?

Q It is to that comment I wish to direct your mind. When was it the change took place to utilization-- to timbers below ten inch tops?

A It would be at the time they made the experiment, but I would not be sure what time that was. They took it out then to five inches.

Q That would be in the period of 1943 to 1944?

A Yes, I would say so.

Q You are suggesting a recess now, Mr. McPherson.

MR. McPHERSON: Well, because your Lordship raised it, and I did not deal with the over-run in cedar, and I will clear this up now.

THE COMMISSIONER: Very good.

MR. McPHERSON: Q: Looking at the reports of Deep Bay -- that is the log scale there -- Exhibit 22, his Lordship commented on the large over-run in cedar? A: Yes.

Q And he commented on it yesterday when Mr. Wray was in the box? Could you give his Lordship any information? Can you account for it in any way? A: Well, I can only give the same opinion I gave before. It was a very poor grade of timber and I did not count it, and I just took the best of the cedar.

Q Well, would you say today they are taking out more cedar than they would in '43?

A No, today they are taking out less because cedar is no good now, but a year ago it was very good.

Q It was good a year ago?

A Yes, but conditions change very fast.

THE COMMISSIONER: There is a greater variation in

the market for cedar than any other timber?

A That is right. As Mr. A.J. Anderson says, "Cedar is done for".

MR. McPHERSON: Would you like to adjourn now?

THE COMMISSIONER: Yes, I think we might recess now. You are going to be some little time?

MR. McPHERSON: Yes.

(PROCEEDINGS RESUMED AFTER A SHORT RECESS)

EUSTACE SMITH, resumed the stand, testified further as follows:

DIRECT EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Smith, we were dealing with this Block 203 adjoining the McGargle property, and you stated the people who logged it first had finished logging it some time in '43 or '44?

A Yes.

Q You thought it was '44? A: Yes.

Q Can you tell his Lordship when they started logging it? A: I could not be exact. I think it was '39.

Q '39? A: Yes.

Q Well would you say then that they were logging that property during the war?

A Oh yes.

Q Now with respect to the methods -- the changing methods of logging, Mr. Smith, can you tell his Lordship anything about the Swedish gangsaw, and the Hillcrest Lumber Company experiment?

A Well all that I can say about the gangsaw is,

the first one that I saw was put in by Mr. Stone of the Hillcrest Logging Company. Of course, he had a great deal of small timber on the Silver Creek divide, and he really pioneered with it. It was the first one I saw, and I think it was the first one in British Columbia. That was when I was cruising back in 1937.

THE COMMISSIONER: Well there again I see a reference is made in the Sloan Report that they were in operation in '44 -- there were eight to ten Swedish gang mills in the Province?

A Yes, there would be more now, because there have been several put in up in the Prince George district and there is one in Lumby just going in now.

MR. McPHERSON: Q: Mr. Smith, evidence was given yesterday by Mr. Pretty on behalf of the claimant in respect to the Allworthy timber that was bought by Mr. MacMillan on Northwest Bay and he stated there was a royalty of 50 cents on that timber. Would that be correct?

A No, there was no royalty on it.

THE COMMISSIONER: Well you had better pursue that further. Mr. Pretty said although this was E. & N. timber there was a fifty cent royalty on it for some particular reason and I have just forgotten his explanation.

MR. McPHERSON: Q: Mr. Smith, you showed me a map this morning of Vancouver Island. Is there any way that you can figure from this map whether there would be royalty or not?

A No, except we always figure E. & N. timber has not royalty.

Q What about Exhibit --

THE SECRETARY: 4.

MR. McPHERSON: Exhibit 4.

A That is a thing that can be easily ascertained though.

MR. McPHERSON: Exhibit No. 4 is a map of Vancouver Island.

THE COMMISSIONER: Mr. McPherson, this may be of some help to you. As I recall it, Mr. Pretty said there were certain parts of the E. & N. railway belt that were Crown granted prior to or subsequent to certain dates, and in consequence of the difference in dates there was a royalty of fifty cents on some of it, and none on the majority of it. Then it would be quite conceivable.

MR. McPHERSON: Yes, that the timber that Mr. Smith

C cruised had no royalty, as it was only a part -- and I won't pursue that further.

THE COMMISSIONER: Well, perhaps by reason of that information, you might be able to help us out on it? A: Well, I can't. I would be almost sure there would be no royalty, because all that in yellow on the map is E. & N. -- but there is no royalty.

MR. McPHERSON: Q: Well, point out to his Lordship why you say there was no royalty on this timber?

A Because it was in the E. & N. Railway belt. If

he had bought that before the C.P.R. took it over, it might easily have carried no royalty.

MR. McPHERSON: This was always E. & N. timber?

A Well it was a Dunsmuir tract that was sold to the E. & N.

MR. NORRIS: My friend said it was always E. & N. timber.

MR. McPHERSON : Well according to this map it is E. & N. timber.

THE COMMISSIONER: Well the statement is that the Dunsmuir timber was sold to the E. & N.?

A That is right.

Q And it was first of all the Dunsmuir timber?

MR. McPHERSON: Mr. Smith is pointing out that the royalty timber is coloured in yellow on that map. Is that correct?

A Yes.

THE COMMISSIONER: Where does the royalty timber lie?

A It lies right in the center of the map. It was called Englishman's River.

Q That is somewhere in the vicinity of Duncan?

MR. McPHERSON: It is running through Nanoose there. I can point it out to you.

THE COMMISSIONER: I see it.

MR. McPHERSON: Q: Well, it is your opinion that there is no royalty on that timber; is that correct? A: Well, I think so but I would like to check it again.

MR. McPHERSON: In any event, my Lord, I have further evidence which would indicate, I think, -- it

does not really matter from the Government's stand point.

Q What were the logging conditions on this Allworthy timber?

A It was good ground with very little high elevation, sir--particularly at Northwest Bay.

Q Northwest Bay? A: Yes.

Q And what about the timber?

A The timber was small to medium in size.

Q Evidence was given by Mr. Pretty that this was a deal involving a mill, and it involved logging equipment? A: Yes.

Q And it involved roads, and the total consideration was over a million dollars?

A Well, that was the second deal. The first deal was bought by the Dollars, and the Dollarton Mill is the one that went with it.

Q Pretty's evidence is when Dollarton sold to MacMillan, the consideration was over a million dollars? A: I don't doubt it.

Q And that included a mill. At least there was a mill included in the deal. What species of timber was predominant in this area?

A Well the piece I cruised ran about 72% fir, I think.

Q Would you say there was any comparison between this deal and the Deep Bay deal?

MR. NORRIS: The witness wanted to qualify his answer.

THE COMMISSIONER: Was there some qualification you

wished to state? A: To what --
to the fir?

MR. NORRIS: 72& percent, you said.

A If I had my cruise here -- it runs heavy to fir.

MR. McPHERSON: It runs heavy to fir?

A Yes.

Q What about the Deep Bay property? Is there any comparison between this property and Deep Bay?

A Well this was a virgin tract of timber, and Deep Bay was a remnant.

Q Would you say it was comparable then or not comparable?

A No, you could not compare the two at all.

Q Now yesterday Mr. Fred Brown was in the witness box, and I asked him some questions about the Western Forest Products and the Dudahay deal. Were you familiar with that?

A I have seen the timber.

Q Was there any royalty on that timber?

A Well that is another thing I would have to check. I think there was a fifty cent royalty but I would not be sure.

Q Now Mr. Kagetsu is claiming 500,000 feet on 204; and in your report you refer to the felled and bucked timber in Exhibit -- well, in any event, evidence has been given to the effect that the felled and bucked timber was on 566?

A Just at the corner of those three lots.

Q 566 and 274. And in your report, Mr. Smith, you don't refer to any standing timber on Block 274. That is where the felled and bucked timber was?

That is where they were operating?

A Yes.

Q What did you say about Mr. Kagetsu's claim that there is 2,500,000 standing timber in 1943?

A Well that is all felled and bucked. That is the felled and bucked area.

Q Well, I am pointing out Mr. Kagetsu says in addition to felled and bucked he is claiming 2,500,000 feet in that block?

A Well, I didn't see it.

Q It wasn't there when you were there?

A No, I couldn't find it.

Q Now, Mr. Smith, how much timber -- have you any idea as to the quantity of E. & N. timber that you have cruised and have valued since, say, approximately 1939 up to the end of the war, 1945?

A I started early in 1936, I guess, and I probably cruised about two and a half billion feet.

Q Two and a half billion feet?

A Yes.

Q And you would value the timber, would you?

A Well I would always make valuations for them.

Q And in making valuations did you have some definite system whereby you arrived at a valuation? A: Well I took all the different varieties and based the value on my own cruise.

Q Now you showed me this morning your method. Is that the method you would go on?

A Yes, that is the method I worked out.

Q Will you speak out so that his Lordship can hear you? A: I would go into the details of the varieties, and value each one separately. That was before the big rise.

Q And I gather you also showed the average per acre, did you?

A Yes, that was in '42, -- the average per acre-- that was about the prices they were getting at that time.

MR. NORRIS: Q: That was in 1942?

A Yes, that one.

THE COMMISSIONER: Are you putting in the chart?

MR. McPHERSON: No, my lord, this is a chart made by Mr. Smith of a cruise that he made for the E. & N.

A It is just a sample.

MR. McPHERSON: And Mr. Smith is rather reluctant to put in work done by other people.

THE COMMISSIONER: Yes, I appreciate his reluctance unless he has permission from his employer.

THE WITNESS: Yes.

MR. McPHERSON: And I just had him give me a rough outline of how he valued the timber.

Q Now evidence has been given by one of my learned friend's witnesses that in their early days -- I think the figure was in the 1920's, if my memory is correct--or maybe it was twenty years ago -- that it was customary with the

E. & N. timber to pretty well give it away.

Q And what would you say about the policy now?

A Well it would not be giving it away at that time. Itwwould be giving it away if you put today's conditions to it.

Q Could you give his Lordship some idea of the conditions under which the E. & N. cruised in the early days?

A They did very little intensive cruising at that time.

Q From what time? A: From the twenties on. They did not get a system in there until about eight years ago.

THE COMMISSIONER: Just a minute -- very little of what kindof cruising do you mean?

A Intensive cruising such as they are doing today.

MR. NORRIS: Until eight years ago?

A Yes.

MR. McPHERSON: That would take it back to 1940?

A Yes, roughly speaking.

Q And would that be about the time you started to cruise for the E. & N.?

A Yes.

Q And then when you started, up to that time they did not do intensive cruising but after you started to cruise, what did you supply them with?

A Well I built up all the information -- and made up maps, and worked on a hundred feet to the inch and they had the one square inch scale

shown. It was a very poor map, but we built up a logging map for them.

Q And would the logging map show the elevation?

A Yes.

Q Mr. Kagetsu made some reference to the fact he was buying timber by the acre, and when he made the reference I did not quite understand what the point was. But would Mr. Kagetsu's statement be correct, in those rearly days the E. & N. were selling timber by the acre?

A That is correct.

Q And now how do they sell it?

A They sell it on a cruise which they won't guarantee. Every map that I get out for them has on it, "Look at it and you take your chances".

Q Well now, the timber that you cruised for the E. & N., that you estimated as being some two billion feet from 1938 to 1945 -- did you cruise any additional amount of timber and value it for people?

A Oh yes, I was cruising all the time in different places.

Q You have considerable experience in cruising and valuing timber? A: Oh yes.

Q Now when you value timber -- standing timber, will you tell his Lordship anything about the factors that you would take into account in arriving at the value of the timber?

A Well the main thing is the accessibility of the stand--the quality of the logs that you would take

off it and the density of the stand had quite a lot to do with it. There is alot of things that you have to look at.

Q Are there any more factors that you would take into account? A: Well the accessi-

b bility covers so much. It covers the length of haul and the method of handling the logs from the forest to the booming ground, or to the mill, whichever you wish.

Q Well you referred this morning when I was asking you questions about your cruise--you referred to merchantable timber -- I think that was the word you used.

A Well, we always call merchantable timber timber that can be sold at a profit, or that you can make money by logging it.

Q Is that a factor that you take into consideration?

A Oh yes, definitely.

Q Now for my learned friend's information, so that he can keep his notes right, I am going back to Block 195, Mr. Smith. We will go back to 195. Can you tell me anything about the conditions of the logging there, as to the truck haul and the question of loading on the trains? There has been some evidence here about that.

A Yes.

Q Can you tell his Lordship something about the operation?

A Well they built a truck road up from --

MR. NORRIS: Who did you say -- who do you mean by "they"?

A That is --

@MR. McPHERSON: I think there has been some evidence as to who they were.

THE WITNESS: The Stoltz Logging Company.

MR. McPHERSON: My learned friend has had Mr. Shaw subpoenaed.

THE WITNESS: They built a truck road alongside the landing that comes out to Cowichan Bay, and about five miles of truck road out to the edge of the timber, and then they re-load onto railway trucks. I think the rail haul is about twenty miles.

Q Have you any idea what it costs to haul logs on the C.P.R.? A: I think in this case it cost $2.50.

Q That would be $2.50 a thousand?

A Yes, I think it is a little more now, but it was that then.

Q Do you know anything about the type of timber -- well you were cruising on the timber -- on Block 195. What kind of terrain would that be for building roads on?

A Not too bad.

Q And what about Block 403?

A There is not much rock work -- not much solid rock.

Q And what about 403? A: Just the same.

Q The same type? A: Yes.

Q Now in arriving at your valuation for the timber for Block 195, which was $3.00 for fir, cedar, and

pine, and a $1.50 for hemlock and balsam, -- in arriving at those valuations, you would take into account all the factors you have mentioned?

A Surely.

Q And I think that in the case of the Deep Bay you took similar factors into account?

A Surely.

Q Can you tell his Lordship anything about what the going price of standing timber was in the E. & N. timber belt in 1943?

THE COMMISSIONER: Do you differentiate between sales made by the E. & N. and sales by private persons?

MR. McPHERSON: Yes.

Q Taking the E. & N. sales, have you any idea in 1943 what the E. & N. sales of timber were?

A Yes, I have a pretty good idea.

Q What were they? A: They were running around $2.40 for a big block -- it was a price overall. We did not segregate the timber for the valuation. We would just take that as a whole.

Q Now, Mr. Wray, in Exhibit 40, has put in a statement indicating that the price of logs rose much faster than the price of stumpage during the period from 1943 to 1946? Would you say that Mr. Wray's evidence on that would be correct?

A: That the price--?

Q The price of logs rose to a greater extent than the price of stumpage?

A Oh yes, it did.

Q Could you tell his Lordship what the cost of felling and bucking logs on an average was in 1943? A: As near as I could make out it was running $1.50 a thousand.

Q And what is the price today?

A It is not less than $4.00.

Q It is not less than $4.00?

A No.

Q Now, Mr. Smith, evidence has been given by my learned friend's witness, Mr. Brown, and I believe by some other witnesses, that there was a difference between a deal for standing timber on a stumpage basis and on a cash basis?

A Yes.

Q Mr. Brown stated that 25% would be a reasonable discount and he knew of some deals that had gone higher than that?

A Yes.

Q What would you say about that?

A Well I would say that was right. A man would sooner sell it for cash for 25% less than he would on a stumpage basis where he takes the risk of the timber all throughout the operation and the man possibly going broke logging.

THE COMMISSIONER: Comparable to the same factors, what is the normal attitude of a purchaser who buys on a stumpage basis as opposed to a cash basis? A: Well he

is quite willing to pay more in a case of that kind because he needs his available cash for the operation and he would not want to put too much cash into the operation at one time.

Q And what about the 25% differential?

A Well he does not mind that because he pays it as he logs it.

Q I think in one of your reports you apply a differential of twenty percent?

A That might be. That would be for something else, wouldn't it?

MR. McPHERSON: My recollection is that in Mr. Smith's report he says that Mr. Field, if he sold it on a stumpage basis, could get 20 percent more. I think my recollection is correct, my lord. It is twenty percent more on a stumpage basis.

THE COMMISSIONER: It is in Exhibit 36, is it not?

MR. McPHERSON: That is the report on 195, my lord.

THE COMMISSIONER: Exhibit 3 -- yes, Exhibit 3 being part of Exhibit 36.

Q You make this statement, "If the timber is sold on a stumpage basis or on logging terms, the price would be 20% higher". Now would you explain that recommendation in the light of your earlier evidence?

A Yes, that would be right. It is only a rough figure. In my opinion that would be about right -- 20 to 25%.

MR. McPHERSON:. Q: Mr. Smith, with respect to the

felled and bucked timber, his Lordship indicated some interest in the deterioration of the timber between the time it was felled and bucked and the time theliquidator sold. His Lordship was concerned about it in a different matter entirelyx than the matter of your evidence, as to whether it came within the terms of evidence. Can you tell his Lordship anything about that felled and bucked timber and what the condition of it was?

A Well felled and bucked timber that is left for any great time -- say for two years, it does depreciate a lot in the sap --particularly in hemlock and balsam, and some in the fir, but very little in the cedar. It holds it quite awhile -- for quite a long period.

Q And in your estimate of felled and bucked timber, you estimated two million, with 1,500,000 recoverable, as I understood your report?

A Yes.

Q Have you any estimate of what was taken out?

A No, I don't think it was segregated. I don't think they had logged it.

Q The other day I produced a statement, filed as Exhibit 12, from the British Columbia Loggers' Association, showing the average price of logs. I believe it was when Mr. Birk was in the witness box and he could not identify it and I undertook to have Mr. Smith identify this document. Now I produce Exhibit 5. Can you

tell me where that came from?

A It came through the B.C. Loggers' Association, through Fred Brown.

Q And did you obtain them?

A I did.

MR. McPHERSON: Your witness, Mr. Norris. Thank you.

THE COMMISSIONER: Well perhaps it would be more convenient to adjourn now and open the cross-examination at 2 o'clock.

MR. NORRIS: Well, my lord, I was going to suggest a little longer adjournment, as I think I can then boil it down.

THE COMMISSIONER: We will say 2:15, or if you would prefer, 2:30.

MR. NORRIS: I think I would prefer 2:30 and I think by then I could get it down to the essentials.

THE COMMISSIONER: Very well, we will adjourn until 2:30 p.m.

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

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

E. Bligh
Deputy Official Stenographer

Vancouver, B. C.

November 25th, 1948 2.00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

EUSTACE SMITH, resumes.

CROSS EXAMINATION CONTINUED BY MR. NORRIS:

Q Mr. Smith, you have had I think you said, a very great many years experience in connection with the logging industry?

A Yes.

Q Since about when, would you say?

A Since 1898.

Q And you have made yourself acquainted with changing conditions and with changing operations?

A I have tried to as much as possible.

Q That is the way you make your living?

A Yes.

Q You know about these things?

A Yes.

Q And throughout the province you have kept in touch as much as you could with the various logging operations? A. Yes I have been in quite close touch with a lot of them.

Q And in general you have been in touch with most of them, you have known of them, what they are doing? A. Yes.

Q Throughout the province and mainly in the Coast area? A. Mostly on the Coast.

Q And you know well about the changing methods of utilization? A. Yes.

Q And methods of fire protection and things of that sort? A. Yes, as much as a fellow could have.

Q As much as one could have who was in the business?

A Yes.

Q Would it be fair to say that the fire loss in this province is less than one-quarter percent in relation to standing timber?

A It is not very high. I wouldn't like to give any definite percentage.

Q But it is not high? A. No. There was one very bad fire at Comox.

Q But generally speaking throughout the province?

A Standing timber is pretty safe as a whole. It is the old decayed stuff that gets it.

Q I take it that the cost of getting one log out is about the same as getting another log out of a different species?

A You mean the same size log would cost about the same?

Q Yes? A. Cedar will be a little lighter.

Q A little cheaper? A. Yes. There wouldn't be any material difference.

Q And that, I suppose, was the situation that existed in 1943? A. Yes, pretty well.

Q And therefore, I suppose, Mr. Smith, that the going log prices at any time are a fair indication of relative value as between species?

A I don't quite get that, Mr. Norris?

Q The going log prices -- you know what I mean by

going log prices?

A Yes. Of different varieties.

Q Of different varieties.

A Yes.

Q The relative value of going log prices we will say, between any two varieties would be a fair indication of the difference in value between timber in the woods?

A Between the two varieties.

Q Y es? A. Much more would depend on the quality of the particular logs.

Q But apart from the question of quality -- I understand the question of quality comes in -- but the relative value as between species is a fair indication of therelative value of the species in the woods?

A On the stump,you mean?

Q Yes? A. Well, I guess so. It is a rather ambiguous thing. It is pretty hard for me to tell.

Q Having in mind it costs about the same to get one log out as the other?

A If both are the same size.

Q Yes. So that the relative value between the species in the woods would be fairly well indicated?

A The value would be more determined on the market price of the logs .

Q But the relative value I am speaking of as to whether it was that value in the woods or in the logs as between two varieties.

A Yes, I guess that is safe enough.

Q Dealing with Block 195. First with regard to 195, did you have anything to do with that sale other than to make the examination. Did you negotiate the sale?

A No.

THE COMMISSIONER: You are referring to the Custodian sale?

MR. NORRIS: Q: I am now referring to the Custodian's sale. You said, I think, in 1923 you made a cruise of 195, and then in 1940 you checked that?

A Yes.

Q What did you check that for, do you remember?

A I can't remember. I think I checked it in 1944 ourselves to see how our original cruise would work out as to quantity. I think Keith Shaw and I checked.

Q I am speaking of 1940. How was Keith Shaw in the picture at that time?

A He was working with me at that time.

Q He was working for you in 1940?

A Yes, I think 1940. He left me about 1941, I think.

Q In any event you and he, he being in your employ, made this check?

A Yes.

Q I refer to your letter of April 5th,1943, to P.S.Ross & Son. Do you remember that letter?

A Yes.

Q You say, "I am writing this in order to give you

further information . . . . . Cowichan District." Hadyou given them some previous information on that?

A I think probably I had. I wouldn't be sure, but I am almost certain I must have.

Q You know Mr. Schultz pretty well?

A Yes, I do.

Q He has been a timber cruiser here for a good many years? A. Yes.

Q And you worked with him I suppose at times?

A We worked on the same pieces at times.

Q You would say his judgment was pretty good?

A Reasonably so, yes.

Q As a cruiser? A. Yes.

Q Of course, there is always romm for a difference of opinion? A. It is not an exact science.

THE COMMISSIONER: There are even differences of opinions among lawyers.

A They allow the scaler of the logs 5% and he has actual measurements.

MR. NORRIS: Q: You made on March 23rd, 1940, a report on Block 195, didn't you?

A I think so, yes.

Q Have you got a copy of that report with you?

A It was in that bunch of papers we had.

MR. McPHERSON: Q: I don't think the Custodian has ever seen a copy of this report. Mr. Smith wasn't doing this for the Custodian at that time.

MR. NORRIS: Q: No, not for the Custodian, but you did

make a report in 1940?

A I think I did, after we made that check in 1940.

Q Will you read this document through and tell me that that is a copy of the report you made?

A I think that is correct, as far as I can remember.

Q There are some notes on the back of it. I take it those aren't your notes; they are somebody elses notes? A. I guess that was put on at the time. Those are the figures we got on the original cruise, 29 million.

THE COMMISSIONER: Q: You think the notes on the back are your notes? A. Yes, I think so, they are the exact figures of the original cruise.

MR. NORRIS: Well, perhaps I had better get that marked.

MR. McPHERSON: Could I have a copy of this document. I haven't been supplied with a copy of this document.

MR. NORRIS: I will get a copy made. I assume that my learned friend had that, because he refers to his previous cruise.

MR. M cPHERSON: Of course, the previous cruise couldn't be that cruise.

(REPORT BY EUSTACE SMITH MARKED EXHIBIT No.1388/53)

MR. NORRIS: Q: You didn't, as a matter of fact, make a cruise for the Custodian on 195, did you?

A I went over and checked my own cruise, yes.

Q On 195? A. I never made a re-cruise.

Q And it was this cruise you checked at that time?

A That is the check of the original cruise.

Q That is the check of the original cruise?

A Yes.

Q In 1940? A. Yes.

Q And then in 1943 or thereabouts you say you made a recheck again?

A Yes, I went through the timber to get the quality.

Q I will give you that and I will read my copy. This is March 23rd 1940. (Reading report). Now that was the result of a cruise made in 1940?

A Yes.

Q And when you made that report in March 1940, the statements in that report were correct?

A As near as I could get them, yes.

Q And you have had no reason to change your mind since? A. No,

Q What do you mean by those words, "definitely conservative". A. Well, it was a little on the low side.

MR. McPHERSON: Your lordship will appreciate that I didn't have a copy of this exhibit. I am not complaining about that now, because it shows Mr. Smith made a very good cruise, but my learned friend asked Mr. Smith if he had any reason to change his mind now, and Mr. Smith said no. I think my learned friend should also point out that Mr. Smith did change his mind and it is in as an exhibit submitted, increasing the cruise by one million.

MR.NORRIS: This man is under cross-examination.

THE COMMISSIONER: I think that is a matter you might bring out in re-examination if you wish to.

MR. McPHERSON: Thank you, my lord.

MR. NORRIS: Q: Again I ask you have you any reason to change your mind?

A No, the only reason I could have, would be the actual results of the scale. The scale so far shows a considerable increase.

Q What you are saying is that in your report of April 5th,1943, you show instead of 29 million feet --

A No, the report of 1940 shows that.

Q But in your report of April 5,1943, you show there was almost 31 million feet?

A Yes.

Q And that is what you are talking about now, the difference in the scale?

A Yes.

Q That is a difference of approximately one million feet? A. Yes.

Q And that is the difference?

A Yes.

Q With regard to the statements of the cruise, have you had any reason to change your mind?

A No. They apparently used the route I outlined in this report.

Q In the last paragraph of that report you say that, "E. & N. timber lying east of Blocks 403 and 195. . . . . same route".

A That should have been, "could".

Q "would" should be "could "?

A Yes.

Q "Could all be developed. . . . . road construction".

Q Do you know whether that timber lying east of 403 and 195 has been developed?

A That is just a suggestion.

Q But my question is, do you know whether or not that timber which lies east of those two blocks has been developed?

A Close to it, no.

Q Not close to it? A. No. They have reached in from the Robertson River side.

Q I am producing to you a map, showing 195. You see this road which runs from 195 through this block 7-A? A. Yes.

Q And through 195 up into block 231, and then up to the road? A. That isn't the road we used.

Q That isn't the road they used?

A No. They cused the lower part.

Q They used the lower part of this grade?

A Yes.

Q But whatever road was built in there to 195, would be utilized by this other timber?

A Any other timber there was tributary, yes.

Q Now, you checked with Mr. Sheehan, didn't you?

A Yes.

Q Who had made a cruise in 1923?

A A little later, I think.

Q Did you at that time see his cruise report?

A I talked it over with him.

Q And you had it beofre you when you talked it over with him? .A. Yes.

Q I produce to you this report. Will you look through that please, Mr. Smith?

A It doesn't say who he made this for, does it?

Q No. Did you discuss that cruise with him at the time? A. Yes.

Q And is that the report you discussed?

A I suggested it was too high.

Q I know that, and you gave your reasons this morning, but this is the report you discussed with him? A. Yes.

Q And following your discussion with Mr. Sheehan, then he wrote this letter of April 5th,1943?

A Yes.

MR. NORRIS: It is in Exhibit 36.

THE COMMISSIONER: Exhibit 3, in Exhibit 36.

MR. NORRIS: And following that discussion with him, he wrote this letter?

A Yes.

Q And gave it to you? A. Yes.

Q And you gave it to the Custodian with your report?

A I did after.

Q Yes, with your report?

A That's right.

Q Do you know where Mr. Sheehan is now?

A No, I don't.

Q I may say we have been trying to find him?

A I think he went to Seattle, but I am not sure.

Q And you said this morning that the difference between you and Mr. Sheehan was, he took the small

timber which you did not take into account -- hemlock which was then a poor price and a poor grade-- and you didn't agree with him in this, "and further, that his reports had in mind the installation of a small mill on the ground".

A Yes.

Q And those were the factors which you think contributed to the difference in your cruises?

A Yes.

Q It was mostly hemlock, I take it, that he had taken into account that you hadn't?

A Yes, it looks like it.

Q Do you remember when the Czechs, the Korners came to this country?

A Approximately.

Q 1937 or 1938, I suggest to you?

A It was just ahead of the war. It must have been 1938.

Q And they had their plants in New Westminster at that time? A. Didn't they buy out the one at Marpole first?

Q That may have been the first, but it was about that time? A. Yes.

Q And they utilized hemlock to a large extent?

A Mes.

Q To such an extent that it was a matter of very considerable publicity in the province at the time?

A Yes, they advertised quite a lot they had utilized the wood to far better advantage than we had in

the past.

Q And you agree they did? A. Yes, they didn't use an awful lot of hemlock at that time.

Q Not at the beginning? A. No. Fir was very low then.

Q Wasn't it hemlock on which they commenced their big development? A. They have since that, yes.

Q And within a year or so of the time they came in?

A I wouldn't know enough to say that.

Q You don't know as to what?

A No.

Q You referred to the railroad -- I take your mind back to 1943 -- and that was in 1943 and 1944 and at that time and prior to that time that railroad had been in operation -- Mr. Kagetsu's railway.

A Yes.

THE COMMISSIONER: You are now talking about Deep Bay?

MR. NORRIS: Yes.

Q And at that time I take it there was a great pressure -- I think there was evidence to that effect -- for timber development and the production of lumber? A. They were just beginning to call for logs at that time.

Q And did you know that the timber controller was exerting a great deal of pressure on all concerned to get tracts in operation and get lumber production?

A Yes.

Q And this was obvious, wasn't it -- you went through the previous war, didn't you?

A Yes.

Q And it was obvious that lumber production would have to increase, wasn't it?

A Yes, that's right.

Q Right from the beginning of the war. The history of the previous war showed you that, didn't it?

A It certainly looked that way.

Q Having in mind the necessity for greater production, I take it it was necessary that all means of production and transportation and so on would have to be utilized?

A That's right. There was a great shortage of manpower on account of the war taking many young fellows away.

Q That's right. And at that time there were difficulties with regard to fuel oil and gasoline and that sort of thing? A. Yes, although they usually supplied the logger.

Q But there was a shortage throughout the country at that time? A. Yes, there was for us.

Q So that any means of transportation, railroads, logging/roads, which even under ordinary circumstances might not be economical, having in mind the necessities of the war, wasn't there necessity to get all transportation? A. No, they were all abandoning the railroads at that time regardless of condition.

Q You mean prior to that time?

A Yes.

Q But you don't suggest, do you, that in view of the war necessity, and the difficulties with regard to fuel oil and those things, that it was not a proper thing at that time?

A Fuel oil was the main thing used on railway for logging.

Q Take gasoline that would be used in your trucks, as between use of gasoline and fuel oil, I take it at that stage it would be better to use fuel oil? A. I think so.

Q You know Mr. Kagetsu pretty well, don't you?

A Yes, I knew him before the war.

Q You have known him a good many years, I take it?

A Yes, quite a few years.

Q And you have had quite a lot to do with him off and on? A. Not very much. I cruised for him, I think, one time.

Q And he is a pretty keen logging operator?

A Well, I guess you could say that, yes. We wasn't a big operator.

Q No. In a small way? A. Yes.

Q He was well known at that time in the lumbering industry? A. Yes, he has been here quite a long time.

Q This morning, Mr. Smith, you gave evidence relating to the report you made, Before coming to that, again coming back to the railroad. I suppose it would be a fair statement to say that with regard to the operation of the railroad that you would be

more likely to depend on this steam operation at that stage in view of the war necessities than you would a trucking operation?

A I don't think so.

Q Why? A. The trucks are well developed.

Q I am speaking of supplies and looking forward to the future, that being the most crucial time in the war, the time of the greatest necessity?

A I would only be guessing on that.

MR. McPHERSON: When was this most crucial time, my lord; which year?

MR. NORRIS: 1943 .

MR. McPHERSON: I think there is some difference of opinion on that. I think that Dunkirk was rather crucial.

THE COMMISSIONER: Your friend has been dealing with 1943.

MR? NORRIS: I have been dealing with 1943 and I think it was a fairly crusial time.

THE WITNESS: What was the question?

MR. NORRIS: Q: At that time in 1943, it would be fair to say for a logging operator that had been looking forward to the possib ilities of shortages with regard to gasoline and so on, and the trucking operation, that he had better stay with the means of transportation that he had.

A Well, he probably would have done that himself, but I still wouldn't think it was economical.

Q Under normal circumstances it wasn't economical?

A Yes. He would, because it was there.

Q And because of the war?

A I don't think that the war would have much to do with it.

THE COMMISSIONER: The witness has already said that the operators weren't experiencing any difficulty in getting fuel supplies.

MR. NORRIS: Yes. Of course, I am speaking of the broad picture.

Q And you said trucking was coming in more and more every year? A. Yes.

Q And you were then referring to 1943?

A Yes. It started before that, but they were getting better trucks and pneumatic tires.

Q In referring to the number of employees, I think my learned friend said there were 75 employees on the Deep Bay operation and he related the production to the number of employees. Do you remember that discussion? A. Yes.

Q I take it the 75 employees would include quite a number of personnel who weren't strictly speaking in the woods -- he would have cooks and odds and ends of people like that?

A Of course, they always counted them that way, the cooks and everything else and men working on the road keeping the road in repair.

Q Do you know the Pioneer Logging Company sometime prior to 1943, had an operation at Port McNeil?

A Yes, I cruised it for him.

Q And that was subsequently sold to the Alaska Pine?

A Yes.

Q And there they were operating a straight hemlock, balsam proposition?

A Quite heavy cedar too.

Q But very largely a hemlock-balsam proposition?

A I think it was about 55% hemlock and balsam; the rest nearly all cedar.

Q And you know Peter Bayne who was an operator in the Fraser Valley?

A Very well.

Q And he has been engaged for years in the production of second growth fir?

A That's right.

Q For a great many years?

A Yes. He has always worked in stands of second-growth, if nothing else in it.

Q Reference has been made to the Ladysmith experiment. I take it that went on for a number of years?

A I think it went on for about a year and a half.

Q To get the results it would have had to be going for a year and a half, to assess?

A The practicability of it?

Q Yes?

A They put a good deal of volume into the water.but the Powell River Company didn't like it when it got to the mills. There were knots in it and limbs on it. It was an awful looking bunch of stuff that went into the mills, but they did get good volume out of it.

Q And that took some considerable length of time?

A Yes, to make a thorough test.

Q Speaking of Deep Bay in your report Exhibit 4 5, Schedule 2, to that exhibit, you said, " I made a general examination . . . . . of the amounts accessible". That is as far as you go?

A I went all through the timber.

Q You didn't make a cruise?

A Yes, I cruised all of 617.

Q What do you mean by " general examination", Mr. Smith? A. I went all over the blocks of timber remaining and took samples,

Q About what percentage cruise did you make?

A It would be about a 10%.

Q You did make a 10% cruise?

A Yes.

Q And no better? A. No.

Q Was that a measured cruise? Did you take measurements or was it just an ocular cruise?

A Ordinarily we check our judgment by taking an occasional measurement.

Q In this case what did you do?

A That is the way I would do it in this case.

Q When you went over that Deep Bay operation, how many men did you have with you to make that cruise?

A Just one. I never take more than one if I am doing the cruising myself.

Q How long did that cruise take?

A I couldn't tell you. I guess about four or five or six days. I stayed in the camp and the watchman took me up on the speeder.

Q How did you know where these various lots were?

A By the map.

Q And you ran a line? A. Yes, æveral lines.

Q Speaking of cruises generally, I understand you to say that the E. & N. have always taken the position that they won't guarantee the cruise?

A Yes. In all the twork I did for them I had to put that on the bottom.

Q And you say that when you cruise you take into account such things as assessability?

A Yes.

Q The quality of the logs?

A Yes.

Q And other things. And you said merchantable timber. That is to say timber which could be sold at a profit in your opinion?

A Yes, that it would pay to take out at the time I cruised.

Q You said I think,"I take into account whether the limit can be logged at a profit"?

A That's right.

Q And that is the way you have made your cruises throughout? A. That's right.

Q And that is the way you made your cruise in 1940?

A Yes, that's right.

Q And your previous cruises?

A You mean on the same block?

Q No. A. Other cruises?

Q Yes? A. Yes. It is a regular

system I have. I have a book I use for that purpose to use all the volume tables to check on.

Q And you have done that always, I take it?

A No. Cruising has developed a great deal. In the cruising before 1900 a fellow would go to the Valley and down the other side and say, "I guess 20 million here".

Q It is difficult for me to go back that far?

A In Clark and Langford first started --

Q That would be about when?

A About 1912, I think , Langford came out to join them.

Q In 1923 when you made a cruise, were you considering then -- did you apply the same rule about the merchantable timber?

A Yes, always.

Q And you had that in mind in 1923?

A Yes.

Q And subsequently? A. We kept improving our methods of mapping the country and giving as much information to the logger as possible.

Q I am not so much worried about the mapping, although I am interested, but what I am concerned with at the moment is the matter of the merchantable timber, and the question of market, You considered and you always considered that matter?

A Yes.

Q When you made these cruises -- let's deal with the cruise first of all of Block 195?

A In 1923?

Q 1923 if you like? A. I mean the first cruise was made then.

Q 195. Did you at that time cruise below 20 inches D.B.H? A. Yes. I had already installed a system of cruising from 14 inches to 19 inches and from 20 inches up and segregated the two amounts; just about starting then.

Q When? A. In 1923.

Q Then in 1940 what was the D.B.H. limit you cruised?

A I never altered it. I would alter it if I went into a piece of second growth.

Q But I am speaking in relation to these operations, that is 195 at Deep Bay?

A Yes.

Q Then your evidence is you cruised, you divided the result of the cruise as I understand it, into two parts? A. Yes.

Q From 14 to 20 and from 20 up?

A Yes.

Q And that was throughout all the species?

A That's right.

Q How did you relate that to the demand for a particular variety. You referred to merchantable timber? A. You mean the variety of timber?

Q Yes? A. I considered the amount of fir, cedar. I take it down in my book and I see what is in it so that I can add up how many fir, cedar and hemlock.

Q As to D.B.H., with regard to those varieties, take

Hemlock for example, would you cruise all hemlock by the same D.B.H. in 1923 as your cruise of fir?

A Yes. I would only take the sound trees.

Q But your D.B.H. would be the same?

A Yes.

Q That is, above 14.

A Yes.

Q But in 1923, Mr. Smith, there was no demand -- I think that is the evidence -- or very little demand for hemlock?

A There wasn't very much. We hadn't begun to use hemlock like we did later.

Q And I take it the hemlock then couldn't be sold at a profit? A. No, although you would naturally count the hemlock to show them there was hemlock there.

Q But you didn't pay the same attention to it, I take it? A. No.

Q In other words, your cruise of the hemlock in 1923 would be more cursory and general than would be with regard to fir?

A It would be low, yes.

Q And the same would apply in 1940, I take it?

A Well, hemlock wasn't very strong in 1940. It was very low; about $7.00 a thousand, I think. 1940 we would be more particular, because we were doing a better job cruising. We had learned a lot in the past and were counting the timber better than we had before.

Q In your report of April 5th,1943, which followed your cruise of 1940 -- I take it this wasn't the result of a cruise at all?

A What?

Q This report of April 5th,1943?

A Well, it was a report made up from a cruise.

Q From the cruise of 1940?

A Yes.

Q And in that I draw your attention to your statement that "fir, cedar and pine at $3.00 per thousand and hemlock and balsam at $1.50 a thousand", that at that time the going log prices were $19.50 for fir, and $16.00 for hemlock and balsam.

A Yes, I presume they were. I haven't checked them.

Q I think that evidence is in. That is to say, hemlock and balsam were worth four-fifths the value of fir? A. I didn't work it out that way.

Q Can you account for the spread, the two to one spread between fir and cedar and hemlock and balsam as you have given it?

A Yes, I can. It doesn't depend altogether on the sale price of the logs. It was a standard price for that kind of timber at that time.

Q Will you refer to schedule 8 of Exhibit 45. That is your report to .P.S.Ross, of October 24th,1944.

MR. McPHERSON: Is this Exhibit 16 now, or another one?

MR. NORRIS: It is another one. I have dropped Exhibit 16. At least I will deal with it in a minute.

Q If you look at that October 24th,1944 schedule 8,

to Exhibit 45. I draw your attention to the figures which you have given of the total timber on 617, and that figure is what?

A 7298.

Q 7,298 thousand? A: Yes.

Q Now I draw your attention to Exhibit 16, the second letter on Exhibit 16. It is a letter of October 2, 1948, from Mr. Barrie of the E. & N. Railway to P. S. Ross & Sons, and he refers to block 617 as having been purchased in the name of the Deep Bay Logging Company Limited in 1941; the sale was based on estimated cruise of 7,298 thousand feet board measure, no recoverable cedar poles. Now, I suggest to you that you took your figure from the E. & N. cruise.

A No, I didn't. Is that the same figure?

Q It is the same figure to a decimal.

A I don't know anything about that at all, not a thing. I cruised that thoroughly.

Q You cruised 617 thoroughly?

A Yes.

Q And it had no reference--

A It had no reference to the amount of timber by the E.& N.

Q Who made the previous cruise for the E.& N.

A I presume Mr. Prior made it. I don't know.

Q And you say the two cruisers went on block 617 and arrived at exactly the same figure?

A It seems quite a coincidence, but I didn't have their figures.

MR. McPHERSON: I am not sure whether Mr. Smith is a bit confused here or not. My understanding is Mr. Smith had cruised it for the year end.

THE WITNESS: No, not that one. I didn't cruise that one.

MR. McPHERSON: I think that is what Mr. Norris is getting at.

MR. NORRIS: No, my point is this —

THE COMMISSIONER: I think the witness understands.

THE WITNESS: Yes, I do.

MR. NORRIS: Q: Having in mind Mr. Smith, your statement in Exhibit 45, Schedule, 2 that this was a general examination of the timber and you didn't make a systematic cruise and that the check could only bring a fair idea of the same amount, you still maintain you made a systematic cruise?

A Yes.

Q And arrived at the same figure?

A Yes.

MR. MCPHERSON: The witness said as to 617 he did make a complete cruise but not the other blocks.

MR. NORRIS: Yes. I am dealing with 617 now.

Mr. McPHERSON: You had said, " notwithstanding the fact that you did not make a complete cruise." I am simply drawing to your attention the fact that he said he did make a complete cruise of 617.

MR. NORRIS: Yes. I point out that in spite of the general statements made in the opening of this report of August 16, then we have this statement that the result is exactly the same figure.

Q What was the area of 617?

A I don't know.

Q I want to read to you again from Schedule 2, your letter of August 16,1945, the fifth paragraph. I want to be quite fair to you and I want to point out to you that you just made a check of this. Don't answer until I read this, because I want you to understand. I think you have forgotten. "The upper portion of Lot 617 . . . . . is all there". Now I suggest to you that at that time you were guided by the E. & N. cruise? A. I am just wondering.

Q You are just wondering?

A Yes. I know I went all over it but I don't remember seeing any cruise by the E. & N.

Q Perhaps we had better leave it at that. My suggestion is again, that your check was a check merely of the E. & N. cruise?

A It looks like it there, but I certainly went over that ground thoroughly.

THE COMMISSIONER: Any re-examination?

MR. McPHERSON: Yes, my lord. If your lordship would care to adjourn now before I re-examine Mr. Smith, I think I would like to get Mr. Smith to get in touch with his office and find out about Block 617, because the point Mr. Norris raised, and I don't think this need go on the record . . . . . .

THE COMMISSIONER: All right, we will recess for ten minutes.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. McPHERSON: My lord, with respect to Block 617, the evidence which was put in some time ago was that it was purchased by Mr. Kagetsu in November, 1941, Mr. Smith was leaving for the West Coast tomorrow, with respect to the East A sciatic, I think, and would prefer of course, not to have to come back. I wonder if your lordship, if my learned friend agrees, would be prepared to accept a statement from myself as to what Mr. Smith finds out tonight as to whether or not he did in fact check Mr. Prior's cruise of the E.&N. of that block?

THE COMMISSIONER: Or make his own cruise?

MR. McPHERSON: Or make his own cruise.

MR. NORRIS: If he has got field notes or something that he is going to produce, I would like to see them, that's all.

THE WITNESS: I will try to find them tonight. I think I made a mistake. I did check Mr. Prior's cruise but I did cruise that 617 thoroughly, and then checked with him and figured that amount of timber was there that seven million odd.

THE COMMISSIONER: Q: The figure you estimate is a confirmation of the Prior cruise rather than your own figures? A. That's right. After I had cruised it I felt sure the timber was there.

REDIRECT EXAMINATION BY Mr. McPHERSON:

Q With respect to Mr. Sheehan's cruise of Block 195

I read you a paragraph on the first page: "When the ground is logged . . . . . revenue". I take it from that paragraph which you discussed with Mr. Sheehan, that he was talking about roads which weren't there; that is there were no roads in there.

A There weren't at that time, but he really describes that as a salvage operation at Ladysmith. After they were through logging he would use the same road. That is what he meant, I think.

Q Would that account for the fact of the overrun on your cruise? A. It would to a large extent, yes.

Q My learned friend made a few remarks on the urgency of the war and the shortages in men, gasoline and so on, and I believe the suggestion was that a purchaser if he was patriotic would continue to operate Deep Bay as a railway proposition.

MR. NORRIS: I didn't put it on the basis of patriotism.

MR. McPHERSON:Q: That it wasn't reasonable to convert to trucks because of all these shortages which had occurred and might occur in the future. With respect to a railway operation is the maintenance of the railway quite an item?

A Yes it is when it is old, when the ties begin to rot.

Q What about the number of men employed on a railway operation, not only running the trains but all

the men in the railway operation compared to the number of men required in a trucking operation. Which would require more men?

A The railway, I would say. A truck operation is resilient. You have one truck or six trucks. You have one driver and swamper or six trucks if your road is good. Your railway you should run it full to make it pay, so many carloads of logs every day; a high priced engineer and trainmen to run it.

Q And would you say it would be better during the war than to operate a trucking operation?

A I wouldn't say that. It depends on the ground and if the truck road could be easily built.

Q My learned friend mentioned gasoline. What about these logging trucks. Do they burn diesel oil?

A They were burning gasoline a good deal but they are mostly diesel now, the big trucks.

Q Were there diesel trucks in 1943 and 1944?

A Yes, they had some at Ladysmith.

Q Did logging have a high priority as to equipment and supplies? A. Yes.

MR. McPHERSON: In view of Mr. Smith's remarks, my lord, unless Mr. Smith finds something definite tonight, I won't introduce anything further. And Mr. Smith will be able to leave, because he is anxious to get away.

THE COMMISSIONER: Very well, you haven't any further cross-examination, Mr. Norris?

MR. NORRIS: No, my lord.

(Witness aside)

MR. NORRIS: Just at this stage, perhaps it would be a convenient time-- I would like to put two documents in.

THE COMMISSIONER: Yes.

MR.NORRIS: The first is a consolidated statistical table of the Forest Branch, 1912 to 1940, for the Province of British Columbia, and I refer to page F-65 which shows the cut 1912 to 1940 inclusive the percentage of the total cut by varieties and the trend of cut volume of cut by percentages and by quantity through that period. I don't think there is any need for me to refer to it. It is quite long.

THE COMMISSIONER: Very well.

(FOREST BRANCH REPORT REFERRED TO MARKED EXHIBIT No. 1388/54)

MR. NORRIS: I would also like to put in another report of the Forestry Branch, for the year ending December 31st, 1943 at page B.B.22, which shows the quantities by varieties cut in the various districts, and the grand total for 1943 and of course, for other years prior, and would show that in 1943 a cut of fir was 39.5% of the total cut in the Province; the cut of hemlock was 19.1%; and the cut of balsam 4.41% of the total cut.

(FOREST BRANCH REPORT REFERRED TO MARKED EXHIBIT No. 1388/55)

MR. McPHERSON: I take it in view of the fact that these documents are in that for the purpose

of argument Government counsel will be entitled to refer to that part of the documents they wish to refer to.

THE COMMISSIONER: I think so.

MR. NORRIS: They are government reports, and there they are.

MR. McPHERSON: I mean both counsel, I assume are entitled to argue --

THE COMMISSIONER: We will treat them in exactly the same way as it was proposed to treat the Sloan Report.

MR. McPHERSON: I would like to put in as an exhibit, my lord, the Forestry Report for 1944, because there may be some discussion as to whether the property was sold in 1943 or 1944.

(FOREST BRANCH REPORT REFERRED TO MARKED EXHIBIT No. 1388/56).

MR. NORRIS: May I ask has this relation to the same figures?

MR. McPHERSON: Well, I am putting in the whole document. For instance, the Ladysmith experiment is discussed in 1943 and 1944.

MR. NORRIS: It would be helpful for the purpose of argument if I knew to what my learned friend was addressing his remarks; for what purpose it is being put in.

MR. McPHERSON: I can do that, my lord.

THE COMMISSIONER: If you will do so before you finish tomorrow.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Reference has been made to the Ladysmith report, which I think I introduced first. I would like counsel not to overlook the fact that the reference to the Ladysmith report in the Sloan Report, to which I referred, does not deal with the results of the Ladysmith experiment, neither does it touch upon the limits of utilization on the original operation before they started the Ladysmith experiment.- It is to that the Chief Justice refers when he speaks of utilization down to ten-inch tops, not to utilization in the course of the Ladysmith experiment down to ten-inch tops; they were much lower, I think.

MR. NORRIS: Five, I think.

THE COMMISSIONER: Five or six, I think.

MR. McPHERSON: Of course, my learned friend was not here, but I did quote extensively from those reports.

MR. NORRIS: Which Reports?

MR. McPHERSON: From the Forestry Report. I read statistical records into the tables sometime ago, your lordship will recall.

THE COMMISSIONER: Yes.

MR. McPHERSON: I would like to call Mr. Skelding, my lord.

THE COMMISSIONER: You are examining Mr. Skelding solely on the buildings, is that the situation?

MR. McPHERSON: No, my lord, I would like to extend

the examination of Mr. Skelding to include the question of the railway.

THE COMMISSIONER: We are all finished with the equipment.

MR. McPHERSON: The two points are the buildings and the 50 cents a thousand as an increased value of the railway.

GEORGE WILBUR SKELDING, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McPHERSON:

THE COMMISSIONER: We have you on both sides in this investigation apparently, Mr. Skelding?

Mr. McPHERSON: Q: I think you have been qualified, Mr. Skelding. His lordship knows you, but I would like you to state your qualifications as a valuator of logging equipment and railway equipment , sawmills and such like in order that my learned friend, Mr. Norris, may be aware of it .

A I am a Universal appraiser, and I have been in the sawmill business, connected with it about thirty years, operating in the mills, appraised all kinds of logging camps and sawmill camps and all types of industrial plants.

Q And in your work as an appraiser have you had any experience at all in appraising the value of rights-of-way and roads and such like?

A Yes, we have to do that when we appraised logging camps in connection with sales and valuating the

improvements. We take in the cost of putting in the roads, having regard to the available timber and various logging equipment and so on.

Q And haveyou had experience in appraising railway operations as such, not only locomotives and equipment, but the operation as a railway operation for logging purposes?

A Yes.

Q And with respect to the claim before his lordship, there is a claim that the railway at Deep Bay had a special valuation over above the value of the equipment. The valuation claim is 50 cents a thousand on the timber in the Deep Bay property. You made the appraisal of the equipment? A. I did.

Q With respect to the Deep Bay operation generally, in order that you may have the picture, evidence has been given here first of all that the most accessible timber had been taken out of Deep Bay. Mr. Smith's cruise ran to 14 or 15 million feet of timber left. There has been some evidence about a figure of 17 million feet, and the claim is for 27 million feet. So you have three possible amounts of timber in the area. Evidence has been given that there was no other timber available to this operation. Mr. Kagetsu has given evidence that if he didn't have any other timber available, he would have logged block 504 shown on Exhibit 13, the green part here, (indicating). He would have logged that by

truck if there wasn't any other timber available in the back of the Deep Bay area.

THE COMMISSIONER: To the railhead.

MR. McPHERSON: I think that may be so. He would have logged by truck to the railhead. I don't think in that particular instance -- in the case of the timber here Mr. Kagetsu on cross-examination -- I was referring to these streams here and the terrain over which he would have to build his load, and my recollection is that Mr. Kagetsu Junior, who was interpreting at the time said they would have logged to the railhead by truck. That may have applied to both.

THE COMMISSIONER: That is what I took it to be.

MR. NORRIS: That is what I understood.

MMR. McPHERSON: Q: Evidence has been given that the timber on Blocks 617 and 566 ran I take it, anywhere from up to 2,000 feet and high as 2600 feet. Evidence has been given by Mr. Kagetsu also, that the railway itself had a grade running from four to as high as six feet. Now, Mr. Skelding, having in mind all these factors I have outlined to you, what would you say about the Deep Bay operation as an operation?

A I think possibly when the operation was first started it may have been a logical thing to do, to put in a railway at that time; but prior to this sale and for some years prior to this sale, logging camps have been going more on a trucking

form of logging. They have made other timber available to them that they couldn't reach with the railway. And there has been a gradual betterment in the equipment; air brakes have been introduced, and so on. On your railway you couldn't operate greater than about a 6% grade. You can operate a truck road even on an adverse haul up to 15% grade. And from my experience in the plant, and where we were operating logging camps, I think it is generally recognized your big cost in hauling logs out is the loading and unloading, where your equipment is tied up. I don't believe for a minute that it would be feasible with labor costs as they are, and have been and were at the time of the sale, to haul out by truck to the railhead, unload, load again, and haul out by rail. I don't think that is feasible at all. I think it is genera lly recognized you can haul 20 miles for possibly 25 cents more than 8 miles, because your last time is loading and unloading. If you have got an elevation in here up to 2600 feet, I think it is reasonable to suppose that when this timber has been left and he was considering using trucking operations here, is it not reasonable that the reason the railway wasn't extended was it wasn't feasible to extend it. I don't see that it would be practicable to put a railway extension in there for that amount of timber if it isn't feasible to extend the track and bring the logs out by rail. I don't regard

the railway has any value of 50 cents a thousand. If the areas were cut out it has no more value unless it taps an undeveloped area. I can't see it has any fiftycent value at all.

Q You will notice a small green patch down along the righthand corner of Exhibit 13?

A Yes.

Q That piece as I understand is on Block 276. Mr. Kagetsu in his evidence stated the reason he bypassed that was because sometime it would be taken out by truck , that it was only a small block of timber and that they would take it out by truck. I take it your remarks applying to the rest of the timber would apply to that?

A Yes. Anytime your timber is sparse and you have to traverse some area to get quantities a truck operation is the logical way to take it out, but there again if you are going to load it onto trucks I do not think it is economical to haul it to the railroad and reload again and haul out by railroad.

Q And at the time you valued the equipment for Mr. Field, -- Mr. Eastace Smith said he retained you to value the equipment?

A Yes.

Q And at the time you made that valuation I take it you considered the operation as a whole?

A I was of the opinion then as I am now, that the logical thing to do would have been to change it to a truck set-up. I think the same thing would

apply largely in the other case.

THE COMMISSIONER: Q; What value would you put on the railway right-of-way in terms of this claim as of 1943? A. I wouldn't think the railway right-of-way would have any great value because you couldn't use it as a trucking road. If you were to put in trucks there you would have to widen the road, and since there is a very much greater incline than the railway you would shorten that as much as you could by more direct routes than with a railway where you had to maintain certain grades.

MR. McPHERSON: Q: Would you opinion be different if timber, say 30 million feet had been available at the back of Deep Bay?

A Oh yes, definitely.

Q Your opinion of the value would be different?

A Provided you could tap that timber with the railway.

Q I show you a letter, Exhibit 47, put in as an Exhibit subject to your identifying it. Is that a copy of a letter you wrote to Mr. Wray?

A It is.

MR. McPHERSON: That is dated August 11th,1943, my lord.

Q Would you just tell his lordship what your opinion is about the buildings on the Deep Bay prpperty?

A The buildings were of the type usually found in small logging camps operated by orientals. With the exception of one or two buildings they

wouldn't be suitable for occupation by occidentals at all, and in this letter I stated that the buildings would have no particular value, except to someone actually logging in the particular area. The buildings might have some value, but not for living accommodations. They could be used for sheds or something . There were one or two buildings there that had some value, but in the main the buildings had very little value.

CROSS/EXAMINATION BY MR. BALDWIN:

Q What were your instructions when you went up on the Deep Bay property?

A To go over the equipment and buildings and advise Mr. Smith as to what those buildings were worth.

Q Did you put a valuation on the buildings?

A No. I went over the buildings and the buildings didn't have any value. The Japs were being moved out and they were not in my opinion habitable by whites.

Q You were examining the equipment and valuing the equipment for the Custodian, is that correct?

A I was valuing it for Mr. Smith who was employed by the Custodian.

Q And in the course of your employment up there, what parts of the operation did you visit?

A I visited all the main areas where there was equipment for me to see.

Q And where was that? A. Down on the lower

end. I didn't come in up here (indicating).

Q By that, what do you mean? The lower area, would you indicate it on Exhibit 13?

A I don't just remember where I came in. I was up the tracts wherever there was any rolling stock or equipment for me to see.

Q Was the rolling stock within sight of the campsite?

A I can't remember that. I was there for a day or two, but I wasn't up in the timber area at all.

Q You weren't up in the timber area at all?

A No.

Q Well, looking at this exhibit 13, and as it shows, the railway comes all the way up to 617. Would you say you had seen perhaps one-quarter of the railway shown on Exhibit 13, that is the eastern part? A. I wouldn't want to say that, because I don't know what proportion I saw.

Q What was the width of the right-of-way?

A Standard logging railway width.

Q And what is that? A. Possibly about 7 feet at the top or maybe six feet -- the grade.

Q If I told you the grade was 16 feet wide, would you be surprised?

A It maybe in places.

MR. McPHERSON: There has been no evidence produced by the claimant as to the width of the grade.

THE COMMISSIONER: No. The question was not put on that footing.

THE WITNESS: It is not usual that any railway in any logging camps I have been in, and I think I have seen all the logging camps in British Columbia operating railways except those on Queen Charlotte Islands -- I have never yet seen a railway bed in a logging camp that could be used as a truck road without a heck of a lot of work at any time.

MR. BALDWIN: Q: You mentioned that your opinion of some of these buildings wasn't very great. What about the ones you did consider were of value?

A I made mention of that one particular house in the course of construction. It appeared to be reasonably good. The others were very temporary. They weren't as we build houses at all. They are not as they build them in bigger logging camps where they have to accommodate whites.

Q There was a Commmnity Hall there, wasn't there?

A I believe there was a hall.

Q It was quite a large building, wasn't it?

A I don't think it was very large.

Q Your recollection of the whole matter is a little dim, to tell the truth, isn't it?

A I have been in an awful lot of places since I was there.

Q I suppose Mr. Skelding, you are familiar with most or a great many logging operations?

A Yes.

Q Isn't it a fact that in a considerable number of them this practice of trucking to the end

of steel and then onto railway cars is in effect?

A No, I don't think it is. I do know one or two.

Q I put it to you that the Comox Logging Company do that? A. They do some, but they don't bring out most of their logs that way.

Q They do some? A. Yes, but not very often.

Q Do you think the Comox Logging Company would do it ? A. They may do it if it is an economical operation.

Q They wouldn't do it if it was not economical to truck all the way out, would they?

A I wouldn't imagine they would.

Q And I put it to you that the Elk River Timber Company do that? A. I have been in the Elk River timber and made an appraisal of their equipment and I never saw them doing that there.

Q You have been at Bloedel Stewart & Welch's mill at Franklin? A. No, but I have been at Bloedel's claims over on the Island.

Q Do you say they don't do it?

A They may do it in the odd instance, but it is not a general practice.

RE-EXAMINATION BY MR. McPHERSON:

Q With respect to the buildings, so there will be no confusion, I show you Exhibit 45. I take it this is a copy of your appraisal of August 7th. My lord, this is schedule 1, to Exhibit 45. I show you the summary showing the valuations. You

will notice Parcel G shown as no value and then if you refer to schedule 4, which was the advertised parcel, G is stated to be the camp buildings together with the beds, bedding, utensils, etc.? A. Yes.

Q So there is no question in your mind that you did examine them? A. Yes, they were definitely examined.

(Witness aside)

THE COMMISSIONER: What have you left for tomorrow.

MR. McPHERSON: I have no more witnesses. I would like to put Mr. Wray back in the box for a moment, to explain this Income Tax situation. I think Mr. Wray will indicate that my memory was sound that Mr. Field had had some negotiations, and I wouldn't like your lordship to hve the idea that this company never paid Income Tax.

THE COMMISSIONER: Do you want to put him in now?

MR. McPHERSON: Yes, it will only take a couple of minutes.

THE COMMISSIONER: Very well.

ROBERT FREDERICK WRAY, recalled.

RE-EXAMINED BY Mr. McPHERSON:

Q Mr. Wray, you recall the evidence this morning?

A Yes.

Q Can you tell his lordship anything about the Income Tax position which Mr. Field, I understand, straightened out with respect to this company?

A In September 1943, the company received an assessment of its 1941 returns. To the loss as

R.F.Wray,
Recalled.

filed, which is according to the profit and loss account of the company previously given, as $412.58, the Income Tax Department added $4,870., being rentals credited to Mr. Kagetsu and not allowed. That made the taxable income for 1941 $4,457.42. The rentals that were credited to Mr. Kagetsu, included rentals of lots 88, 198 267 and 276 of $1500.00 and an item marked skid gate -- I think it probably means a skaget yarder that was his property -- a total of $1800.00, and tractor to the total of $4500.00, part of which was allowed.

Q Am I correct then, that those charges which were deducted by the company were not allowed by the Income Tax Department?

A Yes.

Q Would you tell his lordship how the company says it lost money some years and an income tax was paid some years?

A The write-offs of the company very often were not in accordance with the Income Tax Departments rulings and regulations. I might refer particuarly to the 1935 payment to the Provincial Tax Department. At about that time the Provincial Tax Department put on a drive to bring their assessments up to date, a number of which I recall had not been assessed for ten years, and the Provincial rulings respecting depreciation and write-offs, were considerably less generous than the Dominion Tax Department ruling.

I recall their depreciation rates were approximately half those of the Dominion and their regulations concerning the admitted cost for depreciation we re more stringent.

THE COMMISSIONER: Any cross examination?

MR. BALDWIN: No, my lord.

(Witness aside)

THE COMMISSIONER: Then we will adjourn until ten o'clock tomorrow morning.

MR.NORRIS: I wonder if I might say I understand that the results of Mr. Schultz' cruise are not complete yet. I am drawing that to your lordship's attention . It may be another week to ten days before it is available.

THE COMMISSIONER: We will deal with it when it is ready. I understand that Mr. McPherson will not be available, but Mr. Hunter will be here. All we have left then, is Mr. Keith Shaw in the morning.

MR. McPHERSON: Yes, my lord.

MR. NORRIS: And I will have some letters to put in.

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

(PROCEEDINGS ADJOURNED UNTIL 10.00 A.M. NOVEMBER 26th, 1948.)

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

Deputy Official Stenographer

JAPANESE PROPERTIES CLAIM COMMISSION

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

Keith Shaw. chief 885-890
cross 890-953

Vancouver, B.C.
November 26th, 1948.

CLAIM No. 1388

DEEP BAY LOGGING COMPANY.

(Pages 885 to 953)

The Commissioner.

Vancouver, B.C.,

November 26, 1948, 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Is there another witness?

MR. BALDWIN: I suppose, since we are the initiators at trying to get more information for Mr. Shaw, we should call him first. I don't know what your lordship's view is.

THE COMMISSIONER: Will you ask Mr. Shaw to take the stand?

MR. McPHERSON: I assume both counsel have the right to cross-examine.

THE COMMISSIONER: Yes.

MR. BALDWIN: And to re-cross examine?

THE COMMISSIONER: Oh, yes. Be good enough to take the stand, Mr. Shaw.

DUNCAN KEITH SHAW, being first duly sworn, testified as follows:

THE COMMISSIONER: Mr. Shaw, so that I may explain to you the situation here, you are probably aware that I am directed to determine whether or not the Custodian, on the sale of the property which was sold by him, realized the fair market value. I have no desire, and I do not believe counsel have, to show any curiosity as to the operations of your principal, but any information which you can give us which will be helpful in determining whether the fair market value was realized or not, would be very much appreciated by myself.

A I would be glad to.

Q There are one or two questions I would like to ask

you in the first instance. Referring to both those properties which you bought, both the timber on Block 195 as well as that at Deep Bay, will you tell me whether or not or what information your company had that those properties were available for sale prior to their being advertised by the Custodian, ifyou had any?

A Nothing beyond general gossip at that time, as to what would happen to the Japanese properties and would they be for sale.

Q Was there any general gossip among operators in the industry regarding those particular portions?

A Yes, a great many people knew about them. They were quite a topic of conversation or gossip, rather. Where that started, I don't know.

Q I have been told that efforts were made to sell privately for some little time prior to the advertising by the Custodian.

A That is right.

Q Did that information come to your knowledge?

A Yes, a broker came tous and told us he thought he could buy it and would we be interested. He thought he could arrange a sale for them, that is, prior to the advertisement, and would we be interested if he could do so. We thought that we might, and wanted to get a price. He was unable to give us a price. That is the only thing that had any bearing on it before the advertisement.

Q You did not pursue it any further at that time?

A No.

Q After the properties were advertised for sale, you made some investigation of both those properties? A: I went on the ground myself for awhile, a day or two.

Q Were you aware as to whether or not there was any probable competition?

A Only from the gossip. I did not know of anyone who was going to make a bid, definitely going to make a bid. There was considerable interest and talk about it.

Q Referring particularly to Block 195, can you tell me how you determined upon the tender that you did make? A: We used Eustace Smith's cruise, showing approximately 31 million.

Q That would determine the quantity?

A That determined the quantity.

Q How did you arrive at the price?

A Timber of that kind in that locality - that was between $2.00 and $3.00 in price at that time time.

Q And in that area? A:Yes, in that area.

Q When you say timber was between two and three dollars, will you enlarge upon that? To what extent was that the going price of such timber?

A Well, the only evidence I could give there is that subsequent to our acquiring 195, we bought pieces in that area under $3.00.

Q Those pieces were of comparable size?

A Of comparable size, and in that vicinity.

Q I have forgotten now what your stumpage offer

amounted to? A: Of 185?

Q 195. A: $3.00 a thousand;

$93,000 was the money we paid.

Q And there were other parcels you bought subsequently at less than$3.00?

A Yes.

Q How were those subsequent purchases negotiated? Was it a private negotiation or another public sale? A: No, it was private.

Q In every instance? A: Yes.

Q How many such other purchases do you think you made? A: In that locality?

Q You don't need to be specific; approximatey.

A Two.

Q What was the situation with regard to Deep Bay timber, relative to the same thing? How did you arrive at your price on the Deep Bay Timber?

A Again used Eustace Smith's figure of approximately 17 million feet, and we judged that timber would be worth in the neighbourhood of $2.50. It was a long way back, a lot of it was scattered and because of that we made an offer of $40,000.00.

Q Were you aware at the time there was also competition in regard to the Deep Bay timber? Or did you antidipate it?

A We assumed there would be some. We didn't know of any.

Q In regard to both of your tenders, am I right in assuming that the sums that you tendered were

the maximum prices you were prepared to pay whether you got it or not?

A That is correct.

Q We have had a good deal of discussion during the last two weeks in regard to the degree of utilization of standing timber ~~after it is cut~~, and your firm has been referred to as being keener on a full utilization than others in the industry. In other words, one of your principals was a keen advocate of utilization beyond the normal utilization at the time. Can you make any comment on that?

A That has always been the policy of our company, and coming from the head of the company, the utilization of everything, and wasting as little as possible. Whether at that time in 1943 we were utilizing more than other companies, I would not be able to state.

Q Can you tell me in your operations as of that date, and this will be prior to your opening of either of the parcels of timber, to what d.b.h. your company would cut?

A I would like to qualify the answer there, because it would depend what type and kind of timber you were cutting. If you were in a stand which was ~~approximately~~ largely small timber, you would cut smaller diameter than you would with big timber that has scattered small timber through it.

Q That, I take it, would be due to the fact you would have light equipment?

A That is so, and also that the big timber would

destroy quite a bit of the small timber that was with it when it was felled and when it was logged.

THE COMMISSIONER: Now, I am going to turn you over to counsel. I thought perhaps it was desirable, in the circumstances, that I should open the examination. I have got the information which I think will be helpful to me, and I leave it to counsel to take whatever line of examination they desire.

A May I refer to my files? This has been so long ago.

THE COMMISSIONER: You are quite free to look at your files.

CROSS-EXAMINATION BY MR. BALDWIN:

Q Mr. Shaw, as his lordship stated in outlining the purpose of this, this is not a law suit; it is a Commission appointed to find some facts and we wish to find, as his lordship has said, whether the Custodian did in fact dispose of those properties for less than the fair market value at the date. If the MacMillan Company were able to get these properties at a lower figure than we think was the fair market value, that is not a criticism of the MacMillan Company. On the question of this reference, to refresh your memory I would read to you my letter to you of October 5th. Perhaps you have it there.

A Yes.

THE COMMISSIONER: You don't desire to have this put in the record?

MR. BALDWIN: No, I don't think it is necessary.

THE COMMISSIONER: It is simply the question you are coming to--

MR. BALDWIN: No, I do want it in. There is a paragraph in there. It may as well all go in.

MR. McPHERSON: Have you a copy of it?

MR. BALDWIN: "Dear Sir; We are acting for Mr. Kagetsu and the Deep Bay Logging Company, Limited, in the preferral of their claims against the Custodian to be heard shortly before the Commissioner, Mr. Justice Bird.

Among the assets of the above-named claimants sold by the Custodian are certain timber limits in the Newcastle and Cowichan Lake Districts, Vancouver Island, which were sold to your Company by the Custodian. We are instructed that the timber on these was in excess of the amount estimated by the Custodian and this in part forms the basis for our clients' claim that the Custodian did not realize the fair market value of these assets. The lands in question are:

Blocks 504, 566, 276, 617 in the Newcastle District, Vancouver Island

Block 195 in theCowichan Lake District, Vancouver Island.

The former were sold to you in April, 1944 and the latter in June, 1943.

"As we understand these blocks were sold on the condition that the timber be cut out immediately, we assume that by this time they have been completely logged and the best way of showing the amount of timberthat was on these limits would be by your records of the cut. Will you therefore be so kind as to let us have a record detailed as to blocks of the amount of the cut by you, and also at our expense, copies of the cruises made prior to the sale to you of these limits. If in any instance there remains timber which has not been cut, would you please indicate it. There was also on Block 274 of the Fanny Bay operation a quantity of felled and bucked logs variously estimated at two and two and one-half million feet, with respect to which we would appreciate information as to quantity and condition.

As little time now remains before the hearing, we would be grateful for your early co-operation in this regard."

That letter was dated October 5, 1948. You received that letter?

A Yes.

Q What did you do subsequent to that?

A We answered your letter, or Mr.Hosie answered your letter October 26th.

Q Well, subsequent to receiving that letter of mine, you gave certain instructions to Mr. Hosie,did you? You consulted him, I suppose.

A Yes, I asked him to answer your letter.

Q And you gave him the necessary information with which to answer the letter, did you not?

A Oh, yes.

MR. BALDWIN: My lord, I have not got any copies of this. I think it will be as well to read certain items into the record.

THE COMMISSIONER: Go ahead.

MR. BALDWIN: I believe the witness has a copy of the letter, if my learned friend wishes to follow me in this letter, he can do so. This is a letter dated October 26, 1948, from Mr. Hosie to P. G. Norris, re DeepBay Logging Company and Kagetsu -- I don't propose to read the whole letter. My learned friend can see it.

Paragraph 4: "The properties mentioned in your letter of October 6th were purchased from the Custodian by tender. No cruise was made by the company, but the tender was based upon the cruise made by Mr. Eustace Smith in 1943, which was the cruise upon which your client, Kagetsu himsel bought this property from Mr. Tisdale of Duncan in 1937 at a price which we understand was very much less than the price we paid the Custodian. The MacMillan Company did not log any of this land, but sold the timber on Block 195 to the Stoltze Logging Company, Limited, and the remainder to J. E. Fletcher. Both purchasers are still engaged in the logging and none of the property has, so far as we know, has yet cut out.

"Particulars of the timber standing upon the properties should therefore be obtained from the present owners. Permission for a stump cruise on Block 195 would have to be obtained from the Stoltze Logging Company, Limited. Particulars of the felled and bucked timber on Block 274 could, of course, be obtained from Mr. Fletcher, who bought whatever timber there might have been on it, whether standing or fallen."

THE COMMISSIONER: These sales to Stoltze and Fletcher were parts of 195, were they, or did they include Deep Bay? A:No, Fletcher was Deep Bay.

THE COMMISSIONER: And Stoltze?

MR. BALDWIN: Stoltze was 195. &

Q On October 28th we wrote Mr. Hosie. Have you a copy of that letter?

A Yes, we have that. Q: The second paragraph is all that is relevant, my lord, in which we ask Mr. Hosie, "Will you please advise us as soon as possible whether or not your client is willing to supply the following information to us:

1. Complete details of the sale of the timber on Block 195 to the Stoltze Logging Company, Limited;

2. Complete details of the sale of the timber on the DeepBay operation limits to J. E. Fletcher.

3. Details of any estimates in their possession or control made of the volumes of timber on these limits, whether made at the time of the

"sale to them or to their purchasers.

4. Details of the estimate made by Mr. Eustace Smith in 1923 of the volume of timber on Block 195."

That letter was received by Mr. Hosie, I take it? A: And answered.

Q And you have the written letter there, have you?

A No, I have the copy.

Q It was answered on the same date?

A October 28th.

MR. BALDWIN: A letter from Mr. Hosie to Messrs. Norris & Baldwin, dated October 28th, 1948:

"Answering yours of this date, the details of the sales referred to ~~x~~ in your items 1 and 2 are private business which my client does not care to disclose to your client. As to your item 3, no estimates were made either at the time of the original purchase from the Custodian or sale to the purchasers. As to your item 4, the Eustace Smith cruise of Block 195 and his report on the other timber are in the possession of the Custodian, from whom you can, no doubt, obtain them on application."

Q That is the reply by Mr. Hosie to our letter, is it not? A: Yes.

Q Now, Mr. Shaw, will you give the Commissioner the details of this Deep Bay contract or the sale?

A If the Commissioner would like me to, I will.

THE COMMISSIONER: If you have not any objection. First of all, the date of it is important.

A This is Deep Bay you are speaking of?

Q The Deep Bay. A: The properties were purchased from the Secretary of State March 13th, 1944.

MR. BALDWIN: Q: Excuse me, witness, I don't mean the sale to you. I mean the sale from you to Fletcher. Just at what price -- first of all, the date.

A The date is March 9th, 1945. It was a stumpage contract where he paid for the timber after the logs were scaled in the water. It was not a cash contract.

Q How much was he paying for the logs?

A For fir and pine he was to pay $4.00 a thousand. For cedar and yellow cedar, $3,00 a thousand. Hemlock and balsam, $2.00 per thousand, until an aggregate of $50,000 was paid. Then the rate for all species was $1.25 per thousand.

Q Until the aggregate of $50,000 had been paid, thereafter-- A: $1.25 per thousand.

Q That was the maximum?

A That is all the rate for all species.

THE COMMISSIONER: Q: Your purchase was made early in March of 1943?

A I have it in '44. Our tender was made on August 31st, 1943; August 31st, 1943. We got an agreement from the Secretaty of State on March 13th, 1944.

Q And you sold to Fletcher on --?

A March 9th, 1945. I will just check that. I will

just make absolutely certain.

MR. BALDWIN: I think your lordship is thinking perhaps of Block 195. That was in 1943.

THE COMMISSIONER: And the bid was accepted in August--

A The tenders were closed in August, 1943.

MR. McPHERSON: The tenders on Deep Bay closed the 31st August, 1943.

THE COMMISSIONER: When was this offer accepted?

MR. McPHERSON: On Deep Bay?

THE COMMISSIONER: Yes.

MR. McPHERSON: That is a problem as to the date of acceptance. The papers were signed on the 13th March, 1944. There was some difficulties about rights-of-way and what not.

THE COMMISSIONER: When was the MacMillan's Company's bid?

MR. McPHERSON: The MacMillans made their bid on the 31st August, 1943, and the Custodian was unable to complete the papers or transfer the title until March, 1944.

THE COMMISSIONER: When did the Custodian accept?

MR. McPHERSON: I have not been able to find that out, and nothing has been adduced in evidence to prove it. It is some time between those two dates.

THE COMMISSIONER: Perhaps Mr. Shaw can tell us.

A No, there is no letter of acceptance that I know of.

Q You say that your offer hung in the air for six months or eight months. If you have not got

it, that is that.

A No, I have nothing to bridge that hiatus.

MR. BALDWIN: Q: Under this contract, Mr. Shaw, I suppose Fletcher would furnish you with the amount that he cut annually under the stumpage contract. That is the case?

A Yes, I should have added we bought all his logs at market price.

THE COMMISSIONER: Q: Was that a term of your contract or sale to him? A: That was a term of the contract. It was an agreement to buy all his logs from him at the current market price, when they were put in the water.

Q Then under the ~~Workmen's~~ Woodman's Lien Act, you were making yourself good for the wages that would be incurred; that is a matter of law.

A I could not answer that.

THE COMMISSIONER: That is the fact. Proceed.

MR. BALDWIN: Q: How was the going market price to be determined? Was it the B.C. Loggers' Association list, or what?

A That would be an indication of the prices, yes.

Q How was it determined?

A I think it would be largely determined by what the MacMillan Company, who bought logs on the outside, would have to pay for those logs; what open market logs were selling at.

THE COMMISSIONER: Q: The contract did not fix the price? A: No.

MR. BALDWIN: Q: I think it is quite clear -- I just

want to emphasize it to be sure in my own mind that Fletcher did not have the right to sell those logs to anyone else. A: No, we agreed to buy those logs from him and he agreed to sell them to us.

Q And if you sold those logs according to your quota, and you were able to sell them across the line in the United States, would he be paid that price?

A I know of none of his logs sold on the other side.

Q They could have been so sold. They were exportable. A: We were manufacturing them here.

Q My point is they could have been sold, could they not?

THE COMMISSIONER: Perhaps Mr. Shaw is not aware of it -- there are a number of questions involved here, and I am not sure, in view of the evidence we have had, whether or not there was any market on export at that time.

MR. BALDWIN: I think Mr. Shaw will be able to enlighten the Commission on that point.

Q I understand you are Mr. MacMillan's, shall we say, chief lieutenant in his operations in timber?

A Manager of the timber department.

Q My information, Mr. Shaw, is, and you will no doubt correct me if I am wrong, although there is a ban which was imposed on export that is still in effect, there is a quota system still in effect. It is not an absolute ban covering all logs. There is a quota system still in effect, whereby

a certain quantity of logs are exportable.

A I would not be able to comment on that, as I have nothing to do with the logs after they are in the water. That would not come within my range of duties.

THE COMMISSIONER: We have no need to pursue that factor, Mr. Baldwin, in view of the fact the Mac Millan Company were permitted to buy and Fletcher permitted to sell. Fletcher obviously, under his contract, could not export.

MR. McPHERSON: My lord, I think on that point Mr. Baldwin might have overlooked there was some evidence produced here that at the time of the sale of both Deep Bay and Block 195 the logs on those properties could not be exported, so what might have happened to the logs after the date of sale does not affect prices.

THE COMMISSIONER: That is a matter of what the evidence was. The fact remains that according to Mr. Shaw there was an absolute commitment on both parties, Fletcher to sell and MacMillan to buy.

MR. BALDWIN: That is true on the general application of this. I am seeking to discover from this witness whether it is not so that there is a quota in effect; that the ban is not absolute; that there are exportable logs which can go out on a certain quota.

THE COMMISSIONER: If you are aware of that, you might tell me, Mr. Shaw.

A I don't know enough about it to comment, sir.

MR. BALDWIN: Q Now in our first letter to you, we asked you for the cut of Deep Bay, and in the letter we received from your solicitor, which was written on your instructions, you say, they referred us to Fletcher. Now, you had that information. A: Which letter are you referring to?

Q I am referring first of all to our first letter to you, in which we asked for information to be placed before the Commission as to the cut on Deep Bay.

THE COMMISSIONER: I am not greatly concerned whether the MacMillan Company were or were not justified in refusing to give you the information. If Mr. Shaw is prepared to give it now, why cannot we get down to that instead of what transpired earlier.

MR. BALDWIN: Q: How much was cut by Fletcher on Deep Bay from the time he went in until the present date. I understand that he is still logging there. Is that correct? A: If the snow has not closed him down-- he was closed down and it might have gone, and he may have started. The amount cut at September 30th, 1948, the amount scaled we show to be 15,571,196.

Q That is all species? A: That is all species.

THE COMMISSIONER: 15, 571,000.

MR. BALDWIN: Q: And has your contract reached the $50,000.00. Has it resched that aggregate of $50,000.00 yet?

A It is in that vicinity. Whether it has actually reached it, I cannot say.

Q It is pretty close to it. Now, Mr. Shaw, with regard to Block 195, it was the timber only that was sold, not the land?

A We sold the timber to the Stoltze Logging Company.

Q Not the land. Was that a stumpage contract, the same as Fletcher's?

A That was a stumpage contract the same as Fletcher's, in that the logs-- the stumpage was paid after the logs were in the water, but the amount -- the stumpage rates are rather different.

Q What would those rates be?

A Fir and pine, $4.50; cedar and yellow cedar, $3.25; hemlock and balsam, $2.00 per thousand.

Q What is the date of this contract?

A August 10th, 1943.

Q August 10th, 1943. A: I have a copy of the contract. I had better check it. That is the date of the contract.

Q May I see the contract, please?

THE COMMISSIONER: Q: What was the hemlock rate again?

A $2.00 per thousand.

MR. BALDWIN: Q: May I see that contract?

A If the Commissioner directs me to give it to you.

Q All I am concerned with is the date, Mr. Shaw. Is that the executed copy?

A That isone of the executed copies.

Q This is the signature?

A That is Mr. L.R. Scott, Vice-President.

Q And Mr. Wallace? A: Mr. Wallace, secretary.

Q And is this Stoltze's signature?

A Stoltze signature, of the Stoltze Logging Company.

Q This contract was duly executed on the date and year first above written, the 10th August, 1943. Thank you.

THE COMMISSIONER: Q: Was there any provision under that contract similar to the Fletcher contract, providing for the sale of the logs to the Mac Millan Company? A: We agreed to buy all logs and Stoltze agreed to sell us all logs at the then current prices. I think I can give the exact phrase on it.

MR. BALDWIN: Q: You mean, Mr. Shaw, -- excuse me -- the price from time to time?

A As of the date of the scale of the logs; the market at that time.

Q Not the date of the contract?

A Oh, no.

Q You said at that time. I just wanted to be clear.

A At the time the logs were scaled, and that is when the stumpage was payable.

THE COMMISSIONER: Q: These prices run throughout the contract? A: They run throughout the contract.

MR. BALDWIN: My lord, I would like to have an opportunity of looking at those contracts while my learned friend goes on to see if there is any factor which might affect value, which should be drawn to your lordship's attention later.

THE COMMISSIONER: I am somewhat reluctant to ask the

MacMillan Company to produce any such contracts, because, after all, they are not public property. Mr. Shaw has been most co-operative. Supposing you leave it to myself to examine them, if Mr. Shaw is satisfied, rather than to have them checked by counsel. You are on somewhat delicate ground here. You are asking another firm to disclose a good deal of their internal operations. Of course, if Mr. Shaw has no objection--

MR. BALDWIN: Those other witnesses have come in with stumpage prices.

THE COMMISSIONER: If Mr. Shaw has no objection. Perhaps I should have asked him.

Q Had you any objection to counsel examining those contracts? A: Well, I have reluctance, which you just pointed out. They are the private business of the company I work for. If the Commissioner would like to look at them, it is perfectly all right.

THE COMMISSIONER: I hesitate to direct the witness to deliver those documents to counsel.

MR. BALDWIN: My only point is this, on the face of it -- on the information we have, we have those values on a stumpage contract. There may be certain restricted features to that contract, of which we know nothing.

THE WITNESS: I can answer that by saying there are no restrictive features and I would like the Commissioner to look them over to make sure of that. I have given you the amount of the contract.

THE COMMISSIONER: I do not propose to make a direction that those documents should be handed to counsel for examination.

MR. McPHERSON: Could not my learned friend, if I might make the suggestion, get over this point. Can not my learned friend ask Mr. Shaw whether there are any other factors in the contract which would affect the price? I think counsel would accept Mr. Shaw's statement. If there are any other factors, then your lordship can examine them.

MR. BALDWIN: I think, my lord, if you will examine the contract, you will be perhaps in a better position to determine whether there are any factors, if your lordship will look at both contracts.

THE COMMISSIONER: I will do so while we recess.

MR. BALDWIN: That is the Stoltze contract and the Fletcher.

THE COMMISSIONER: I will get them both from Mr. Shaw before we recess.

MR. BALDWIN: I might say, my lord, we have not prying curiosity into Mr. MacMillan's affairs.

THE COMMISSIONER: I know, but this is rather a sensitive business. For the purpose of another man's interest you are asking the witness to produce his private contracts, and I quite appreciate that your duty is to get any information you can that may be helpful to your client, and I am ready to be helpful as far as I can, but I do not wish to go to the point of treading on ther people's toes in doing it.

MR. BALDWIN: It is merely by the way and I do not wish it to go on the record, but if Mr. Shaw had been a little more co-operative in the first instance --

THE COMMISSIONER: I am not concerned with that at all. At the moment Mr. Shaw is being most co-operative.

MR. BALDWIN: That is all for now. Thank you, Mr. Shaw.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Shaw, I understand that your company paid the Custodian $3.00 a thousand -- at least, it worked out on this cruise at $3.00 a thousand for Block 195. A: Yes.

Q For fir and --

THE COMMISSIONER: For all species.

MR. McPHERSON: Q: For fir, cedar and pine, was it not -- no, it was $3.00 a thousand for all species for Block 195. Now, information has been given here by Mr. Eustace Smith that he cruised Block 403, which I understand adjoins 195; that is, he cruised the timber that had been left on 403, on the southern side of 403, and his cruise roughly was 21,800,000 feet. Do you know if that was approximately right? A: He did cruise it and the amount, I think, was approximately 21 million.

Q Now, Mr. Smith stated he cruised 403 for both the purchaser and the vendor by agreement between them, and he stated that Mr. Hunter, of the Lake Logging Company, would be the vendor. -- A: That is correct,

the vendor was the Ocean Timber Company but the actual vendor--

Q Were negotiations carried on with Mr. Hunter?

A With Mr. Hunter.

Q Some evidence has been given by one of my learned friend's witnesses, that Mr. Hunter, in his opion, was a fairly shrewd trader. Would you agree with that? A: I would agree.

Q Mr. Smith gave evidence of gossip that he thought the price your company had paid for the remaining timber on Block 403 was somewhere about $2.50 a thousand. Would that be correct?

A It was in that neighbourhood.

Q When did you buy 403? A: November29, 1943.

Q That was approximately six months after you bought ~~1935~~ 195 from the Custodian's liquidator for $3,00 a thousand. You bought Block 403 with 21 million for $2.50 a thousand, is that correct?

A In the neighbourhood of $2.50.

Q That was a private sale?

A Yes.

Q It was not a deal with the E. & N. Railway?

A No.

Q When were logs first taken off Blocks 195 and 403?

A I can give you the exact time. The first logs were scaled in Cowichan Bay onFebruary 14, 1944.

Q Had you started to logg-- did the loggers, that is Stoltze Logging Compahy, log both blocks together. I don't mean at exactly the same time, but were they going on with logging --

THE COMMISSIONER: Your question is directed as to what possibility there was of mixing the logs from one block with those of another. Is that the situation?

MR. McPHERSON: Yes.

THE COMMISSIONER: Q: Having that in mind, can you help us as to whether or not logs were being taken out of both blocks at the same time?

A Throughout a great deal of this operation logs were being taken from both blocks at the same time.

Q They were being logged with the mark 1.C6, were they? A: Yes.

Q Did this timber mark cover any other timber blocks?

A No.

Q Mr. Eustace Smith said in 1940 you were working with him, in 1940, on Block 195 and together made a check cruise. A: That is right.

Q Then when you bought 195 from the Custodian, or liquidator, I understood from your evidence of a few moments ago you did not bother re-cruising it, but bought it on the basis of Mr. Smith's cruise.

A Yes.

Q You kept in mind your check cruise of 1940?

A That is what influenced me, yes.

Q Now, with respect to the actual logging of 195, Mr. Shaw, could you tell his lordship why the people who logged Block 403 did not finish logging 403? Have you any ideas why they stopped when they did and left this strip of timber?

A Part of it would be very difficult for them to

get at from the operation on the northern part of 403.

Q Would you say it was not accessible to them?

A Yes, I would say parts of it were inaccessible, from a practical standpoint.

Q When your company bought this and when I refer to your company, I assume you have considerable information as to what the Stoltze Timber Company had been doing, since you buy the logs --

A Yes, we buy the logs.

Q Could you tell his lordship how the Stoltze Timber Company opened up this property? Did they come up from Cowichan Lake, or the side, or the north?

A They came in from Mile 65 on the C.N.R.

Q Could you indicate to his lordship where that would be? A That would be about a mile to the west of that map.

Q A mile to the west?

A A mile to the east.

Q That would be somewhere above L. 47, shown on the edge? Did they have to build a bridge across the Cowichan River?

A Yes, they built a bridge across the Cowichan River to connect with the Duncan roads, so they could have access to Duncan for supplies.

Q When they came down into the block of timber, how far would there road be; what length of logging road would they build at the edge of 195?

A Approximately 3½ miles.

Q What kind of construction? Was it the easy road

building? A: Not, it was not really easy road building. Coming along the north, coming through Block 47 there is quite a steep side hill where Stoltze ran into a tremendous amount of hardpan, when he got into Block 403, and he had to pass through that to get on Block 195; he had considerable rock work there. It was not an easy road to build.

THE COMMISSIONER: Q: Did this road run roughly from the northeast corner of 47 to the space between there and the creek? Is that the general line of the road? A: I can show you it on the map better. I would say at least a mile, if not more, from that point over, and it went through that part of Block 403 and then came back here, (indicating).

THE COMMISSIONER: Thank you very much.

MR. McPHERSON: Q: Mr. Shaw, coming up to Block 195, I gather there was some hard road building, and after they got into 195 what would you say about the construction in 195?

A It was better when you got into 195. There were still the normal difficulties you get in building a logging road, but there was nothing very tough about it, from the ordinary logging standpoint.

Q Mr. Kagetsu, in his evidence, told me he had intended to log 195 to Cowichan Bay, where he was then going to load on the railway, apparently, or sell to the local mill and ship down to tidewater.

THE COMMISSIONER: Cowichan Bay?

MR. McPHERSON: Cowichan Lake-- I am sorry. What would you say about that as a man of some experience in the industry, the practicality of logging over to Cowichan Lake as opposed to logging the way you did it? A:It was very much shorter the way we took it.

Q Would you say it was more economical to take it out the way you took it out?

A We thought it was.

Q When you get your logs down to the railway, you truck them to the railway?

A Yes.

Q When you get them to the railway and load them, what rate do you have to ship at?

A We don't do it, but Stoltze.

Q I qualify my remarks. In referring to the term "you", I was referring to yourself and Stoltze, but what rate does Mr. Stoltze have to pay?

A Are you referring to 1943?

Q 1943. A: There was a nominal --

Q You did not start to log until 1944.

A Do you wish to know the rate or the actual cost? They are very different.

Q I would like to know both, the rate that the C.N.R. -- A: The rate was $1.80, nominally $1180 per thousand, but that was based on a 7,000 minimum load per car. In other words, you paid for 7,000 whether or not you could get

7,000 there.

Q What was your experience?

A At that time it was -- the actual cost was almost exactly $2.50 per thousand.

Q Evidence has been given, Mr. Shaw, that approximately 58 million feet of timber has been taken off some land under timber mark 1.C6. Mr. Eustace Smith yesterday, I think, said that from gossip or knowledge he had that there was the possibility that Blocks 195 and 403 together might log out at around 70 million, a total of 70 million. What would you think about that aspect? Would that be anywhere around what the Stoltze Lumber Company and yourself estimated as the total production?

A In estimating total production for many blocks, you have to take into consideration the market for which it is going to be logged.

Q Yes. A: And the best I can do is to make a guess as to what I would hope would come off.

Q What would be your rough guess under present market conditions, and what do you think of the future? A: The market conditions-- they change, and change very fast. Take the present market for the lower grades of cedar and hemlock, and you wonder whether you are going to take it out in the spring or not, and that would make a very great deal of difference to the amount that was left, because, if the logger cannot take it out at a profit, it has

to stay.

Q Would you think a figure around 70 million would be a fair guess at this time?

A 58 has been taken out already.

Q 58 million?

MR. BALDWIN: From both.

MR. McPHERSON: Q: From both under that timber mark?

A Yes, I should hope for the figure to be in the neighbourhood of that.

Q You hope to get that? A: Yes, sir.

Q And, of course, I take it in view of your remarks that whether you can do it ornot would depend on what happens to the market?

A It is bound to.

Q I take it from your remarks, too, that if the logger and the purchaser of the logs are interested in what may happen to the market, as to what logs they take out, then when you buy timber, do you also take into account, when making an offer to buy, the market conditions?

A You are bound to do that.

Q And the species and quality as well?

A Yes.

Q Now, if we take a figure of 70 million, for the purpose of discussion, as coming off Blocks 403 and 195 -- keeping that in mind, Mr. Shaw, and you say Mr. Eustace Smith cruised 195 at approximately 31 million and 403 at 21 million and it makes a total of 52,800,000 roughly, as his cruise for the two lots, so that with 70 million

there will be considerable overrun over Mr. Smith's cruise. Evidence has been produced by my learned friend. They had a firm of Forestry engineers and cruisers make a stump cruise of Block 195, and in making that stump cruise they estimated a total of 55,474,000 feet of timber for 195 alone. That is their estimate of what should come off 195.

A What is that figure again?

Q 55,474,000 feet of timber. Now, for the purpose of the question I want to ask you, let us assume the figure is correct. The Government certainly does not agree with it. Let us assume it is correct, 55 million feet. In other words, taking your figure of 70 million, they are saying that all the timber that is on Block 403 was 15 million.

A Yes, on that line of reasoning.

Q Schultz cruised of 195 as 55 million is therefore 80% above, 80% above Mr. Smith's cruise? But if you take your own figure of what you expect to get off 403, Mr. Schultz is approximately 30% under, he is 30% below what you think you would get off 403. Now --

THE COMMISSIONER: Is this cross-examination not becoming a bit argumentative?

MR. McPHERSON: I am just going to ask the question, my lord.

MR. BALDWIN: Are you with my learned friend so far?

MR. McPHERSON: Q: Now, with the information I have given you, which is from the evidence presented to his

lordship, how would you account for it-- or can you account for Mr. Schultz's stump cruise of Block 195 at 55 million?

A I would not try to account for anyone else's word, or comment upon it, and the only opinion I can offer is what I would expect the overrun on Block 403 to be; much the same as the overrun on Block 195.

Q That is, if Mr. Schultz's cruise of 195 is a good cruise, then his percentage of overrun should be the same?

THE COMMISSIONER: It is a fair assumption --

MR. McPHERSON: Q: If Mr. Schultz's cruise of 195 is to be accepted as a reasonable cruise, there should be the same ratio between Mr. Smith's and Mr. Schultz's on 403.

A I cannot comment on Mr. Schultz' work at all. I would not dream of doing that, but I would expect the overrun to be similar on both blocks.

THE COMMISSIONER: Q: Is that in view of your knowledge of the timber on both areas?

A Yes.

MR. McPHERSON: Q: The timber on both areas is comparable? A: Yes, comparable.

Q Now with respect to the overrun that is expected, taking Mr. Smith's two cruises, would you expect to get on 70 million an overrun of 18 million? Can you account to his lordship for that overrun? Why would you get that big overrun over the

cruise? You would appreciate this raises the question that his lordship raised; changing logging methods. That is a question of cutting smaller logs, the question of taking type of logs you would not have taken before, and what you might consider merchantable timber.

THE COMMISSIONER: Just before the witness answers that question, can counsel help us? Did not Schultz say he had cruised down to 6 inches?

MR. McPHERSON: Mr. Schultz said he had cruised 12 inches d.b.h.

MR. BALDWIN: That is set right out in the cruise.

MR. McPHERSON: It is, my lord, 12 inches d.b.h. Perhaps I should ask the question in a different way. In 1943, when you bought Block 195, what would you say was the customary things --that loggers were cutting to, in an operation the size of Block 195?

THE COMMISSIONER: Wait a moment. Had you not better tie it up to 195, because you will recall Mr. Shaw said a great deal depends on the character of the timber being cut.

MR. McPHERSON: Yes, I qualified it at the end by saying an operation like 195. If you had a block of timber -- when you bought Block 195, and you bought it on the basis of Mr. Smith's cruise, what was your estimate at that time as to the minimum top diameter of the logs which would be coming out of there? Have you any idea?

A You are asking me to remember five years ago.

If you ask me to guess at what I thought at that time, I would say 12 inch tops in that particular type of timber.

Q That would make 12 inches d.b.h. on a 40 foot log? A: It would.

Q That would be the basis, I suppose, taking into account the market and the accessibility of the timber and the fact you had to open it up, taking into account all the ~~rel~~

THE COMMISSIONER: All the relevant factors.

MR. McPHERSON: Q: All the relevant factors, including the market in which you were going to sell the timber, when you based your price of $3.00 a thousand? A: Yes, we were thinking of timber in terms of minimum logs of that size at that time we made the offer; that is, timber of that kind.

Q Now, his lordship referred to the utilization of the timber in 1943 and remarked that your particular company had a policy of greater utilization than most other companies, and my recollection is you said you did not know what other companies were doing. When, would you say, with your experiecne, the policy of greater utilization came into effect? Would it be in 1943, before or after?

A A policy like that builds up very gradually. It would be impossible to set a date as to when it started.

THE COMMISSIONER: Q: What would you say generally?

A I would say generally around 1943.

MR. McPHERSON: Q: Some evidence has been given here, Mr. Shaw, by my learned friend's witnesses that there was a great deal of cutting, even as far back as 1938, of logs as low as 6 inch tops.

A There is bound to be quite a bit of cutting as low as that, if there were logging a stand that was a small stand of timber and where they have the proper equipment for it, and that was the kind of ttimber that was there.

Q But you would not cut down to a 6 inch top in big timber? A: No, you would not.

Q My learned friend made a point in connection with -- with particular reference to 195. He said that when you made the contract with the Stoltze Logging Company, you sold the timber and not the land. Would I be correct if I said that the reason why the MacMillan interests are keeping the land is for reforestation purposes?

A I could not comment on that, but when you are selling on a stumpage basis you don't think in terms of land. You think in terms of timber. We bought that for cash, and we sold it on a stumpage basis, and you would not include land on a stumpage basis. It would not come in together.

Q With regard to the rate of stumpage on Block 195, fir and pine at $4.00, cedar $3.25, hemlock and balsam at $2.00, I suggest this is about an average, is it not, of $3.30?

A That is correct. Based on Eustace Smith's cruise, that works out just over $3.30.

Q That would be the average stumpage?

A Yes.

Q Evidence has been given here by Mr. Fred Brown-- I assume you know him?

A Yes.

Q By Eustace Smith and other witnesses, too, that when you are selling timber on a stumpage basis, you expect to receive more for the timber than if you sell it for cash. That is, ifyou sell it for cash you would probably give a discount,and Mr. Brown and Mr. Smith agreed that the discount might be anywhere from 20 to 25%, and Mr. Brown was rather emphatic he knew of some deals where it went over 25% discount.

AA I would agree with that.

Q So in order to get a fair comparison between your stumpage contract with Mr. Stoltze and your purchase from the Custodian's liquidator at $3.00 a thousand -- your purchase from the Custodian was cash? A: Yes.

Q Would you agree with me to arrive at a fair comparison you would take 25% off the $3.30 or $3.33,or whatever average price the sale was?

A Oh --

Q Could I explain?

THE COMMISSIONER: I think the witness understands.

A I should think you would be quite justified in doing so.

MR. McPHERSON: Q: What I am suggesting is, if your company had sold to Stoltze for cash, having

bought from the Custodian for cash, that the stumpage figure would not have worked out at $3.35, but on your own statement that 25% discount is reasonable --

THE COMMISSIONER: Do not aggue with the witness, please

MR. McPHERSON: Q: Is that correct, that you would expect to get the 25% discount, buying for cash?

A You ordinarily would expect it --

Q Then I suggest that if the average stumpage in the Stoltze contract is approximately $3.30, that is, the stumpage contract, that to compare that contract with the sale from the Custodian to Mac Millan interests, to make a fair comparison you should deduct 25%. Would that be correct?

A I am a little puzzled by the question. You mean you should deduct 25% from our $93,000 cash figure?

Q No, I am saying that if you sell timber on a stumpage basis you pay a certain rate of stumpage. If you sell it for cash, you would be willing to take somewhere around a 25% discount for cash.

THE COMMISSIONER: On the aggregate stumpage payment.

MR. McPHERSON: Q: My learned friend has brought out through your evidence, that you made a stumpage contract to Mr. Stoltze, and I have brought out that the average stumpage is $3.30. That has to be paid over many years. All I am suggesting to you and asking for your opinion is, that in order to compare the Stoltze stumpage contract with the Custodian's sale of $3.00 per thousand, in order to make a fair comparison you cannot say that your

contract withStoltze at $3.30 was a better contract thanx your deal with the Custodian at $3.00, because I suggest to you that you would take 25% off the $3.30.

A I agree.

Q Is that not the right way to compare it? Now, with respect to the Deep Bay operation, Mr. Shaw --

THE COMMISSIONER: Are you going to be some little time?

MR. McPHERSON: Yes.

THE COMMISSIONER: I might take the contracts and read them now.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

THE COMMISSIONER: Now, gentlemen, I have examined both those contracts. Many of the terms are identical in each contract. I found nothing in either contract which would appear to me to is likely to change the situation as described by Mr. Shaw. There are numerous provisions which I would take to be less advantageous to the purchaser in each instance, or should I put it this way: There are numerous provisions which places the purchaser in a position less advantageous than he would be, were he simply undertaking to buy the timber on a normal stumpage contract. I refer particularly to provisions of this character. Both contracts provide for immediate delivery of logs cut in any month, and for sale when scaled by the logger to the MacMillan Company, so that the logger has not the right under either contract to hold his logs;

he must deliver them immediately. There is an obligation on the logger to fight fire at his own expense, and in addition to that not only to fight fire originating on the timber which they are cutting, but also fire originating elsewhere which might spread into their timber. There is an obligation on the logger to indemnify the MacMillan Company in respect to any loss occasioned by fire; that is, loss to the timber. There is an obligation on the purchaser in both instances to insure against fire damage, and this is at the logger's expense. There is an obligation on the logger in both instances to log timber which may have been damaged by fire, and to do so immediately. In both instances, the timber stands at the risk of the purchaser. The logger is required to operate continuously, there being an escape clause in both provisions which one might expect to find in such a contract, protecting against -- yes, both contracts call for the immediate commencement of logging operations and continuous operation, except during such time as logging operations shall be prevented by acts of God or the King's enemies, strikes, the operation or effect of any law or rule or regulation issued by order or under the authority of either the Government or any department official under the terms of which the operations must necessarily be shut down. In both cases, there is a limitation of time in which to log of 3½ years,

again with an adequate escape provision covering shut-downs, which are authorized under the contract. In the case of the Stoltze timber, there is this advantage, that the MacMillan Company is bound to obtain a right-of-way or logging road to the Canadian National Railway, and also for a campsite, a right of use of those rights-of-way in Stoltze, but at cost to MacMillan. The logger is bound to pay the land tax and other such taxes, and impositions that are known. There is further an obligation on the logger in both instances to insure all felled and bucked, cold decked and boomed logs until the same is delivered, and as a protection to the MacMillan Company in respect of complete logging of both operations, the logger is restricted from removing any of his equipment until the area has been completely logged.

So that in general terms I would say that there is nothing that is unfavourable to -- I put it this way, that there is nothing that affects the price favourably to the MacMillan Company on the ground that is more onerous from the point of view of the logger --

MR. BALDWIN: I didn't quite hear the last half of the sentence.

THE COMMISSIONER: There is a great deal in the provisions that I have read out that impose an unusually heavy burden on the logger over and above what is normally in a logging contract, as I know it. There is the other factor I pointed

out that under Sections 37 and 38 of the Woodmen's Lien that under a contract such as this, the owner of timber who contracts to obtain a supply of timber to be logged by another whereby leaves himself open and liable for wages incurred by the logger.

Q You are familiar with the provisions of the Woodmen's Lien, I assume?

A I was not until now.

MR. McPHERSON: Q: Mr. Shaw, was it in 1943 there was a big fire and a lot of losses arising out of that fire to timber? Do you recall that?

A I could not say whether it was in 1943 or not.

MR. BALDWIN: Which fire?

MR. McPHERSON: Q: Do you recall there were alot of losses with respect to fire in the last few years which resulted in certain changes in logging contracts; that is, as to the ordinary provisions in logging contracts?

A No, I am not familiar with that.

Q Are not the provisions that his Lordship referred to with respect to fighting fires, the liability for fire insurance, for felled and bucked timber and cold-decked and boomed -- is it not correct that those clauses are quite common in logging contracts today, in stumpage?

A I looked on them as standard clauses.

Q In your opinion they are normal insurance contracts, normal insurance provisions in stumpage contracts today?

A In my opinion they were normal when we made them and are today.

THE COMMISSIONER: Q: That is to say in contracts where the owner of timber has contracts with another to log that owner's timber?

MR. McPHERSON: Q: Yes. That is a stumpage contract.

A Yes.

THE COMMISSIONER: No, there is a great difference. You see here obviously the object of both those contracts was on the part of the MacMillan Company to obtain a supply of logs for his mills.

THE WITNESS: That would be the underlying reason.

THE COMMISSIONER: There are a lot of stumpage contracts that are not set up on that basis.

MR. McPHERSON: The witness has not been able to tell us about fire, and it is my understanding that around 1943 the stumpage contracts were revamped and that is the point I was trying to bring out.

THE COMMISSIONER: Mr. Shaw is apparently not aware of it.

THE WITNESS: I could not answer that.

MR. McPHERSON: Q: Now with respect to restrictions on the movement of equipment where you let a stumpage contract, is it not customary to have a clause in there that the logger cannot take the equipment out until he completes the contract? A: I would not say it is customary. I have seen other contracts with it in and also the refusal -- it has an escape clause in with the refusal to unreasonably with-

hold or that such permission from the vendor is not to be unreasonably withheld.

MR. McPHERSON: Q: At the time you made the stumpage contracts, I suggest to you that one of the considerations was that you thought you might have to finance those loggers. Would that be fair?

A No, I would say that did not come into it at all. They were good loggers.

Q Without going into the company's business, would it not be correct if I said that you did have to finance the loggers?

THE COMMISSIONER: I think you need not answer that question.

MR. McPHERSON: Q: Now, Mr. Shaw, with respect to the Deep Bay property -- the date that your company purchased Deep Bay. Tenders closed or at least your bid was made on August 31st, 1943, and there has been some evidence, an advertisement has been filed -- that the contract was signed on March 13th, 1944. Would I be correct if I said that after the tenders closed and during that period from March 13th, 1944, there was not any question of bargaining as to price. It was a question that the Government would either accept or refuse the offer?

A: That is right.

Q Would I be correct that one of the reasons for the long delay was there were certain contracts which had been made by Deep Bay with respect to rights-of-way over the property; the use of

certain parts of the railway, and that all involved a considerable amount of negotiation between your solicitors and the liquidator's solicitors. Is that not correct?

A Speaking from memory, that is correct.

Q With respect to the actual operation itself, evidence has been given that at one time there was a suggestion from your company to the liquidator, Mr. Peele, that your company would be prepared to buy the entire operation for $75,000.00, but that offer was not open for very many days. I think that is what the liquidator, Mr. Peele, said. There was an offer of $75,000.00 and that was after you had made a bid for the timber. That is probably during this period that we are discussing between March, 1943, and March, 1944. During that period you having bid for the timber and the rights-of-way to get the timber out to the camp buildings, and at one point there was a suggestion you would buy the whole operation for $75,000.00. Would I be correct one of the reasons you did not follow through with that offer was you did not want the railway and the equipment?

A Well you are correct that we did not want the equipment and the railway.

Q What did you think about this Deep Bay operation as a logging railway operation?

THE COMMISSIONER: As an operation capable of being logged by railway.

MR. McPHERSON: Q: Yes, an operation capable of being logged by railway.

A We did not consider it to be a railroad operation. We thought it was a truck operation, and that would be one reason why we were not interested at all in the railroad.

Q Evidence has been given that the top left of 504 as indicated in Exhibit 13 -- that is at the top of 504 coloured green -- Mr. Kagetsu has said that if there was no other timber available than that you see in green, he would have logged this by truck, at least to the railhead and would have logged 617 by truck to the railhead. Mr. Smith has given some information about the elevation of the land. What would you say about the remaining timber at Deep Bay at the time you took it over? Was it more practical to log by truck than by railway?

A We were definitely of the opinion at the time that to clean up the timber on it, if at all possible it would be a truck show. That was our opinion at the time.

Q Mr. Shaw, there has been some evidence presented to his Lordship by Mr. Kagetsu that he had an option on some timber up in this district 504, and would be able to get that timber. Other evidence has been produced that an option had been obtained by other timber sawmill interests and that the liquidator could not get the option at the time that he sold to you. Would I be correct if I said that in making your

offer of $40,000.00 for this timber you had in mind the possibility of getting that timber?

A That would be correct, yes.

Q And if you had this information at that time, that you were not getting that particular timber, would you have offered $40,000.00 for this timber, do you think?

A That was definitely a factor in our offering $40,000.00. There is no question about that, but that was a possibility, and how to value a possibility, I don't know.

THE COMMISSIONER: Q: You hoped you might be able to get the E. & N. timber?

A Yes.

MR. McPHERSON:. Q: My question of a few moments ago which was ruled out of order by his Lordship -- it was certainly an indiscreet question, as to the financing of your loggers. It was badly worded in my stumbling way,, but what I attempted to get out, I can probably get out in another way. Were logging conditions in the Deep Bay operation in particular -- you have stated that Mr. Fletcher was given a logging contract. Can you tell his Lordship some of the difficulties that Mr. Fletcher encountered when he went in here with respect to snow conditions; the terrain over which he had to go to open it up to get the timber, his difficulties with regard to the railway right-of-way, and why he did not use the railway right-of-way. Mr. Smith has indicated that -- can you tell his Lordship

something about the problems Mr. Fletcher encountered?

MR. BALDWIN: I object to this question. It is purely hearsay.

MR. McPHERSON: I don't think that anything Mr. Shaw says about Mr. Fletcher's operations are hearsay.

MR. BALDWIN: My learned friend is inquiring about this contract.

THE COMMISSIONER: Q: Had you personal knowledge of those matters that are apparently indicated by the question? A: Yes, I followed Mr. Fletcher's operation with great interest.

THE COMMISSIONER: I will allow the question. I would like you to refrain from repeating matter that has been told you by Fletcher, which you did not subsequently verify?

A There is one factor that is quite important, one thing there, and it is not easy to overlook, and that is the snow conditions, especially on this higher block 617. There is one example of that which I think -- well, Fletcher got logging in the old felled and bucked in October, 1945. He had four days logging and the snow closed him down. It was May of 1946 before he could get back to that level and take the snow off and unfortunately he had three days of logging and the strike closed him down. There is no question in my mind that this is an unusually heavy snow belt, heavier than other localities.

on the other side and when the snow will close down an operation that becomes a very big factor.

THE COMMISSIONER: Was that something which you anticipated at the time that the contract with Fletcher was made?

A No, I overlooked that.

MR. McPHERSON: Q: With respect to Mr. Fletcher's operations in Deep Bay, do you know from your own knowledge whether he is using the log dump at Fanny Bay, used by the Deep Bay Company?

A He did not use the log dump. He built a new log dump at Mud Bay.

Q Will you tell his Lordship why, from your personal knowledge?

MR. BALDWIN: I must object again. I don't see how this witness can tell what was in Fletcher's mind on this operation. This is third hand evidence.

THE COMMISSIONER: Just a moment. The terms of the contract make it very clear to me that the MacMillan Company were holding a close hand on this operation throughout the conduct of it, and if Mr. Shaw has knowledge of matters such as are suggested by the question, and I put it to you very definitely, Mr. Shaw, I don't want you to repeat matters that you have been told by Fletcher, but if you have information of your own knowledge it is that which I wish and not what you have heard from Fletcher.

MR. BALDWIN: Yes, if it was the MacMillan Company's policy to put a dock there, that is something else entirely.

THE COMMISSIONER: That is not the point. If Mr. Shaw knew the factors which would operate on anyone who was logging that area to put in a new dock or a dump rather than to use the old one, that is the information I am asking him to give.

A There was one factor which would fall in that category; that would be that the right-of-way was not clear to Fanny Bay; that the rails for the last three-quarters of the mile had to be left in place due to a contract between Deep Bay and the old B. & L. & M. Company, and if Fletcher had to go out that way he had to go out over those rails, and conflict -- anticipate conflicting with the operation of the B.L. & M. Company because the truck road and the railroad would come together at the same crossing. I think that was a very big factor in Fletcher deciding to go up to Mud Bay.

THE COMMISSIONER: Q: I suppose had the rails been used, it would have been practical to continue to use the old dump?

A Yes, the old dump would have been available, and I would say would have been practical.

MR. McPHERSON:. Q: If you had been going to use the old dump as a logging dump, I suggest you would have to widen the dock?

A Yes, for truck loading you would have to add considerable construction to it. You could not use the old railway dump as it was then.

Q You have been into the Deep Bay property since Mr. Fletcher had been there?

A Yes.

Q And travelled up into the woods?

A I was into the woods with Mr. Fletcher.

Q And you know the highway -- where the road goes?

A Yes.

Q Do you know where the old railway grade ran?

A Yes.

Q I show you a copy of Exhibit 13 in which Mr. Eustace Smith stated yesterday he had sketched in roughly where the road goes in relation to the railway. A: You are asking me --

Q If this is approximately correct. It is merely a rough sketching in. A: This part is correct, but the road should tie in there. It is a very hard place to put it -- it is cut off again there and it followed with the exception of a piece in here -- cut off again there, cut off here completely to go to Mud Bay.

MR. BALDWIN: Perhaps my learned friend could get this on the record. It means nothing.

THE COMMISSIONER: I agree.

THE WITNESS: I would say that there was a mile and a half more of the railway grade used for truck road than shown on this map.

Q So they used some of the railway grade up here and

into the felled and bucked. Mr. Smith's rough sketch is correct up to the water tank.

A That is right.

Q And at the water tank there was a jog-off and back onto the railroad again?

A Yes.

Q Down to the lower water tank they followed part of the rail? A: They followed mostly the rail and cut off --

Q To Block 274, and cut off at the edge of 274 and ran xparallel for a piece down into the--

THE COMMISSIONER: Is it necessary to go into this detail?

MR. McPHERSON: I think my learned friend wished to put it in.

MR. BALDWIN: Yes, the extent to which the old grade was used.

THE COMMISSIONER: There was a mile and ahalf more of the old grade used than this exhibit shows.

MR. BALDWIN: Yes.

MR. McPHERSON: Q: Have you any personal knowledge of t the construction of the road into that timber? Were you up there?

A I went up on two or three occasions when Fletcher was building the road.

Q Have you any personal knowledge as to what he had to do in building the road; that is, where he was using the railroad grade?

A A lot of the railroad grade that he used was put on stringers, fore and aftx stringers with ties laid across and gravel put over, and he

found it quite difficult. He had to remove the grade completely and build a new one, something he had not anticipated and something which cost him quite a bit of --

Q Would I be correct if I said that Mr. Fletcher's road follows the old grade, as indicated by Mr. Smith, for a mile and a half more as indicated by yourself, and actually much of the old railroad grade was actually re-built entirely?

A Yes, the old grade was pushed aside, and the truck road built on and gravelled again.

Q You gave his Lordship some figures on the going price of, was it E. & N. timber, in the Cowichan Lake District. Did you give his Lordship a rough figure for 1943 for standing timber?

A I don't remember if that was E. & N. timber.

Q Can you give his Lordship any indication of the going price for E. & N. timber in the Fanny Bay area in 1943 and 1944?

A No, I could not. I can only judge what the price would be on what we bought, and we bought nothing in there in that time.

Q There has been some reference to the bundling of small timber in order to take small timber out. To your knowledge was there any bundling of small timber in 1943 or early in '44 in either Fanny Bay area or Block 195?

A No, not to my knowledge.

Q There has been some evidence with respect to the over-run that is indicated in the talley sheets which have been filed as exhibits for Block 195

and Fanny Bay area. There has been some evidence given from talley sheets produced from the Provincial Government records of logs that were being taken out with six and seven inch tops in 1946 and '47, according to my recollection of the evidence. That is Stoltz and presumably Mr. Fletcher were cutting down to six or seven inch tops at that time. Would you think that would account for considerable part of the over-run over Mr. Smith's cruises?

THE COMMISSIONER: First of all, does the witness know whether it is a fact or not?

MR. McPHERSON: Q: Do you know whether that is a fact they are cutting six inch tops now?

A At what period?

Q At the present time in 1948.

A Yes, they are cutting as low as that, as low as six.

THE COMMISSIONER: Q: And have been for how long?

A Oh, I would say three years. It gradually got smaller and smaller in the size that they are taking.

MR. McPHERSON: Q: And you were a timber cruiser with Mr. Eustace Smith for some years, is that right? A: That is right.

Q Mr. Smith has given evidence that it was the customary thing in his cruising that he cruise from twenty inches D.B.H. and up and fourteen D.B.H. to nineteen inches?

A Yes.

Q And that he took into account in his cruises only what he considered to be merchantable timber?

A Yes.

Q Would you say that in 1943 Mr. Smith's cruises on the basis of what it was customary to cut in '43 would be very accurate as compared with the large over-run now indicated on Block 195 and Fanny Bay?

A I would say the cruise Mr. Eustace Smith made in Block 195 was a good cruise of what you would expect to log at that time.

Q And what about the grade of hemlock on Block 195 and Deep Bay? Was it good hemlock or poor hemlock? A: That has been quite a factor in both operations. There has been a great deal of low-grade hemlock with knots and shakes in it. That is shown by the number of culls in it.

Q Mr. Shaw --

THE COMMISSIONER: Q: While you are on that last subject, is this poor grade hemlock used from a milling point of view?

A I don't think you could give it away right now. It has been used. The pulp mills have been picking it up but right now there seems to be no market for it.

Q For instance, your company was the purchaser of this low-grade hemlock. I presume they would not take it unless they could market it?

A Well, we had agreed to take all the timber from

both and we took it.

Q Regardless of its grade?

A Yes.

THE COMMISSIONER: All right.

MR. Mc PHERSON: Q: Would you say that this low-grade hemlock that you refer to was considered as merchantable timber in 1943?

A Definitely not.

Q Mr. Kagetsu's company is claiming $10.90 for the felled and bucked timber at Deep Bay, and $12.75 a thousand for the cold-decked timber. Mr. Smith's valuation of that felled and bucked and cold-decked, which he did not segregate, was $3.00 a thousand, and I would likeyou to keep in mind the evidence is it had been in the woods for a year and a half. Would you think that was a reasonable price for that particular felled and bucked timber in 1943?

A That is a very difficult question to answer. One factor is it had been fallen for a railroad, and had you felled it for a truckroad -- in other words, the fallings scheme did not fit if you wanted to log it for a truck road, and naturally you would log it from the standpoint of trucking it, not railroading it. The second factor was the age it had been down, and the condition of the hemlock which was poor. I did not make any attempt to value it at that time except thinking that it was worth about the same as the best.

MR. BALDWIN: Q: When the Commissioner was questioning you, Mr. Shaw, at the outset this morning, I think you told him that youhad made several other purchases near Block 195 a little later. Whom did you buy those blocks off?

A I spoke of one.

THE COMMISSIONER: Do you want the names of the actual owners?

MR. BALDWIN:. Q: Did you buy from the E. & N.?

A we bought one from the E. & N., yes.

MR. McPHERSON: My lord, I suggest to my learned friend we might get into a bit of a problem here. This is cross-examination and I did not bring out those details. I may want to cross-examine on these details.

THE COMMISSIONER: I have not done and I don't propose to hold either counsel strictly to the normal course of procedure.

MR. BALDWIN: That is my understanding. If my learned friend wishes to examine again after me-- I will finish mine, if I can.

Q One was from theE. & N.?

A Yes.

Q What was the price paid for that stumpage?

A That was a block of timber that was just under twenty million feet, and the price was $54,124.00. The average was about $2.75. That was bought in March of 1944.

THE COMMISSIONER: Q: Is it a comparable stand to either of these?

A It was in the next block.

Q How did the timber compare with 195?

A It was a younger growth. It was very much easier to log and it had as heavy a stand per acre and it was opened up ~~xxxxxx~~ with a road to it, which is another factor.

MR. BALDWIN: Q: Now in the development of Block 195, the road you have earlier described to my learned friend--on Block 1~~4~~ I think it is, the cost of that road was shared between the limits that it served, was it not? Stoltz did not have to bear the full cost of that road, did he?

A Yes, he built the road.

Q I know he did, but Mr. Smith, Eustace Smith, in his report gave evidence those blocks to the east of 195 and east of 403 -- and this one, would also be developed with the same road?~~x~~

A That is not right. Those were developed by another road.

Q That is what I stated -- the development on Block 195 in that neighbourhood was by a road which came up to the east side of Bear Creek?

A That is right.

Q Will you just show the line where it goes?

A It came up there, came over here, along the canyon, around 195, and to get here, it had to cut over here, and then back and three and a half miles to there.

Q 3½ miles to the north-east corner?~~-to~~ the north corner of 195 to the Stoltz camp?

A Yes.

Q There is also a road up here at the point where this road turns to the -- about due north?

A There is a road crosses the river at Stoltz's and it continues into 653 and 712.

Q The road construction in Block 195 was quite easy? A: I would not say it was easy. There was not a great deal of rock work, but it was not enough to class as really bad.

Q There is a high gravel in that lot?

A Yes, but when you get higher you lose the gravel again.

MR. BALDWIN: This is a plan, my lord, which is a copy-- I believe it is the same as the one I supplied to my learned friend earlier. I omitted to put it in through Mr. Eustace Smith, but it is his plan, and my learned friend used it in the examination of Mr. Smith. I would like to put it in as an exhibit.

THE COMMISSIONER: Do you want to re-examine the witness on it?

MR. BALDWIN: Yes.

THE COMMISSIONER: Go ahead.

MR. BALDWIN: Q: I show you this plan. I show you the contours on Block 195, signed by Eustace Smith, September 28th, 1943. Have you seen that before? A: Yes.

Q And you, I take it, are quite familiar with this block and the Block 403?

A Yes, I have been on them both.

Q And would you agree that this is a correct description of the block?

A I think from memory, it was surveyed a little bit differently from that. The acreage is about the same.

Q When? A: I could not answer that but subsequent to that.

Q As to the general description of the stand of timber? A: Generally it is the same.

Q You will notice up here as you get into 403 there is balsam and hemlock in Block 1, scattered fir and cedar; balsam and hemlock; scattered fir. Is the piece down here well timbered?

A That is part of Block 403, the part that directly adjoins.

Q The part shown on this plan?

A Yes, which is part of 403.

(PLAN MARKED EXHIBIT NO. 1388-57).

Q I think you told the Commissioner, Mr. Shaw, that you were on those limits before you purchased them? A: Yes.

Q About one and a half days on each limit, as I understand you? A: Yes, maybe two days.

THE COMMISSIONER: I think we can take it Mr. Shaw was there long enough to satisfy himself as to what he was buying.

MR. BALDWIN: I take it it certainly is not the MacMillan practice to buy a pig in a poke.

Q You make very sure what you are buying before you

do? I mean, you make logging plans and go into the topography of the block in considerable detail before you buy a block of timber?

A We do with some, yes.

Q Well in what cases would you not do that?

THE COMMISSIONER: Are we concerned with that?

MR. BALDWIN: I think we are, my lord.

THE COMMISSIONER: After all, we have had evidence that Mr. Shaw was on this property in 1940 with Mr. Smith.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: And checked through it then. It is fairly obvious he had a good working knowledge, is it not, of this timber?

MR. BALDWIN: Of that timber, yes.

Q And I understood that the purchase was based on the cruise made by Mr. E. Smith of which that is a plan; is that correct?

A That is right.

MR. BALDWIN: If your Lordship will excuse me for a moment, I will see if there is anything else. Have you any other stumpage figures, Mr. Shaw, stumpage paid by or to the MacMillan company in 1942 and '44, which may be of assistance to the Commissioner in determining what the fair market value of stumpage is?

A I have figures but I know of no other case where we -- well, they would not be comparative figures. It is timber in a different locality, timber with a different timber title to it and

timber with different logging conditions.

Q Well the matter of title -- you mean, for example, private timber which carried royalty?

A Yes, and then whether it was a stumpage or a cash basis, and also whether --

Q What cash sales of timber on Vancouver Island by and to the MacMillan Company were made during those years?

MR. McPHERSON: Surely, my lord, it would have to be restricted to comparable timber.

THE COMMISSIONER: Yes.

MR. BALDWIN: My lord, --

THE COMMISSIONER: We can cover too wide a field here. We start with this, that Mr. Shaw said in answer to my question that the going price of timber comparable to 195 in 1943, if I recall what he said, was between $2.00 and $3.00. Now if you start with that, can we hope that he will add anything?

MR. BALDWIN: I submit, my lord, a general statement like that from the witness is putting too much of a burden on him to decide what is comparable. It is for your Lordship to determine whether it is comparable timber or not, not the witness.

THE COMMISSIONER: I must take the testimony of experts. Certainly I do not set myself up as an expert in timber valuations or as to whether particular blocks of timber are comparable.

MR. BALDWIN: But your Lordship can get the facts on

which to judge as to accessibility and type of stand. If your lordship has the facts before you, then you can determine whether it is comparable.

THE COMMISSIONER: You may think so, but I do not.

MR. BALDWIN: Q: Well then in 1944, did your company not make a purchase of the North Pacific Exporters holdings, on the Englishman River watershed?

A No, not from that company.

Q Did you make any purchase in 1942 or 1943 not from that company -- I mean their holdings?

A You refer to the timber at approximately --

Q Block 155.

MR. McPHERSON: With all respect to my learned friend, I feel that this re-cross examination does not arise out of the cross-examination I conducted.

MR. BALDWIN: It does not purport to.

THE COMMISSIONER: I have already ruled on that.

MR. BALDWIN: That was my understanding in the first instance. It was not necessary.

THE COMMISSIONER: It is unfortunate that counsel should not exhaust the examination in the first instance. When they have not done, I must allow you to go on. It is somewhat an imposition, insofar as I am concerned, to go over the same ground twice.

MR. BALDWIN: It is adjacent to Block 155 in the E.&N. belt. Mr. Secretary, may I have Exhibit 4. Here is Englishmans River. You bought some timber here in this area from the Allworth people?

A We have a contract with --

Q You took an assignment of the contract?

A Yes, that is right.

Q This timber I refer to now adjoins that?

A Yes.

Q Can you give me some assistance. Which block is 155? A. Here is Block 155. What you refer to is right north of it.

Q Can I indicate it with pencil?

A Yes, and it also went down here.

Q What was the stumpage paid -- what was the date of that sale to you?

A From memory I would say 1944, I have not got the date on that here. But I think that is hardly comparable because that was timber that was opened up by Rhodes, and it fitted in with the operation which we had while logging the Allworth.

Q What stumpage did you pay for that?

A I cannot answer for that without getting further data.

Q Mr. Shaw, I would like to read you letter which you no doubt have got on you. You received a letter from our firm indicating that the scope of the examination would not be limited --

A I have the letter.

Q Will you read it to the Commissioner, please.

THE COMMISSIONER: I am not concerned with letters that have been exchanged.

MR. BALDWIN: This witness says he has not got the stumpage in this deal. The letter was to advise him--

A You did not refer to any year in your letter in that area?

Q That is correct. And on the first morning when you were up here did I amplify that?

THE COMMISSIONER: Perhaps I can clear this up. Will you tell me approximately, Mr. Shaw, what the overall price on this timber near the Allworth timber was?

A I would have to look that up, sir. I cannot offhand. I would let you know after lunch.

MR. McPHERSON: If I may be permitted your lordship, on the day when Mr. Shaw was here last your lordship made a ruling that both counsel might get in touch with Mr. Shaw and write a letter and outline exactly what information they wanted. Then when we appeared before your lordship with Mr. Shaw as your witness, you presumably would have something to base your cross-examination from. I would point out to your lordship that immediately after that direction from your lordship I wrote to Mr. Shaw and he was good enough to reply and I gave considerable detail such as my learned friend is asking for today.

MR. BALDWIN: I don't see the relevance of my learned friend's remark.

THE COMMISSIONER: I think it has a good deal of relevance, because it is obvious you are asking a busy man to come here and if counsel does not co-operate by intimating to this man what information is required, they are liable to suffer in

the information they get.

Q Would you tell me, Mr. Shaw, for what other reasons you felt that this timber was not a comparable stand to that with which we are concerned in Block 195? First you said it was opened up by roads. A: It had quite a large road system already built in it by the previous owner, which was the Forest Products, Limited. It dovetailed into the operations which we had acquired and were conducting on the Allworth blocks. There could be considerable conflict between the two operations, dovetailing. There was extra danger of fire, a much smaller operation alongside of our larger one. There was about a five mile haul to salt water as compared with a truck haul, in the case of Stoltze, into the railroad, where there was a cost at that time of $2.50 for taking the logs down and putting them in salt water. It seemed to me they are not comparable. I am willing to produce the figures. I don't want to state them, because--

THE COMMISSIONER: I would agree with you I do not think they are comparable in any sense.

MR. BALDWIN: Q: What was the quality of the timber?

A It was merchantable growth on a very easy grade.

Q Was it comparable with 195?

A It was not big timber like 195.

Q Was it as comparable timber as on 195?

A You have to take all the other factors into consideration, in the case of logging.

THE COMMISSIONER: I do not think, Mr. Baldwin, it is comparable timber and the price of one, so far as I am concerned, is not going to be helpful in determining what is the fair market price of the other.

MR. BALDWIN: With great respect, I think --

THE COMMISSIONER: I have made my ruling. Will you kindly go on with something else?

MR. BALDWIN: No, my lord.

MR. McPHERSON: Q: My lord, there is only one question that there is some confusion about, with respect to Exhibit 57, which is the last map. With respect to that exhibit, Mr. Shaw, I understood you started to say something but I didn't get the last of your statement. Am I correct that map of 195 does not include all of Block 403, in which you bought later?

A It includes a small portion.

THE COMMISSIONER: Q: Does it include all the portion on which the 20 odd million stood?

A No, only a very small part of it.

MR. McPHERSON: Rather than go on, there are a couple of odds and ends together with a file of correspondence --

THE COMMISSIONER: You are through with Mr. Shaw?

MR. McPHERSON: Yes.

THE COMMISSIONER: Thank you, Mr. Shaw.

(Witness aside)

THE COMMISSIONER: Do you wish to resume later? You are excused, Mr. Shaw. You have your con-

tracts back?

MR. SHAW: Yes.

MR. McPHERSON: I was requested by your lordship to indicate today what reference I might make in argument to the Forestry Report that I filed yesterday as an exhibit, the Forestry Report for 1943.

THE COMMISSIONER: What is the exhibit number?

MR. McPHERSON: Exhibit 55, my lord. I would have specific reference to pages (bb)14, 15, 28, 29 and 31, and in the Forestry Report for 1944, filed by my learned friend-- I think it is Exhibit 56 -- the pages are numbered (dd), pages 19, 20, 21, 37 and 38.

THE COMMISSIONER: Yes.

MR. McPHERSON: Now, my learned friend has certain correspondence which he is anxious to file, as stated by Mr. Norris the other day. I have two additional letters to what he has, and I would like to join him in filing his correspondence as well as these two letters, so we can file it all as one exhibit.

THE COMMISSIONER: This is correspondence exchanged between whom?

MR. BALDWIN: Various people.

MR. McPHERSON: Various people, my lord, and both sides agree to the filing. I take it they can all go in as one exhibit.

THE COMMISSIONER: Very well, it will be Exhibit 58.

(CORRESPONDENCE MARKED EXHIBIT NO. 1388-58)

MR. McPHERSON: My lord, I assume that closes the Deep

Bay case.

MR. BALDWIN: No, there is one matter.

THE COMMISSIONER: We are still waiting for Mr. Schultz's report.

MR. BALDWIN: Yes, my lord. There is one matter here, my lord, a letter to the Deep Bay Logging Company, Limited, from C. M. Stewart, dated January 30th, 1942:

"I hereby resign as Director of the Deep Bay Logging Company --"

I didn't know that my learned friend was going to attach any great importance to that fact until his argument developed, or his witness developed it. It is signed by Stewart. The signature is familiar to my learned friend. I just wish to put it in.

THE COMMISSIONER: What is the date of it?

MR. BALDWIN: January 30th, 1942.

THE COMMISSIONER: Before this sale was made.

MR. McPHERSON: Yes, but I am taken completely by surprise, because, as your lordship will recall, I had Mr. Kagetsu admit that Mr. Stewart was a Director and, if my learned friend had this letter for any length of time, it is very unfortunate it should be filed now. I assumed that Mr. Stewart was --

THE COMMISSIONER: It is information which should have been given you before. I will admit it.

(LETTER REFERRED TO MARKED EXHIBIT NO. 1388-59)

MR. McPHERSON: Your lordship will allow me a moment?

THE COMMISSIONER: Yes.

MR. McPHERSON: What is the date of that letter?

MR. BALDWIN: The 30th January, 1942.

MR. McPHERSON: In that case, having been blessed with a good memory, I would like to file another letter dated April 23rd, 1942, which my learned friend has had a copy of since last July, in which Mr. Stewart -- I think he recognizes the signature -- it is addressed to the Custodian. Mr. Stewart, in writing to the Custodian on April 23rd, 1942, which is subsequent to the resignation, reported to the Custodian he was a director of ~~this~~ all these companies. I would like to file this, my lord.

(LETTER REFERRED TO MARKED EXHIBIT NO. 1388-60)

THE COMMISSIONER: It is unfortunate this earler one was not filed earlier, more particularly as the solicitor for the Claimant had those two letters. I can understand they probably got mislaid.

MR. BALDWIN: I may say in explanation of the letter I filed, it first came to my notice this morning. We had it all right, but there is such a volume of correspondence.

THE COMMISSIONER: I quite appreciate that.

MR. McPHERSON: This is probably the last time I will appear before your lordship. I would like to thank you for the privilege of having been allowed to take the cases before you.

THE COMMISSIONER: Thank you very much for your assistance, Mr. McPherson, and also for the assistance given me by Mr. Norris and Mr. Baldwin. These

matters have not been easy by any manner of means, and this one has been particularly difficult, I have no doubt, both for counsel as well as for myself.

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

Deputy Official Stenographer