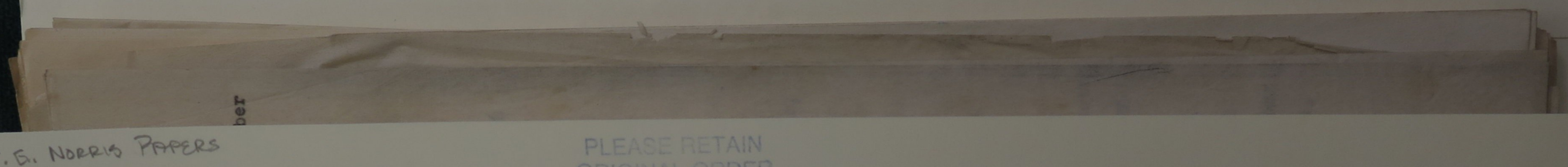
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T. G. NORRIS PAPERS

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ORIGINAL ORDER

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, foreshore 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 Kagetsu'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.

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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 spread over 2½ years, that the

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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 32) that a tract of timber lying to the North West of the Deep Bay propert, 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 endeavoured 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 shown 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 was then and now is held in high regard both for his

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competence and integrity, and the equipment and buildings to be appraised and valued by Eustance 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 (<u>those before mentioned</u>)(my italics) contain trees of a size and quality
"which, under normal conditions can be profitabley marketed.
"These are the <u>merchantable</u> 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

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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

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tract of timber from the Custodian was based upon a cruise estimate made by Eustance 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

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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 that on all of the evidence 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

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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, 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 shewn 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

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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

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

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 shewn 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 the claimants' equipment.

Since I find that the quantity estimate on which this sale was based shewed 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.

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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 centers 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

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 (vide Diggen-Hibben v. Regem supra)) 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

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there is evidence to show that the 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 8½ 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.

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 contained 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 $34,604.53. 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 been then 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 $8,000.00 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 $42604.53.

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 the 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
Deep Bay	7,500.00
Deep Bay felled and bucked	8,000.00
5500 acres immature timber	8,250.00
40 buildings - Deep Bay	1,000.00
Railway	1,000.00
Logging equipment	8,000.00

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

(signed)

H. I. BIRD
Commissioner.

March 24th 1950

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ITEM No. 1.

GROSS CLAIM 55,000 @ 5 = $275,000.00

6.6 M

Scale to early Aug., 1948	55,301,705
Estimate not scaled	2,000,000
	+ 57,301,705

Area cut Block 195 -- 720 ac. + poles

Assume average yield per findings of Schultz (56.18 M/ac. which is 55 million for limit)

Production from 720 ac. = 720 x 56.18 =	40,449,600
This leaves production on 403.....	16,852,105 + poles

Area cut Block 403 - as shown on Map 557 ac.

Subt. 77 ac. for Gully = 480 ac.

Yield on this basis for Block 403 =

$$\frac{16,852,105}{480} = 34.49 \text{ M/ac.}$$

plus poles 30

approx. 34.79 M/ac.

Poles - 25635 lin. ft.
@ 40 lin. ft. number pc. = 640
say 200 bd. ft. per pc. = 128 M.b.f.
for 480 ac. = 0.30 M/ac. approx.

TENTATIVE.

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ITEM No. 1

SUPPLEMENT.

Emphasis 1/2 million ft. Pine
worth $2.00/M more.

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ITEM No. 2.

Value of Buildings (Insured for $10,000.00)	$ 4,000.00
Value of Cold Decked Timber 700 M @ $12.75/M	8,925.00
Value of Felled & Bucked Timber 1868 M @ $10.75/M	20,081.00
Value of Standing Timber 27,000 M @ $4.00/M	108,000.00
Value of Farmland	1,775.00
GROSS CLAIMED.....	$142,781.00

NOT CLAIMED:

2349 Christmas Trees taken out @ 10¢ stumpage 234.90

not to mention hundreds of acres more of above

TOTAL ACREAGE OF LIMIT SOLD --- 6406 acres.

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BUILDINGS BEING USED:

Family residences	20
Bunk Houses	10
Others	8
School Hall	1
New Office	1
TOTAL.....	40 Buildings.

40 Buildings --

Take $75.00 for very conservative figure --- 40 x 75.00	$3000.00
Replacement value per attached sheet --- $2235.70	
Current value take	1000.00
	$4000.00

ITEM No. 3.

Locomotive	$ 5,000.00	per Universal Appraisal Skelding
19 Loggings Cars	3,675.00	
2 Push Cars	200.00	
2 Speeders	4,650.00	
8 Miles of Railroad	9,024.10	
plus 28,000 M @ 50¢	14,000.00	
plus Coal 60 tons @ $8.00	480.00	
GROSS CLAIM	$37,029.10	

1726 Kagetsu - Miscellaneous Briefs (1950)

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For Interest Sake Only:

REPLACEMENT VALUE - 8 MILES OF RAILROAD:

Basis -- Evans Coleman Evans Relay Steel Valves per Bishop's Letter.

Rails - 660 tons @ $30.00			$19,800.00
Switches 1 ton represented by 10 @ $64.50			645.00
Angle Bars - 37 tons or 3520 pairs @ 95¢			3,345.00
Spikes - 23 tons or 47,533# @ $5.00 per CWT			2,376.00
Bolts - 6 tons or 11,735# @ $9.25 per CWT			1,085.00
TOTAL WEIGHT	727 tons	TOTAL REPLACEMENT VALUE	$27,251.00

Actual weight lifted 847 tons

∴ extra lifted = 120 tons

Value @ $8.00 ton 960.00

$28,211.00

Ties, Bridges, grading excluded.

OR

847 t. @ $12.00 = $10,164.00

847 t. @ $30.00 = $25,410.00

Fair Rails 559 t.
Poor Rails 211 t.
Scrap Rails 77 t.
847 t.

1726 Kagetsu - Miscellaneous Bridges (1930)

28-19

ITEM No. 4.

Clyde Gas Donkey	$ 3,700.00	per
Empire Gas Donkey	2,700.00	Universal
Skagit Gas Donkey	8,525.00	Appraisal
Cletrac Tractor	7,500.00	Skelding
Compressor	500.00	
GROSS CLAIM.....	$22,925.00	

ITEM No. 5.

Wire Rope	$ 9,004.85	per
Blocks	3,565.30	Universal
Straps, Clevices, etc.	1,336.15	Appraisal
Falling & Bucking tools	692.10	Skelding
Miscellaneous tools	993.40	
GROSS CLAIM.....	$15,591.80	

1726 Kagetsu - Miscellaneous Briefs (1950)

28 - 19

ITEM No. 6.

McKenzie House

GROSS CLAIM.....$5500.00

ITEM No. 7.

Pontiac

GROSS CLAIM.....	$1,396.00
Sold for $1025.00	1,025.00
	$ 371.00

ITEM No. 8 A.

Boom Chains	640 317	
	323 Chains @ 2.25	$ 726.75
GROSS CLAIM.....		$726.75

1726 Nagetsu - Miscellaneous Briefs (1950)

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ITEM No. 8 B.

1200 ft. Wire Rope @ 8¢/ft. = $96.00

1726 Kagetsu - Miscellaneous Briefs (1950)

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1726 Kagetsu - Miscellaneous Briefs (1950)

July 11, 1950.

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

(E. KAGETSU)

AN INQUIRY BEFORE THE JAPANESE PROPERTY CLAIMS COMMISSION
BEFORE MR. JUSTICE H. T. BIRD, COMMISSIONER, NOV. 8, 1949,

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(E. KAGETSU)

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1726 Kagetsu - Miscellaneous Briefs (1950)

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1726 Kagetsu - Miscellaneous Brochures (1950)

First Cost of setting one log out about same as putting another log out

Long logs for any true fair indication of Relative value of species

Eustace Smith

Block 195:

Lr. Alls 1st 43

1923 Made Cruise

1940 Checked. ——— (mine)

1923 30 M. feet

Did he have anything to do all sale

All of 43 or skirting of 1944 checked to see if peelers with Shaw. — Didn't check timber

Look at Lr 43

~~Assess~~

Cedar — lower Van Island Cedar

four grade

Schultz cruise — stump cruise only on cruises where area not so large.

Good careful percentage shows reasonably close if judgment good

Is Schultz judgment good

28-19

1726 Kagetsu - Miscellaneous Briefs (1950)

reichard original owner - Shoshone
area. - He took small timber
district, Comet Hemlock over fair
to poor grade. Small mill
to be intended.
Blk 403 - Hunter had railroad
developed there
2x.1
Cruised 403 for the Mullen Co
in 1944.

~~2000+~~
Less than 2 M. Oct 43.
Fir & 256 M.
Cedar 168 M.
Hemlock 5-4 31 M.
3 659 M.
Balsam 556 M
Pine 304.
Cypress 720 M.
Other over 10 in. 2084

Similar scale in 195

28-19

1726 Kagetsu - Miscellaneous Briefs (1950)

Wouldn't have loved to have been
When cruised had it been opened up

Ex. 23.
The Mark 106.

Ex 36.
+ 5¼, 830 M.

Ex. 23
Hope out 70 M. No one can say
that will cut out until do cut out

195 5¼ 5¼ M.
Total on 403 10 M. left according
Oschultz

Under my 40% on 403.
70 M. estimated recovery
Over my 18 M. approx 34% on
his cruise.

Nearly all
Didn't count Hemlock. Starting
to come in in 1943 Koenn
Balsam?

28-19

1726 Kagetou - Miscellaneous Briefs (1950)

~~Def~~ Improved methods of logging
undertaken.

Camera day.

Large camera outfit not became
entirely closer

McMillan N. W. Bay

~~Report~~ Comment on Phillips evidence
~~Tender~~

Cut a great deal closer than
Smith's cruise
until 6 mos ago

Deep Bay.

Requested by Board to make reports
3 reports.
Make examination equipment
Employed Skelding
Deep Bay operation — running
many years — never heavy
production
Run by Japanese small logging
operation

28-19

1726 Kagetsu - Miscellaneous Briefs (1950)

Railroad working well not
satisfactory for railway operation.

Kagetsu statement could debunk on it

2 X 13 - I Put in green marking
Blk 504 - Also - West through
3 million feet - Terrain
level of railroad
Other piece west up high 566 high
566-617 — Barnes letter
Kagetsu - 198 - accessible
504 -

Is Kagetsu good operator - experienced.

Would it be economical
Conditions changes
Trucking coming more + more
every year

Not a war year gas.

So & not out of way to take out
Tube to take out

Be
30 m feet behind
If used railway would.

28-19

V. L. M.
Skylie
Road. Was in
Ex 24 Where was V. L. M. by.
Just as accessible.
Wouldn't be much difference
Wouldn't be sure.
Small thing Counters - bunks were
short.
~~Sandbags~~
~~[redacted]~~ £2 = M.
Price & Timber £3 M.
Fallen Bucked
Ex 2. 13.
Didn't use log
332.
~~11~~ 75 employees - cooks etc + unskilled people.
See Ex 22
~~11~~ Jake off Hemlock that I wouldn't count Scale from 195
Jake out timber I would cut when I was using
~~11~~ Not saleable Hemlock in 1943.

1726 Kagetou - Miscellaneous Briefs (1950)

28-19

Mc Gonigle timber.
Changes in logging methods
Logged K. B. Hauer-Loggig Corp.
43-44
45 M.
10 M. feet off.

1939 Began

May have been all sorts of reasons for giving up.

Poles Bow Power logging

Poor grade of cedar.
Poor cruise timber
Poor on the good cedar for bad.

Combined timber — Soft species
8-10 M. years
not saleable object.
1943 or 1944
Change in Logging Over Utilization
1944 - Gradual change.

Utilization C. J.

Change took place when made
experiment at Ladysmith
1943-44 — 65 S. inches.
Ladysmith over Period 4 years. Prior to 1943
92 over. mix cedar.

1726 Kagetsu - Miscellaneous Briefs (1930)

203 McGarrigle

Shares had finished logging in 43 or 44

Started logging in 1939

Logging during the war

Changing methods

Swedish Crosscut saw - Bullcut log

bs.

When started but just in when 1936-1937

No Royalty on N.W. Bay Timber

although E.N. Timber

(Check) Coloured yellow Royalty timber

or not — not coloured

Allowed Timber

small timber & sigl

72% Dir Heavy & Dir

Virgin timber

Dark Bay remnant.

Couldn't count

Cudahy deal have seen deal.

Would have to check

Thinks no Royalty

Bottom — 2,500,000 feet.

How many men with pr in Bay Bay mr

274 - I didn't see it I couldn't find it

How did he know where he was

How did he run his line

28-19

1936. Cruised 2 1/2 billion feet
Took diff. part varieties
Went into different varieties.
Average per acre.
In 1942 Prices getting there.
Ex. & M. cruised

Did little intensive cruising
from 1920 until 5 years ago.
1940
Worked 400 ft to the inch.
Number by acre
(cruise what they will cut
guarantee
&

accessibility - quality
logs - density
accessibility easy to haul

Merchantable timber - timber sold
at profit - to be taken into consideration
whether can be logged at a
profit

1937 Truck haul. built truck road.
5 mi to lodge & inter-reload 20 mi
rail haul

1726 Kagetsu - miscellaneous briefs (1950)

28-19

½ ½ for us to haul

195 - terrain for building roads not too bad

403 - the same

In arriving at valuation take into all factors

In Deep Bay - similar facts

Interests ch 1943. - E → M. Sales. around 2.40 large block over-all.

But value Price of logs rose faster than stumpage in 1943

But rates should be same as boules Cost of falling bucking in 1943 not less than 1

Stumpage + cash basis

25% right

sooner sell for cash 25%

takes risk of timber

Purchaser willing to pay more to have money available for operation he doesn't mind paying 25% more

Ex 3 - part Ex 36. Timber sold on export terms rough price no - 25% we should have advantage of the 25%

Heller. Unsched copy for 2 yrs deferrals
— Cap — Lumbocks balance.

---

2 000,000
1 800000 recoverable

2x12 Average history 60s.

B.C. Logging and Thank Dixed Bros.

1726 Kagetow - Miscellaneous Briefs (1950)

28 - 19

1/

Kagetsu Claim

Exs 9. San Juan Timber Contract

Wray.

Partner Frederick Hall
Field reps R.S. Ross & Sons.
Deep Bay - BCR 195

Defnm. Kagetsu
Investigator of Corp as to enemy
shareholders.

Deep Bay Log out of 5000 shares
100 shares in holder in Japan.
Enemy debts & 23000 due to
Kagetsu debt of
Yokohama Specie - collateral

Contact with Kagetsu wit Stewart
and Erskine and offered
Cruickston Office nearby April 42

Wray
Page 780 Document Kagetsu Statement

Stewart at meeting
At meeting received from Kagetsu
inventory equipment Deep Bay and
Diamond timber Kagetsu said
Diamond 17 million feet.
Diamond a total shed to close
and exported Sale
Kagetsu and all timber at Deep Bay
Industrial Co

1726 Kagetsu - Miscellaneous Briefs (1950)

28-19

1726 Kagetou - miscellaneous Briefs (1950)

Drawn[illegible] disposal of assets
and ~~agreed~~ sale of H[illegible] dismantled
If possible before Kagetou evacuated

P.83 Kagetou transcript

Never said anything to Wray
Some discussion a month
Further

Time for Note made 14 Apl 42.
Explanation

Previous to meeting letter from Stewart

Ex 31 Stewarts letter of Apl 8th/42.

Original portion of Coy

April 42 Approved Wray & Waldron
and he went there and checked
inventory
stayed there until 4 4 when became
ill

No money in Coy
owed $1,000 for wages
Ex 13 Map Part time orig
Can't say map is

Books + records of Dept
Boys stored in Kagetou Basement

28-19

Title Corp.

Earl Stewart

Stewart attempting to sell properties.

During 1942 - abbreviated as
Stewart did not give us
anything - (Sell - we stood
aside

During period enquiries referred to
Stewart

EX 32. 25-Nov/42 report from Stewart to Kosts.

Cruise // Koerner

When option granted.

Option by Koerner
shortly after subdivision - Order dated 42

C. P. R.

Koerner's cruise.

June/43 $12000.00 involved Co.

Hagetsu - Jan 1943 Kagetsu refused
Kagetsu to have taken care of
Debts owing that they sold
Kagetsu agreed that they

Where are notes

Diehl took over end of June or July/43

195 had been sold by end of June/43

Wed to Deed Key purchase two months ago -

Warehouse - buildings

Saw Buildings in 1942 and 1943

and recently.

Who is her Sable R Lbr Co be Sable's Corp

operated by Fletcher

West to Woods with Fletcher

His camp below road

Old railway grade

What about the rest of it.

from log dump to campsite not used at all

Books of Company.

Ledger

From standpoint of operation profits loss also - with exception of 1927 profit of $ 100

remaining years

show losses

1935 - 1941

Extracts also except 1927
Losses from £271 to

1940 loss of £330.5.7
Loss of £12.5.5.

Lost
Good cruiser profit and loss
cles between two years to show
running more tax Kapeka

½ x 21 shows production / Coy
Estimate average 9 to 10 million
year

Boy losing money.

~~Wood~~
Stumpage value of
Larger stumpage charged would
have been : larger loss

Book indicates as to timber
marks:
record of stumpage shows
from 1933 shows timber mark
from which timber cut.
Lot 88 Q 59 - timber

Sub R.
3rd q/c. Just that sale recorded in
1933 shows that timber mark.
Also 13 entries in 1933 Q 59
shown in 6

nothing to indicate boom & slack
Indicate 32 or early 33 production

prom 88

Some sales marked Stock Resume
end of year
Indicate Loss a Stock at end of

32

Other Letter marks Ex 27.
Q 56 appears in 1933
Timber marked Brooks Dowa
Timber 206 pieces Q 56 Q 59
4 secs scale. Royalty 132648

Not possible from books

Marks.

10 July 1933 391 pieces D 26
A 81 8 sec Scale - Royalty
q/c.
A 81 Cussons & Stevenson

1935 Feb 14 387 pieces 6 sec
Balsam D 98 D 26 above
B 25
D. 98 Manzer Bros Ltd.
Feb 21/25 248 pieces 6 sec pi
B 25 A 81

1937 + subsequent Title Marks not shown.

Block 195

Offered by Stewart Aug/Sept 42

ad 1943

27 March 43 Stewart refunded two offers
£1,000,000 each. Commission £75 00
one 1/1/8 0000 Commission of
Terms 10,000.00

Referred
Correspondence Stewart Shears.
Copy of Mr March 3/43 Stewart
to Shears.
Mr. March 3/43 Stewart to Shears.

Correspondence with Disdall
Formal claim 16 April 42
£16000 overdue with interest
60% from 11 April 42

Cost of Counter to Kapetsa
Exam of Kapetsa Documents
P17 purchase price
75 000
4 812.50 to date of Sale
26 0000
105 812.50.

Terms 5-1/2 yrs.
+ Forest Products
Interest
Total

1726 Kapetsa - Miscellaneous Briefs (1950)

28-19

1726 Kagetsu - Miscellaneous Briefs (1950)

Reports & Custodial and Sale
21 May/43
Beaty H R McKillop
Final Report Aug 25/43.

Average prices

Comparison

Average prices / Dowding Dept.
Comparative
Ex 38. Summary of prices 195-
Deduct 25% for cost

Ex. 39. Deep Bay similar statement

Ex. 40 Comparison Prices with Kelthrogger.

Ex 41 Comparison of Smith's cruises
" log output.

Ratio stumpage prices & log prices.

Ex 42 Comparison based on Brown contract
See Ex 12

28-19

1726 Kagetsu - Miscellaneous Briefs (1950)

Wray Re Exam.

44 Letter Feb 19/43.

Field

Sept 43

About time asked Smith to give reports

Report 16 Aug 43

Schedule 2 of Report 13 March 45

Deep Bay.

Do we want Skelding

Le 1/11 Aug 43 written by Skelding

on 2 = page of Bldgs.

Bids Page 3 of report 13 March 45

Bids remained in abeyance

Smith brought report

9 Sept /43

Schedule 3 18 March #5

Smith looked at report of

consultation with Skelding

told Smith what Bids had been

9th Sept 43 Wrote (Custodian making

recommendation

Offer of Hd. Mr Mullen Coy

Invited views of Kagetsu

always of offer

28-19

19/ Wires from Kagetsu
Copies of wires sent to Carl Stewart
Hoped Kagetsu
Ex 48/1 dated Nov 1/43 to Harold Stewart
sending two wires
Parcel (Evans Coleman Evans.
Locomotives - cons.
Evans Coleman Sept 8/43 Evans-Co.
Negotiated with Mr Millar
Right of way for truck road
Plank between Road. not going true
Ry.
1944. Give to
Possession of Mr Millar
Summer 1944.
Evans Co take up rails
Recommendation by Smith.
Timber advise relied on his opinion
valuing timber
Price good - fair market value
Aware that for 18 mos attempts
to sell lots but without success.
Waited for offer from Koerner.

1726 Kagetsu - Miscellaneous Briefs (1930)

28-19

Didn't sell Deaf Boy as a unit
Power of Att for all parcels.

~~No bids for Lot~~

After Order of HRB - pr tender
Obey talked about 7 & 000 for whole
operator withdrew quickly
Withdrawn

by understanding
Gin offer
? after
Dated
offer
for

Confusion as to titles
General knowledge — inquiries
of sale.

Schedule of U.S. Marsh Report

~~Until sold Lot #~~

Kagetsu was suggested
but Deaf Boy timber.
On probate property
timber back of Deaf Boy

Koerner. Verbal option
Kagetsu had surveyed & E. K had
copy of survey
prior to offering for sale
Unfair — letters written

28-19

Could not use C.P.R. property
Sell our property.
Option Nov. 25/42
Kagetsu should have had the
timber
Feb 10/43 to Shears from Hall
Never got date
→ ||| Westing etc - time.
Advised as to debts
Valuation maintenance etc'
Decision awaited desirable to
Sell property.
Ex 50 ~~49~~. Aug 25/42 Deep Bay.
C/o P.S. Los. Rome operation
Sold Aug/43
Come in picture
Sale price not influenced
Webster's position as regards price

1726 Kagetsu - Miscellaneous Bricks (1950)

28-19

didn't influence methods of scale

Miscellaneous Briefs (1950)

1726 Kagetsu - Miscellaneous Briefs (1950)

General Picture
why

1. Why was provision for commencement of Egypt operations immediately in both contracts

2. letter re Constitution - Oct/Nov/Dec Kaplan control. Sept 20/42 - Sept 10/42

Who appointed R.S. Rowe.

3.

4. What became of contents of chests

5. Why did they sell the Why did they hold.

Where was Kagetsu during these negotiations.

War had reached crucial stage

Last June 1/43

28-19

Field.

1. Timber Controller's influence methods of Sale.

2. See P. 11.

3 Was anybody threatening freelance

4. Read contracts - put in.

Ex 22

Certify under new order.
Percentage of pi
other varieties 50%

1726 Kagetsu - Miscellaneous Briefs (1950)

28-19

1726 Kagetsu - Miscellaneous Briefs (1930)

1

Mc Pherson Xexamine.

Exg. J. R. Norma.

Apl 13/42 Ch. Custodian.

Inventory sheet.

In Custodian's office when inventory delivered Stewart not there.

No.

Apl 13 Kabompa Land no money
no debts
Yokohama Store Book
$3000 no debt.

Security for that $6000 owing
Blk. 195

Wholesale.
Country to pay watchman's fees.
Stewart pay life Insurance
premiums
Custodian advanced money to pay
watchman

Drover knew money paid watchman
until I saw Custodian's letter
March 8th closed door
Nanny Boy obtained
Castaway
advanced have money in

28-19

Order given month or 6 weeks earlier
Went back to probert after Apl 13th

½ Semple went on 8th March.
* Operation stopped for time being

Logged after March 8th
Started to continue after

13th March — Left office

Ex 11 Left Austin Taylor
Came to Vancouver in June 1943
Debt Come as to disposition of Corp assets
Don't remember Saw Mr. Robert Wray in Fields office

Discussed debt to Species Bank +

Lot 195*
Don't remember. discussing debts
with Wray
How much timber sell wray on
Dept Bay
Expected to return
Forest 17 - 18 million ft on Dept. Bay

Don't remember. discussing
When cruised cruised down to
10" diameter

1726 Kagetsu - Miscellaneous Briefs (1950)

1726 Kagetsu - Miscellaneous Briefs (1940)

ten in diameter breast high
Smallest stump cutting 12 in diameter B.H.
Cut many
40 in

Takes into consideration cut
breast high
not customary to cut taller than
Mc Nary 18 in B.H.

Ranges cut and confined
that scale than 12" dias left
Uprooted.
Down.

How much time did you take
out Many. boy by Lots.
Doesn't include loads.

Two ft.
Left apl 45

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Dodd Law formal often - verbal often
Lytton Lytton
forbidden

To log Loaded been cruised
Lytton - in charge of Forestry at
Victoria.

Bark E N Victoria - Victoria -
Lytton
forbidden often about 1941
Deferred on their cruise

Price per M.
1.75 - $2 per M.
Original claim Item 2.
Block

Harris

Burke X exam.
1940
to present time

Small log
1 small log.

Doesn't matter whether exportable or
not because prices right up to ceiling

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MEMORANDUM FOR THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER, JAPANESE PROPERTY CLAIMS COMMISSION.

Re: Claim No. 1388 - Deep Bay Logging Company Limited and Eikichi Kagetsu

It is respectfully submitted that the report of the Commissioner on this claim dated March 24th, 1950, indicates a probable oversight of certain important matters of fact which vitally affect the result. The matters referred to are as follows:

1. At page 11 of the Report in the second paragraph from lines 12 to 16 the following statement is made:

> "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."

It is respectfully submitted that there was in fact an estimate furnished at the Inquiry as to the additional timber remaining after the cut by the MacMillan Company up to September 1948. This information is contained in the Schultz Report (Exhibit 61) at page 5, item 3 of his Summary where he sets out the results of the detailed cruise and estimate, the total volume amounting to 39,799 MBM as at November, 1948.

2. At the top of page 11, the Commissioner states:

> "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%."

The E. & N. estimates of 8 blocks (not of 11 blocks) was 88,500 M feet, these blocks being 198, 256, 267, 274, 276, 504, 566 and 617 (See Exhibit 63 -- 1st and 2nd columns).

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The statement further down on page 11 made in connection with the report by Schultz, reading as follows:

> "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 be the case if the Schultz estimate is accepted."

it is respectfully submitted is therefore not correct because of the error as to the 11 blocks.

Further, the cut which is stated to have exceeded the cruise estimates by 27% was the incomplete cut -- the cut which Kagetsu had made. The completed cut will show a much greater over-run above the E. & N. cruise. It was already about 50% in 1948.

3. It is respectfully submitted that apart entirely from the error as to quantity, the proposition that it is not conceivable that the total area contained more timber than was estimated by the E. & N. Railway cruises must be based on an assumption that each block contained the same amount of timber. It is submitted with respect that this conclusion is based on a false premise as reference to Exhibit 63 will clearly show. This exhibit lists quantities varying from 3,000 M feet to 30,000 M feet for each individual block.

The three blocks referred to by the Commissioner are apparently 504, 566 and 617, but the quantity of timber shown by Schultz on these blocks is very much less than the quantity shown on 267 and 276 for example.

In any event, there were only 8 blocks instead of 11 and the divergence if it could be worked out between the E. & N. cruise and the Schultz report would be very much less than 100% and would in fact not be an unreasonable quantity at all.

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4. If the error as to the number of blocks and the error arising from the premise that all blocks contained the same quantity of timber be eliminated, then, it is submitted, it is clear that the quantity of timber is very much greater than that suggested by the Commissioner.

5. The suggested increase which would result from the foregoing is made up as follows:

Schultz' estimate of the total volume, 18" DBH and over on the limits in 1942 before MacMillan began cutting, approximately (See Exhibit 61)	56,500 M ft.	
LESS felled and bucked allowed under separate head and included in Schultz' figure of 46,500 M	2,500 M ft.	
Leaving		54,000 M ft.
LESS 10% as suggested by Commissioner to equate figures between 1943 and 1948 by reason of difference in accessibility and merchantability (See page 9 of the Report)	5,400 M ft.	
		48,600 M ft.
LESS estimated quantity on the basis of which Custodian sold (Smith's estimate)	14,000 M ft.	
		34,600 M ft.
@ $2.50 per M (Commissioner's figure as to the fair market value of this timber)	=	$86,500.00

It might be pointed out with respect that the Commissioner lays very considerable stress -- as against the Schultz evidence -- on the difference in utilization between the years 1942 and 1948 when Schultz' cruise was made. However, while the Schultz cruise shows a quantity of timber 12-18", his figure of 56,500 M feet accepted in the foregoing calculation covers only 18" DBH and over.

It is respectfully submitted that the figure of $86,500.00 should be substituted for the Deep Bay figure of $7,500.00. This would change the amount of the recommended award from $51,750.00 to $130,750.00.

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The fact that there is an error is confirmed if it is realized that the Commissioner is saying, in effect, that there remained standing in 1948 after MacMillan's scale of 16,720 M feet, 2,780 M feet, arrived at as follows:

Standing in 1943 (Commissioner's estimate)		17,000 M ft.
LESS the MacMillan cut, i.e.		
Scale	16,720 M ft.	
LESS Kagetsu's felled and bucked - already felled and bucked in 1943	2,500 M ft.	14,220 M ft.
		2,780 M ft.

As against this there is Schultz' painstaking detailed 5-10% cruise (see page 1 of his Report - Exhibit 61 - for the method and the following pages especially, e.g. page 26 showing the minute detail with which it was conducted) showing a NET after large breakage and cull deduction of 29,999 M feet so cruised of 18" DBH and over (eliminating entirely the dispute about relative utilization in 1943 and 1948) plus the further estimate of 10,000 M odd on the other blocks -- a conservative estimate in Schultz' opinion.

The Commissioner has found that Schultz , in spite of the nature of the cruise he made, was in error to the extent of approximately 37,200 M feet, the difference between 39,999 M feet and 2,780 M feet.

With the greatest deference, it is submitted that the report by Schultz represents a more comprehensive and detailed estimate of the quantities of timber on the property than does that of Eustace Smith, who, by his own admission (Exhibit 45), does not purport to have made more than a rough survey:

> "I made a general examination of the timber that was still remaining when this operation was closed down

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early in 1942 and while this was not a systematic cruise the check I made should give a fair idea of the amounts accessible." (italics mine)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Counsel for the Claimants,
Deep Bay Logging Company Limited
and Eikichi Kagetsu.

Vancouver, B.C.
June 23, 1950.

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MEMORANDUM FOR THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER, JAPANESE PROPERTY CLAIMS COMMISSION.

Re: Claim No. 1388 - Deep Bay Logging Company Limited and Fikichi Kagetsu

It is respectfully submitted that the report of the Commissioner on this claim dated March 24th, 1950, indicates a probable oversight of certain important matters fact which vitally affect the result. The matters referred to are as follows:

1. At page 11 of the Report in the second paragraph from lines 12 to 16 the following statement is made:

> "It was shown 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."

It is respectfully submitted that there was in fact an estimate furnished at the Inquiry as to the additional timber remaining after the cut by the MacMillan Company up to September 1948. This information is contained in the Schultz Report (Exhibit 61) at page 5, item 3 of his Summary where he sets out the results of the detailed cruise and estimate, the total volume amounting to 39,799 MBM as at November, 1948.

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The E. & N. <u>estimates</u> of 8 blocks (<u>not of 11 blocks</u>) was 88,500 M feet, these blocks being 198, 256, 267, 274, 276, 504, 566 and 617 (See Exhibit 63 -- 1st and 2nd columns).

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ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Counsel for the Claimants,
Deep Bay Logging Company Limited
and Hikichi Kagetsu.

Vancouver, B.C.
June 23, 1950.

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