

CLAIM NO. 1388 - DEEP BAY LOGGING COMPANY LIMITED, and
Eikichi KAGETSU

This claim is made in respect of two tracts of timber land situate on Vancouver Island, British Columbia, as well as in respect of the buildings, logging equipment, fore-shore rights, booming grounds, log dump landing, coal dock and other structures erected by the claimants on one such area, used in connection with logging operations conducted thereon by the claimants prior to March 1942.

The claimants allege:

1. That one tract, i.e. Block 195, Cowichan Lake District, had a fair market value of \$247,500.00 at the date when it was sold by the Custodian for the sum of \$93,000.00.
2. That the other tract, comprising 11 blocks of land described in the claim form, certain felled, bucked and cold-decked timber and a stand of immature timber, as well as the said plant and equipment of the logging operation situate in the Newcastle District, all of which is hereafter described as "the Deep Bay property" had a fair market value of \$292,039.00 and was sold by the Custodian for \$40,000.00.
3. That a logging railway situate on the Deep Bay property had a fair market value of \$28,260.00 when the same was sold, together with the property described in No.2 for the consideration mentioned therein.
4. That certain logging equipment enumerated in items 3, 4, 5 and 8 of the claim, having an aggregate fair market value of \$62,368.55, was sold by the Custodian for \$34,604.53.
5. That the claimant Kagsu's dwelling situate at 5286 McKenzie St., Vancouver, had a fair market value of \$5500.00 at the time when the same was sold by the Custodian for the sum of \$4300.00.

6. That a Plymouth 1942 model Sedan motor car had a market value of \$1396.00 when it was sold by the Custodian for the sum of \$1025.00.

The claimants claim, in respect of the difference between the alleged fair market value of the property mentioned in paragraphs numbered 1 to 6 hereof and the sum realized on the sale thereof by the Custodian, the sum of \$464,134.02.

All of the property, the subject of this claim, was administered under the direction of the Custodian by P.S. Ross & Sons and their Vancouver agents, Frederick Field & Co. from the date of the evacuation in 1942 of the claimant Kagetsu, who was the major shareholder and Managing Director of the Deep Bay Logging Company Limited until the said property was sold in 1943 on instructions of the Custodian.

During the period of the Custodian's administration of the said property, efforts were made to sell the tracts of timber and the logging operation, by Carl Stewart, a Vancouver Solicitor who then held a general Power of Attorney from the claimant Kagetsu, which is described by Kagetsu in his J.P. Form (Exhibit 9) as giving full power to the Attorney to deal with his property, both real and personal. Stewart reported to P.S. Ross & Sons, by letter dated November 23rd 1942, that he had been negotiating for sale of the Deep Bay property with five different firms, that the best offer he had received was \$2.75 per M. for the timber (then estimated by him on instructions from Kagetsu to contain 17 to 18 million feet) including the use of the equipment. This offer was rejected by Kagetsu. On March 3rd 1943 Stewart reported to the Custodian (Exhibit 35) that he had received two offers for purchase of Block 195, i.e. \$85,500. cash, and \$100,000. on stumpage payments apread over 2½ years, that the

claimants had rejected both offers and fixed as the rock-bottom price \$125,000.00 cash. It appears that Stewart was unable to effect a sale of any of the said property up to the date when the Custodian received instructions to offer the same for sale by public tender. Stewart further reported to the Custodian (vide Exhibit 22) that a tract of timber lying to the North West of the Deep Bay property, which the claimants had expected to acquire from the E. & N. Railway Company with a view to logging the same in conjunction with the Deep Bay operation, had been optioned by the E. & N. Railway Company to another logging operator. This factor in his opinion had made the Deep Bay property less attractive to prospective purchasers.

There is evidence, which I accept, that Frederick Field during this period in the interest of the claimants endeavored unsuccessfully to persuade the E. & N. Railway Company to make the adjoining tract available to the claimants, so that the same might be sold with the Deep Bay timber.

These properties were advertised for sale by public tender by the Custodian, during the summer of 1943, in two separate parcels, i.e. Block 195 and the Deep Bay property. I think it is unnecessary to canvass in detail the steps taken to bring the properties to the notice of persons interested. Suffice it to say that in my opinion the advertising is shewn to have been adequate, and in fact attracted general interest among persons engaged in the logging industry.

The Custodian or his representatives, before considering the tenders received in response to these advertisements, caused both timber tracts to be cruised for volume and valued by Eustace Smith, Esquire, a timber cruiser and valuator of long experience in the timber industry of British Columbia, who then was and now is held in high regard both for his

competence and integrity,^N and the equipment and buildings to be appraised and valued by Eustace Smith and by George W. Skelding, a machinery appraiser representing the Universal Appraisal Company, Vancouver.

One tender was received for the purchase of Block 195,- that of H.R. MacMillan Export Co. Ltd., for the sum of \$93,000. This offer was accepted by the Custodian, after consultation with and upon the advice of Eustace Smith, who expressed the opinion that the offer was fair and in excess of the value placed upon the timber by himself, i.e. \$80,050.00. The effective date of this sale, I find, was June 15th 1943, when the Custodian notified the MacMillan Company of his acceptance of the offer.

One offer only was received for the Deep Bay property,- that of H.R. MacMillan Export Co. Ltd., who offered \$40,000.00 for the standing and fallen timber, log dump, booming ground, fore-shore lease and right-of-way from timber to dump with rails removed. This offer, which also exceeded the appraisal, was ultimately accepted on the advice of Eustace Smith. Prior to acceptance, however, the MacMillan company, at the request of the Custodian, made an offer for all of the Deep Bay property as advertised for sale, which included timber, equipment and other property enumerated in Exhibit 45, being the report on liquidation dated 15th March 1945. This offer of \$75,000.00 was rejected by the claimant, Kagetsu, who at the same time expressed the opinion that \$40,000.00 was a reasonable price for the timber. The Custodian consequently accepted the MacMillan offer of \$40,000.00 and caused the other property advertised for sale to be sold by private sale under the circumstances later mentioned. The sale of this timber was not finally consummated until March 13th 1944, due to title difficulties, although tenders were closed on August 31st 1943. Since the offer was not accepted by the Custodian until the latter date,

I find the effective date of sale to have been March 13th 1944.

Early in the course of the Inquiry, after extended argument from all Counsel concerned, I announced my conclusions as to the principles upon which I considered that fair market value should be determined under the terms of reference directed to me, vide General Report. Now I have had the benefit of further argument from Counsel for these claimants, who I apprehend accept the conclusions then expressed, though Counsel submits that the principles subsequently adopted by the Supreme Court of Canada in Diggon-Hibben vs. Regem (1949) S.C.R. 712 should be followed. This decision, as I interpret the opinions of the several members of the Court, is designed to clarify and explain the decisions upon which my earlier conclusions were founded, and does not alter or vary the principles which I have held applicable to all claims under consideration on this Inquiry. I do not consider that the allowance of 10% for compulsory taking, applied by the majority of the Court in that case, can be applied to sales made by the Custodian.

The questions raised on the investigation of this claim, as it relates to timber, which occupied 16 full day Sessions of the Inquiry, involved two principal issues, namely,- quantity and price. The volume of merchantable and accessible timber in any given area I think depends in large measure on market conditions in the logging industry at the time when the timber is cut and transported for manufacture. Chief Justice Sloan in his Report on the Forest Resources of British Columbia, made in December 1945, has defined the terms "merchantable" and "accessible" at pages 26 and 29 of the Report as follows:

"The next gradation finds the forest an advanced (so-called) second-growth forest composed of trees sufficient in size to contain measurable amounts of usable material. If normal growth continues, the forest reaches the rotation age or continues on to the maturity of an old-growth forest. Forests in the third and fourth stages of gradation (those before mentioned) (my italics) contain trees of a size and quality which, under normal conditions can be profitably marketed. These are the merchantable trees.

"'Accessibility' is a term definitive of area. An accessible area is one from which the forest crop may be harvested at a profit. An inaccessible area is one in which

"the cost of extraction does not leave a margin of profit.
"The term is a variable one and its components are computed
"in terms of (inter alia) location, i.e. distance from
"markets, terrain, logging methods, degree of utilization,
"site, quality, and the market price for logs and for the
"end product. Thus an area may be inaccessible today
"and accessible tomorrow, depending upon the relation of
"the cost of production to the realizable price of its crop.
"The same factors also operate to render inaccessible areas
"now classed as accessible. Areas of accessibility expand
"or contract in direct relation to logging economics.
"Location and difficulties of terrain are merely elements
"to be considered as affecting production costs."

Here the testimony of many witnesses called on behalf of the claimants on the one hand and the Government on the other discloses a wide divergence of opinion on both of the principal issues. I am satisfied that the very marked difference of opinion between these groups of witnesses has arisen from the factors of merchantability and accessibility as defined by Chief Justice Sloan.

The bases for the Custodian's acceptance of the tenders made for both tracts of timber are the valuations per thousand feet board measure (MBM) and the volume estimates made by qualified persons in and immediately prior to 1943 founded upon economic conditions then existing in the logging industry, whereas in my opinion the bases for the claimants' claim in respect of these tracts rest upon like valuations and estimates which have been unwarrantably influenced by economic conditions in the logging industry existing at the date when the claim was presented in 1948. The claimants caused volume cruises to be made of both areas, one of which, i.e. on Block 195, was completed in November 1948, the other in December 1948. Both are expressed to relate to conditions pertaining to 1943, though in my judgment the appraiser has not successfully avoided the influences of the changed conditions which are shewn to have occurred subsequent to 1945. I am satisfied on the evidence, as well as from my knowledge of conditions in the timber industry of British Columbia in the interval between 1943 and 1947, of which I consider I may

take judicial notice, that a marked rise in the market value of standing timber and timber products occurred between those years, and further that a radical change in the degree of utilization of timber occurred in the same period, which resulted in classification as merchantable and accessible much standing timber of a quality and dimension that would not have been so classified in 1943. These factors in my opinion serve substantially to explain the divergence of opinion noted on both principal issues.

It is I think desirable to review, in what must necessarily be a very summary way, the evidence and argument on these issues taken in the course of this investigation, which extend to some 1200 pages of evidence and nearly 200 pages of argument.

The claimants now allege that Block 195 at the date of sale had a fair market value of \$247,500.00 based upon a volume estimate of 55 million feet valued by them at \$4.50 per thousand, although in the original claim they valued the same timber at \$187,500.00, said by the claimant Kagetsu to have been based upon a volume of 50 million at \$3.75 per M. This block of timber was bought by the claimants in 1937 for \$75,000.00.

The volume estimate made by Mr. Schultz is based upon an examination of 4% of the entire area, in which is included all merchantable timber 12" diameter, breast high (DBH) and over. At the time the cruise was made the area had been logged to the extent of about 80% of the whole. The estimate on the logged portion was based on measurement for diameter and height of stumps remaining. The volume of standing timber tallied was compiled from volume tables. This estimate shows a net volume of approximately 22 million ft. of fir, 26 million ft. of hemlock and balsam, and approximately 8 million ft. of cedar and pine, a total of 55,474 M. ft. The tender of the MacMillan Company for purchase of this

tract of timber from the Custodian was based upon a cruise estimate made by Eustace Smith in 1923, which he had checked in 1940 and then had increased by 1 million ft. to 31 million ft., in which the timber under 12" DBH was not included. Smith again rechecked the former cruises on instructions from the Custodian in 1943, and at the same time considered a cruise made by P.F. Sheehan in about 1925 which showed approximately 50 million ft. A letter from Sheehan, identified by Smith, disclosed that the Sheehan cruise was made on the assumption that the timber removed would be manufactured by a mill on the ground. He therefore included as merchantable timber a grade and quality which he would not have considered merchantable if it was necessary to transport the timber any distance for manufacture. Smith then adopted his 1940 check cruise estimate and declared that his cruise was conservative. I do not attempt to reconcile the differences between these cruise estimates, since other evidence, now discussed, in my opinion provides more reliable evidence of the volume of timber considered to be merchantable and accessible under economic conditions prevailing subsequent to 1945.

In the period 1945 to 1948 the MacMillan company caused Block 195 and an adjoining tract (Block 403) to be logged together. Soon after its purchase of Block 195, that company negotiated by private treaty for and bought Block 403, the purchase being based as was that of Block 195 on a cruise made by Eustace Smith, employed for the purpose by vendor and purchaser. He estimated the timber on Block 403 at 22 million ft. Keith Shaw, a senior executive of the MacMillan company testified that the two areas contained timber of similar type and quality, and that the timber stands were approximately of equal density, which statements are substantially confirmed by William Byers, a witness called by the claimant (vide p.264). He stated, and it appears from the scale records found in

Exhibit 23 that 58,752 M. ft. of merchantable timber had been removed by contractors for his company at September 1948; that he estimated as a result of frequent examinations of the standing timber that 12 million ft. of standing timber then remained on the two areas, i.e. a total of 70 million ft. or an over-run on the aggregate of the Smith cruises of approximately 17 million ft. In view of this evidence, I consider it reasonable to assume that there will have been an approximately equal over-run on each tract. Founded upon this assumption, I conclude that Block 195 is shewn to have contained 41 million ft. or 10 million ft. more than the volume content estimated by Eustace Smith, on which the Custodian's sale was based.

I am satisfied on all of the evidence that the degree of utilization in most B.C. logging operations was substantially greater in the period 1945 to 1948 when this timber was logged than would have applied in 1943 when this tract was cruised by Smith. The evidence of the various witnesses on the subject of comparative utilization does not permit an accurate estimate of the difference in volume. In these circumstances, however, I consider that it is reasonable to estimate that 10% greater volume of then merchantable timber will have been removed in 1947 than a competent cruiser would have estimated to be merchantable in 1943, which brings me to the conclusion that the volume of merchantable and accessible timber on Block 195 as at the date of sale was 37 million ft. or 6 million ft. in excess of the cruise on which the sale by the Custodian was based.

On the subject of market value of this timber, Keith Shaw said that his company bought Block 403 by private treaty soon after its purchase of Block 195, and at a slightly lower price than was paid to the Custodian; further that his company had also bought a comparable tract of timber in the same area at about the same time at a price equivalent to the \$3.00 per M. paid for Block 195. I accept his evidence as establishing the fact that the fair market value of standing timber on Block 195

at the date of sale by the Custodian was \$3.00 per M. However, in view of my conclusion that Block 195 contained 37 million feet of merchantable and accessible timber, I find, ~~therefore~~, that the fair market value at the date of sale by the Custodian was not less than \$111,000.00, or \$18,000.00 more than was realized on the sale.

Deep Bay
Property

Turning now to consideration of the Deep Bay property. This tract of timber is shown on the evidence to have been a remnant of an area which had been logged for 20 years by the claimants. The claimants had bought from the E. & N. Railway Company blocks of this area from time to time between 1923 and 1941 at prices varying from \$1.10 per M. to \$2.00 per M., the last purchase made in 1941 (that of Block 617) being at \$1.10 per M. All such purchases were based on cruise estimates made by the Railway company discussed later. The claimants now allege that at the date of sale by the Custodian the area contained in excess of 56 million feet, based on a 5% to 10% cruise made by Mr. Schultz in 1948, having a fair market value of \$4.00 per M. The claimant, Kagetsu, acknowledged that the most accessible timber had been removed prior to 1942. Eustace Smith confirmed this statement. He said that the heart had been cut out of the stand, and described the logging of it as a salvage operation.

In 1942 Kagetsu's Attorney, Stewart, endeavored to sell this timber to various purchasers, and then reported to the Custodian that Kagetsu estimated the tract to contain 17 million to 18 million ft. of merchantable and accessible standing timber and 2½ million ft. of felled and bucked timber. Confirmation of Kagetsu's estimate is found in a minute of a meeting held in April 1942 attended by Kagetsu, vide Ex.30.

Eustace Smith's cruise estimate of this area, founded upon the same E. & N. cruises upon which the claimant bought this timber, and upon a check cruise made by himself in 1942, shows approximately 14 million feet of standing timber in

addition to an undetermined quantity of felled timber then lying on the ground.

There is evidence that the entire area of 11 blocks when acquired by the claimants from the E. & N. Railway Company was estimated to contain approximately 88 million feet. All testimony introduced on the subject shows that E. & N. cruises were extremely conservative, confirmation whereof is found in a record of the Deep Bay Company's cut from the area to March 1942 showing that more than 112 million feet had been removed by the claimants, that is to say,- the cut exceeded the cruise estimates by 27%.

It was shewn that the contractors for the MacMillan Company subsequent to purchase from the Custodian had cut and removed from the area up to September 1948 approximately 16 million feet; further, that additional timber remained of which no estimate was furnished on the Inquiry.

The foregoing testimony does not permit of any satisfactory conclusion as to the quantity of standing timber on this area at the date of sale. The estimate by Schultz shows half as much timber on three blocks, two of which were partly logged, as the entire area of eleven blocks was estimated to contain when bought by the claimants. Conservative as the E. & N. cruises are shewn to have been, it is not conceivable that the total area contained 100% more timber than was estimated by E. & N. Railway Company cruises, which must have been the case if the Schultz estimate is accepted. On the other hand, Smith's cruise, which is founded substantially on E. & N. cruises, is shewn to err in the other direction, but to a substantially less degree. In view of the claimants' estimate of 17 to 18 million feet, and the fact that the cut made by the MacMillan contractors exceeded 16 million feet, leaving an undetermined quantity of standing timber, the best estimate which I find it possible to make is that the volume of merchantable and accessible timber standing on the area, determined under conditions existing in 1943, exclusive of felled and bucked timber, did not exceed

17 million feet or an excess of 3 million feet over the Smith cruise on which the selling price was based.

Stumpage
value of
Deep Bay
timber.

Keith Shaw has said that the tender of the MacMillan company was based on the Smith cruise and upon his own estimate of value at \$2.50 per M., the latter figure being applied because of the fact that the available standing timber was widely scattered and that a truck road was required to be constructed of approximately 8 miles to remove the timber. I find nothing in the evidence to support a conclusion that the standing timber was then of greater value than \$2.50 per M.

It is true that the going price of timber of comparable quality at the date of sale is shown to have been about \$3.00 per M. However, the scattered nature of the stand in my opinion operated to reduce the market value of this timber below that figure.

It is I think significant that none of the five logging operators with whom Stewart had conducted negotiations were sufficiently interested to tender for purchase of this timber when the same was offered for sale by the Custodian. The best offer received by Stewart was \$2.75 per M., and that offer included the use of all of the claimants' equipment.

Since I find that the quantity estimate on which this sale was based showed 3 million feet less than the tract contained, I therefore estimate the fair market value of the standing timber at the date of sale to have exceeded the price realized therefor by the Custodian by the sum of \$7,500.00.

I therefore find the fair market value of the timber and the various structures sold with it was \$47,000.00.

Felled, bucked
and cold-
decked timber.

It was shewn that approximately 2,500 M. feet of felled, bucked and cold-decked timber cut by the claimants prior to March 1942 was lying on the area and was included in the sale made by the Custodian. The claimants allege that this felled timber had a value of \$29,000.00 calculated on a basis of approximately \$11.00 per M. It may be inferred that this fallen timber had suffered some deterioration due to the fact that it lay on the ground for not less than 18 months prior to the date of sale. No satisfactory evidence was introduced before me on the investigation of this claim as to the value of such timber. However, a similar claim for felled and bucked timber was made by another claimant (Claim No.1381). On that investigation it was shewn that approximately 2½ million feet of felled and bucked timber which had lain on the ground for an equivalent time had been sold in September 1943 by the purchaser from the Custodian at the sum of \$6.50 per M. In that claim I estimated the value of the felled and bucked timber at \$13,750.00 based upon an estimated market value of \$5.50 per M.

The stumpage value of the timber under consideration in Claim No.1381 was found to be \$3.00 per M. compared with \$2.50 value of this timber.

Applying the information furnished in Claim No.1381 and taking into account the difference in stumpage value, - i.e. 50 cents per M., I estimate the fair market value of the claimants' felled and bucked timber at \$5.00 per M. i.e. an aggregate sum of \$12,500.00.

However, since this felled and bucked timber was appraised by Eustace Smith at \$4500.00 (vide Exhibit 45, schedule 3) upon which the Custodian in part based his acceptance of the MacMillan tender - consequently an allowance of \$4500.00 for felled and bucked timber having

25)
-5)
250

been included in the sale price - that sum must be deducted from the estimate of fair market value of felled and bucked timber now made. I THEREFORE RECOMMEND payment to the claimants on this head of the claim the sum of \$8000.00.

Logged off
lands.

The claimants present a further claim of \$43,225.00 for stands of so-called immature timber on logged-off areas, being part of the claimants' lands. This claim is supported by the Schultz report (Exhibit 61 page 20) from which it appears that approximately 5500 acres of logged-off land contained immature timber said to be of from 5 to 65 years of age. No value for such timber was taken into account on the sale made by the Custodian.

There is not before me any satisfactory evidence that such areas were considered as having particular value at or prior to the period of 1944 when this timber was sold, though it does appear that since 1945 logging operators have considered as of real value for reforestation purposes areas which have been logged off in earlier years. The claimants held these lands in fee, and had continued to pay taxes thereon up to the date of sale by the Custodian. In these circumstances, notwithstanding that the change in practice of logging operators did not occur until two years after the sale, I consider that the claimants have been shewn to have placed a value of such areas, though the extent thereof is not readily determined. In the circumstances I estimate the value of the logged off lands to have been \$8,250.00 at the date of sale, i.e. \$1.50 per acre.

A further claim is made for 40 buildings, formerly used by the claimants for housing of its logging crews. Various witnesses have testified that the buildings were not suitable for occupation by Occidental crews, and therefore were esteemed valueless from the point of view of an Occidental purchaser. However, since value to the owner at the date of sale is the criterion to be adopted in circumstances such as are found here, I consider there is evidence to show that the

vide Diggle-Hicks, Regan supra

buildings were of value to the owners, which I estimate at \$1000.00.

The claimants had constructed and in operation at the date of evacuation a logging railway which comprised 3½ miles of main line, upon which steel was laid. It was shewn that the railway was in poor condition. Kagetsu stated that if he had continued in operation he would have converted to truck hauling.

Logging Railway

A claim is made in respect of the railway for value of the railway in use, for \$28,260.00. This claim I take it is based on the assumption that the claimants would acquire the tract containing 25 million ft. before mentioned, lying behind the Deep Bay tract, and would have used the railway for the hauling of logs to salt water. It is shewn that this latter tract had been alienated to Alaska Pine Company by the E. & N. Railway Company, and consequently was not available to the claimants. The purchasers from the Custodian scrapped the railway and converted to truck hauling, using approximately 4 miles of the railway bed in the construction of the truck road; from which information I infer that these 4 miles of railway bed had some value to the purchaser and will not have had less value to the owner. In the absence of any evidence as to the value calculated on this basis, I estimate the same to have been \$1000.00.

Logging Equipment.

The claim for this equipment is set out in items 3, 4, 5 and 8 of the claim form. The claimants allege that this property had a fair market value of \$62,368.55 when sold by the Liquidator on instructions of the Custodian for \$34,804.53. They therefore claim in respect thereof the difference, being \$27,764.02. During the investigation of the claim, Counsel for the claimants and the Government asked me to consider a proposal for settlement of this part of the claim which had been the subject of discussion between Counsel. Evidence had not then been introduced

on this subject other than certain appraisals of such property which had been obtained by the Custodian.

I required Counsel to file memoranda outlining the basis on which the proposal for settlement had been calculated. These memoranda, signed by Counsel, together with a letter of the claimant, Kagetsu, confirming the proposed settlement, are filed as Exhibit 64 on this Inquiry.

I am satisfied after thorough examination of the material filed that the proposal is fair and reasonable, as between the parties, and that the figure of \$3000.00 proposed for payment to the claimant, added to the sum realized on the sale, is equivalent to its fair market value at the time of sale, that is to say the fair market value then was ~~\$28,434.00~~ \$42,604.53.

5286 McKenzie
St. Vancouver
and 1942 model
Pontiac Sedan
motor car.

Claim made in items 6 and 7 of the claim form arising out of the sale by the Custodian of the marginally noted dwelling and car will be disposed of by agreement between Counsel, on the basis of the over-all recommendation made by me in respect to property of the same nature.

I THEREFORE RECOMMEND payment to the claimants of the sum of \$51,750.00, being the aggregate of the excess of the estimates here made of fair market value over the sale price, summarised as follows:

Block 195	-	\$18,000.00	18,000 -
Deep Bay	-	7,500.00	33,750 -
Deep Bay felled and bucked	-	8,000.00	51,750 -
5500 acres immature timber	-	8,250.00	
40 buildings Deep Bay	-	1,000.00	
Railway	-	1,000.00	
Logging equipment	-	8,000.00	51,750.

to which will be added the aggregate of the over-all recommendations in respect of the dwelling and motor car.

March 24th 1950

H. I. Bird
H. I. BIRD
Commissioner.

CLAIM NO. 1392 - Gennosuke SUZUKI

This claim relates to an 11 acre portion of land in Delta Municipality, which had not been cleared at the date of the claimant's evacuation.

It was bought by the claimant, as to -

5 acres in 1937, at \$300.00

6 acres in 1939, at \$565.00

It was assessed in 1942 at \$835.00.

The property was appraised by S.S.B. Appraisers at \$116.40. It was sold to the D.V.L.A. at \$114.00.

In view of the marked difference between the S.S.B. Appraisal and the purchase price paid by the claimant, as well as the 1942 assessed value, I required Counsel to obtain an estimate of value from Joseph Dorgan, real estate operator in New Westminster, and now have his report under date of February 1st 1950, wherein he says:

"The parcels above described were worth as much and in fact considerably more in 1943 than at the dates of purchase."

It is to be observed that a report was made by Hal Menzies to the Advisory Committee on February 4th 1937, from which it would appear that Mr. Menzies did not consider the V.L.A. purchase price to have been adequate, although he is somewhat indefinite in his own opinion of value.

Counsel have proposed payment to the claimant of the sum of \$721.00, based upon the assumption that the fair market value at the date of sale was at least equivalent to the assessed value.

I concur in this proposal and therefore RECOMMEND payment to the claimant of \$721.00.

H. I. BIRD

Commissioner.

February 1st 1950.

CLAIM NO. 1399 - M. NISHIGUCHI COMPANY LIMITED.

The claimant alleges loss sustained upon the sale by the Custodian of 3 motor cars and 3 Ford trucks, which at the date of sale ranged from 5 to 8 years old, and which were shewn by their speedometers to have travelled from 35,000 to 100,000 miles.

It is to be observed that the cars were sold at a time when gasoline rationing was in effect and ceiling prices were applicable.

Valuators called by the claimant estimated the value of the respective cars at prices very substantially in excess of the prices realized. These valuations, in my judgment, had been made without regard to the influence of gasoline rationing and ceiling prices upon market prices of motor vehicles at the date of sale by the Custodian.

In the circumstances, I am not disposed to look upon the claims in respect of these motor vehicles as worthy of special consideration. I consider that the claimant is adequately compensated by the application of the over-all recommendation to the sale of these vehicles and recommend accordingly.

"H.I. Bird"

The claimants allege that they have suffered loss in consequence of the sale by the Custodian of a business block on Columbia Street in New Westminster on July 10th 1944, at a price of \$14,500.00.

The property comprises 66 front feet on the principal business street of New Westminster, having a frontage of 132 feet on McNeely Street. The two storey building standing thereon was erected in 1911.

The Appraiser employed by the Custodian appraised the land at \$6600.00, and building \$7734.00, total \$14,334.00, in May 1944, having based the land assessment at approximately 50 per cent. of the assessed value of the land; his justification for such valuation being that city owned land lying within two blocks west of this property had been offered for sale by the city at 50 per cent. of the assessed value, for which no purchasers could be found.

The property is bounded on the west by lands upon which was erected in 1943 a \$50,000.00 building.

The building on the claimant's property is assessed by the City Assessor at \$6,000.00.

Valuators called by the claimant valued his property at \$20,000.00 to \$22,000.00.

Sale of the property was made to the owner of the premises lying to the east, who first bid \$14,000.00 and subsequently increased the tender to \$14,500.00. It would appear that the last offer which was accepted was made as the result of information that the property could not be acquired at less than the appraised price.

In my judgment, the Appraiser's conclusion upon which he based his land value was unsound, in that he appears

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to have attached too much weight to the fact that city lands two blocks away to the west did not sell at 50 per cent. of the appraised value, and too little weight to the fact that a valuable new building had recently been erected immediately to the east. I conclude on the evidence that the land had a market value as at the date of sale of approximately 75 per cent. of the assessed value, i.e. \$9,000.00. I accept the Custodian's Appraiser's valuation of \$7734.00 on the building, and therefore find the fair market value to have been \$16,734.00. I have therefore considered this claim as a special case, not covered by the over-all recommendation, and recommend payment to the claimant of \$2234.00 in addition to the sum already paid to him.

Special.

sale, as claimed by the claimant, and as shown by the evidence of this valuation, and is now not shown to have been covered by Government Council. This recommendation was based solely upon the difference between the selling price and the estimate of fair market value.

It now appears that the question of value as the sale price is less than the selling price. In these circumstances I have decided that the amount of the claim should be paid to the claimant.

The claimant's claim is for the sum of \$2234.00 in addition to the sum of \$16,734.00.

March 15th 1950.

CLAIM NO. 1400 - Asajiro NISHIGUCHI, Kahei NISHIGUCHI and
Magojiro NISHIGUCHI

ADDITION TO REPORT SEPTEMBER 1949

Since this report was drafted in September 1949, the claimant, Asajiro Nishiguchi, has informed Counsel for the Government that there had been deducted from the proceeds of sale of this property when paid to him by the Custodian a sum of \$746.50 covering commission paid by the Custodian to the real estate agent who negotiated the sale, and \$21.50 for valuations, advertising and Land Registry fees. The fact that this deduction had been made from the proceeds of sale was not taken into account when recommendation for payment of \$2234.00 was made, as claimants' Counsel had not called attention to this deduction, and it does not appear to have occurred to Government Counsel. ~~This~~ recommendation was based solely upon the difference between the selling price and my estimate of fair market value.

It now appears that the claimants received on the sale \$746.50 less than the selling price. In these circumstances I have directed that the amount of these charges be added to the sum recommended.

I THEREFORE RECOMMEND that there be paid to the claimants, in order that they may realize fair market value the sum of \$2980.50.

H. I. BIRD

Commissioner.

March 13th 1950.

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