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Correspondence Re E. Kagetsu and Deep Bay Logging Co. Ltd.

FOLDER NO. 773-11

ANGUS MACINNIS MEMORIAL COLL.
UBC LIB. MSS. COLL.

PLEASE RETAIN
ORIGINAL ORDER

"Surely there are few more
satisfying experiences than
to help set right an injustice."

"Injustice, should be righted
^{whenever}
wherever, however it appears"

November 16, 1949

A M E N D E D C L A I M

IN THE MATTER of a Commission to Investigate Claims of
Japanese-Canadians for property Losses Pursuant to Order-
in-Council P. C. 1810 - 1947 as amended by P. C.

3737 - 1947 At \$4.00 per M. =

(11) (a) Cold-decked timber

(1) DEEP BAY LOGGING COMPANY LIMITED and

SURNAME Kagetsu GIVEN NAME Eikichi

(2) R. C. M. P. Registration No. 00014

(3) Pre-Evacuation Address 335 Princess Avenue, Vancouver, B.C.
2867 West 37th Avenue, Vancouver, B. C.

(4) Present Address c/o Mr. E. Kagetsu, 8 Mountview Avenue,
Toronto, Ontario

(5) ITEMS

Item No. 1

(a) Legal Description Block 195, Cowichan Lake District

(b) Type of Property Timber Land

(c) Value \$247,500.00

(d) Sold by Custodian \$ 93,000.00

(e) Loss Claimed \$154,500.00

Item No. 2

Parcels A, B, and C etc on Custodian's analysis chart
Parcel C on the Custodian's analysis chart, Railway
being

(a) Blocks: 504, 566, 617, 274, 263, 234, 267, 276, 256.

198 and Lot 88 all in the Newcastle District, Vancouver

Island and buildings and contents on Deep Bay Logging

Company's operation: foreshore rights, booming grounds,

dumping landing, bridges, coal stock, etc. comprising

the subject matter of the sale to MacMillan Export

Company Limited, particulars of which are as follows:

(i) All the standing timber as at the date of sale,
being the total amount of 56,520 M. feet shown
on page 5 of the Schultz Forest Inventory, less
the cold decked and felled and bucked timber here-
inafter set out, i. e.

(d) Loss Claimed 56,520.00

56,520 M

Less cold decked
timber
felled and
bucked

700 M

1,868 M

2,568 M

53,952 M

At \$4.00 per M. =

\$215,808.00

(ii) (a) Cold-decked timber

700 M. @ \$12.75 per M 8,925.00

(b) Felled and bucked

1868 M @ \$10.75 per M 20,081.00 29,006.00

(iii) 40 buildings and their

Contents as per inventory 4,000.00

(iv) Valuation of immature stands of
logged and unlogged areas as set
out on page 20 of the Schultz
report

43,225.00

\$ 292,039.00

(b) Value

(c) Sold by Custodian 40,000.00

(d) Loss Claimed \$252,039.00

Item No. 2 (a)

The value in use of the railway (reserved
from the claimant's recommendation of
settlement dated November 18, 1948)

28,260.00

Item No. 3

Parcel C on the Custodian's analysis chart, Railway
Equipment and Railroad, being

(a) Type of property 1 sixty-ton Shay Locomotive

18 Logging Railway Cars

1 Flat Railway Car

2 Push cars

2 Speeders

8 miles of railroad

60 tons of coal

(b) Value \$23,029.00

(c) Sold by Custodian \$14,500.00

(d) Loss Claimed\$8,529.00

Item No. 4

(a) Parcels D. and F of the Custodian's analysis chart 65445

(b) being Value \$1,396.00

(a) Type of property Clyde Gas Donkey

(d) Loss Claimed Empire Gas Donkey \$371.00

Skagit Gas Donkey M. P. on behalf of

Custodian, Hastings Park, Vancouver

Cletrac Tractor

Compressor and Accessories

Item No. 8

(b) Value \$22,925.00

(c) Sold by Custodian \$13,000.00

(d) Loss Claimed \$9,925.00

Item No. 5

Part of Parcel H on the Custodian's analysis chart

being Credited by Custodian 317

(a) Type of property Wire Rope 323

Value 323 x \$2.25 Blocks \$726.75

B. 1,200 ft. wire Straps, clevises, etc. 96.00

Loss Claimed Felling and bucking tools \$822.75

Miscellaneous Tools

TOTAL CLAIM FOR real and personal property \$464,134.02

(b) Value \$15,591.80

(c) Sold by Custodian \$ 7,104.53

(d) Loss claimed \$8,487.27

Item No. 6

(a) Street Address 5286 McKenzie St. Vancouver, B. C.

(b) Legal Description Lots 47 and 48 Block 29, District 1 2027

(c) Type of property Residence

(d) Interest in property Sole Owner

(e) Value \$5,500.00

(f) Sold by Custodian \$4,300.00

(g) Loss Claimed \$1,200.00

Item No. 7

(a)	Description	<u>Pontiac Sedan 1942 Lic.No. 65445</u>
(b)	Value	<u>\$1,396.00</u>
(c)	Sold by Custodian	<u>\$1,025.00</u>
(d)	Loss Claimed	<u>\$371.00</u>

Surrendered to R. C. M. P. on behalf of
Custodian, Hastings Park, Vancouver
March 12th, 1942

Item No. 8

Lost by Custodian being

A. Boom chains left on the premises at Deep Bay
(a) at Blacksmith shop - 610
(b) at boominggrounds - 30

640

Credited by Custodian 317

Lost 323

Value 323 x \$2.25 \$726.75

B. 1,200 ft. wire rope @ 8¢ per fot. 96.00

Loss Claimed \$822.75

TOTAL CLAIM FOR real and personal property \$464,134.02

DOMINION OF CANADA)
TO WIT:)
)
)

IN THE MATTER of a Commission to investigate
claims of Japanese Canadians for Property losses

AND IN THE MATTER OF the claim of Mr. Eikichi
Kagetsu of the City of Toronto in the County
of York, Retired Logger, and Deep Bay Logging
Company Limited.

I, Eilichi Kagetsu of the City of Toronto, in
the County of York,

DO SOLEMNLY DECLARE THAT:

The information set out in the claim form hereto
is true and correct to the best of my knowledge,
information and belief, and I make this solemn
declaration conscientiously believing it to be
true, and knowing that it is of the same force
and effect as if made under oath, and by virtue
of "the Canada Evidence Act".

DECLARED before me at the City)
of Vancouver, in the Province)
of British Columbia, this 16th)
day of November, A. D. 1949.)
_____)
_____)

A COMMISSIONER for taking Affi-
davits within British Columbia.

November 16th, 1949.

A M E N D E D C L A I M.

IN THE MATTER of a Commission to Investigate Claims of
Japanese-Canadians for Property Losses Pursuant to Order-
in-Council P.C. 1810 - 1947 as amended by P.C. 3737 - 1947

(1) DEEP BAY LOGGING COMPANY LIMITED and

SURNAME Kagetsu GIVEN NAME Eikichi

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2867 West 37th Avenue, Vancouver, B.C.

(4) Present Address: c/o Mr. E. Kagetsu, 8 Mountview Avenue,
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(5) ITEMS

Item No. 1

(a) Legal Description Block 195, Cowichan Lake District

(b) Type of Property Timber Land

(c) Value \$247,500.00

(d) Sold by Custodian \$ 93,000.00

(e) Loss Claimed \$154,500.00

Item No. 2

Parcels A, B and G etc. on Custodian 's analysis chart
being

(a) Blocks: 504, 566, 617, 274, 263, 234, 267, 276, 256.

198 and Lot 88 all in the Newcastle District, Vancouver

Island, and buildings and contents on Deep Bay Logging
Company's operation: foreshore rights, booming grounds,
dumping landing, bridges, coal dock, etc. comprising
the subject matter of the sale to MacMillan Export
Company Limited, particulars of which are as follows:

(1) All the standing timber as at the date of sale,
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the cold decked and felled and bucked timber
hereinafter set out, i.e.

56,520 M

Less cold decked
timber
Felled and
bucked

700 M

1,868 M

2,568 M

53,952 M

at \$4.00 per M =

\$215,808.00

(ii) (a) Cold-decked timber

700 M @ \$12.75 per M 8,925.00

(b) Felled and bucked

1868 M @ \$10.75 per M 20,081.00

29,006.00

(iii) 40 buildings and their

contents as per inventory

4,000.00

(iv) Valuation of immature stands of
logged and unlogged areas as set out
on page 20 of the Schultz report

43,225.00

(b) Value

\$ 292,039.00

(c) Sold by Custodian

40,000.00

(d) Loss claimed

\$252,039.00

Item No. 2(a)

The value in use of the railway (reserved
from the claimant's recommendation of
settlement dated November 18, 1948)

\$ 28,260.00

Item No. 3

Parcel C on the Custodian's analysis chart, Railway
Equipment and Railroad, being

(a) Type of Property 1 sixty-ton Shay Locomotive

(a) Street Address 18 Logging Railway Cars

(b) Legal Description 1 Flat Railway Car

(c) Type of Property 2 Push cars

(d) Interest in Property 2 Speeders

(e) Value 8 miles of railroad

(f) Sold by Custodian 60 tons of coal

(b) Value \$23,029.00

(c) Sold by Custodian \$14,500.00

(d) Loss Claimed \$8,529.00

Item No. 4

Parcels D and F of the Custodian's analysis chart
being

- (a) Type of Property Clyde Gas Donkey
Empire Gas Donkey
Skagit Gas Donkey
Cletrac Tractor
Compressor & Accessories
 (b) Value \$22,925.00
 (c) Sold by Custodian \$13,000.00
 (d) Loss claimed \$9,925.00

Item No. 5

Part of Parcel H on the Custodian's analysis chart
being

- (a) Type of property Wire rope
blocks
straps, clevises, etc.
Falling and bucking tools
Miscellaneous Tools
 (b) Value \$15,591.80
 (c) Sold by Custodian \$ 7,104.53
 (d) Loss claimed \$8,487.27

Item No. 6

- (a) Street Address 5286 McKenzie St., Vancouver, B.C.
 (b) Legal Description Lots 47 and 48, Block 29, District 1 2027
 (c) Type of Property Residence
 (d) Interest in Property Sole Owner
 (e) Value \$5,500.00
 (f) Sold by Custodian \$4,300.00
 (g) Loss claimed \$1,200.00

Item No. 7

(a) Description	<u>Pontiac Sedan 1942 Lic. No. 65445</u>
(b) Value	<u>\$1,396.00</u>
(c) Sold by Custodian	<u>\$1,025.00</u>
(d) Loss Claimed	<u>\$ 371.00</u>

Surrendered to R.C.M.P. on behalf of
Custodian, Hastings Park, Vancouver,
March 12th 1942

Item No. 8

Lost by Custodian, being

- A. Boom chains left on the premises at Deep Bay
(a) at blacksmith shop - 610
(b) at booming grounds - 30
640

Credited by Custodian 317

Lost 323

Value 323 x \$2.25 \$726.75

- B. 1,200 ft. wire rope @ 8¢ per ft. 96.00

Loss claimed \$ 822.75

TOTAL CLAIM FOR real and personal property \$464,134.02

day of November, A.D. 1949

I, WILLIAM FOR LAMING 1771-
deputy within British Columbia

DOMINION OF CANADA }

TO WIT:

IN THE MATTER OF a Commission to investigate
claims of Japanese Canadians for Property losses

AND IN THE MATTER OF the claim of Mr. Eikichi
Kagetsu of the City of Toronto in the County
of York, Retired Logger, and Deep Bay Logging
Company Limited,

I, EIKICHI KAGETSU, of the City of Toronto, in
the County of York,

DO SOLEMNLY DECLARE THAT:

The information set out in the claim form hereto
is true and correct to the best of my knowledge,
information and belief, and I make this solemn
declaration conscientiously believing it to be
true, and knowing that it is of the same force
and effect as if made under oath, and by virtue
of "The Canada Evidence Act".

DECLARED before me at the City
of Vancouver, in the Province
of British Columbia, this 16th
day of November, A.D. 1949

A COMMISSIONER for taking Affi-
davits within British Columbia

(c) All the standing timber on the land being the total amount of 10,000 cubic feet on page 5 of the Valuation Report. The land was sold under order of the court.

(d)

November 16, 1949

A M E N D E D C L A I M

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Japanese-Canadians for property Losses Pursuant to Order-
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inafter set out, i. e.

(d) Loss Claimed 56,529.00

Item No. 1

56,520 M

(a) Parcels D. Less cold decked timber

700 M

(b) being felled and bucked

1,868 M

2,568 M

(a) Type of property Clyde Gas Donkey

53,952 M

(d) Loss Claimed Empire Gas Donkey

At \$4.00 per M. =

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(ii) (a) Cold-decked timber

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1868 M @ \$10.75 per M 20,081.00

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(d) Loss Claimed

(iii) 40 buildings and their

Contents as per inventory

4,000.00

(iv) Valuation of immature stands of logged and unlogged areas as set out on page 20 of the Schultz report

43,225.00

(a) Type of property Wire Rope

\$ 292,039.00

(b) Value

(c) Sold by Custodian

40,000.00

(d) Loss Claimed

\$252,039.00

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(b)

The value in use of the railway (reserved from the claimant's recommendation of settlement dated November 18, 1948)

28,260.00

(c)

(d)

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Parcel C on the Custodian's analysis chart, Railway

Equipment and Railroad, being

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2 Push cars

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8 miles of railroad

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 (c) Type of property Residence
 (d) Interest in property Sole Owner
 (e) Value \$5,500.00
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 (g) Loss Claimed \$1,200.00

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(a)	Description	<u>Pontiac Sedan 1942 Lic.No. 65445</u>
(b)	Value	<u>\$1,396.00</u>
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(d)	Loss Claimed	<u>\$371.00</u>

Surrendered to R. C. M. P. on behalf of
Custodian, Hastings Park, Vancouver
March 12th, 1942

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Lost by Custodian being

A. Boom chains left on the premises at Deep Bay
(a) at Blacksmith shop - 610
(b) at boominggrounds - 30

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Credited by Custodian 317

Lost 323

Value 323 x \$2.25 \$726.75

B. 1,200 ft. wire rope @ 8¢ per fot. 96.00

Loss Claimed at the City \$822.75

TOTAL CLAIM FOR real and personal property \$464,134.02

A COMMISSIONER for taking Affi-
davits within British Columbia.

DOMINION OF CANADA)

TO WIT:)

IN THE MATTER of a Commission to investigate
claims of Japanese Canadians for Property losses

AND IN THE MATTER OF the claim of Mr. Eikichi
Kagetsu of the City of Toronto in the County
of York, Retired Logger, and Deep Bay Logging
Company Limited.

I, Eilichi Kagetsu of the City of Toronto, in
the County of York,

DO SOLEMNLY DECLARE THAT:

The information set out in the claim form hereto
is true and correct to the best of my knowledge,
information and belief, and I make this solemn
declaration conscientiously believing it to be
true, and knowing that it is of the same force
and effect as if made under oath, and by virtue
of "the Canada Evidence Act".

DECLARED before me at the City)
of Vancouver, in the Province)
of British Columbia, this 16th)
day of November, A. D. 1949.)

A COMMISSIONER for taking Affi-
davits within British Columbia.

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 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.

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

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 property, after 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 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.

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 (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, of which I consider I may

"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
 The tender of the MacMillan Company for purchase of this

tract of timber from the Custodian was based upon a cruise
 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. Soon after its purchase of Block 195, that

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 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

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. 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 shown 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

Deep Bay
Property

F. 9
m.

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

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

Smith cruise on which the selling price was based.

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.

It was shown that approximately 2,500 M. feet of

felled, bucked and cold-decked timber cut by the claimants

prior to 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. this claim as to the value of such timber.

However, 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 sold in September 1943 by the

purchaser. 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 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.e. an aggregate sum of \$12,500.00.

I therefore find the fair market value of the timber

and the various structures sold with it was \$47,000.00,

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

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 2 1/2 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 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 buildings were of value 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 if he had continued in operation he would have converted to 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

there is evidence to show that the buildings were of value to the owners, which I estimate at \$1000.00.

Logging
Railway.

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

Outline:		
	<u>JAPANESE PROPERTY CLAIMS COMMISSION</u>	1
	Deep Bay Property	2
	Logging Railway on Deep Bay Property	4
	<u>Claim No. 1388</u>	
	Buildings	4
	<u>Kagetsu -- Deep Bay Logging Company Limited</u>	4
	Summary of amounts claimed, amounts awarded and amount now claimed	4(a)&(b)
	<u>Block 195, Cowichan Lake District</u>	
	(a) Volume	5
	(b) Value	12
	<u>Deep Bay Property</u>	
	(a) Standing <u>MEMORANDUM</u>	18
	(b) Pulled and Bucked and Cold-Decked timber	35
	<u>C F</u>	
	(c) Immature Stands	36
	<u>ARGUMENT</u>	
	<u>Logging Railway on Deep Bay Property</u>	37
	<u>FOR</u>	
	<u>Buildings</u>	39
	<u>Costs</u>	
	<u>RECONSIDERATION OF</u>	40
	<u>Appendix "A"</u>	
	<u>AWARD AS TO</u>	42
	<u>Appendix "B"</u>	
	<u>COMPENSATION</u>	43
	<u>AND EXPENSES</u>	

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1164) would INDEX over the range of opinions. Mr. Smith considered that the "break through" could be done for \$4,000.00 per mile but that further surfacing would be required. Even if it was necessary to widen

<u>Outline:</u>	Block 195, Cowichan Lake District	1
	Deep Bay Property	2
	Logging Railway on Deep Bay Property	4
	Buildings	4
	Costs	4
	Summary of amounts claimed, amounts awarded and amount now claimed	4(a)&(b)

<u>Block 195, Cowichan Lake District:</u>	receive the use of the road bed
(a) Volume	5
(b) Value	12

4. Buildings:

Deep Bay Property:

(a) Standing timber	18
(b) Felled and Bucked and Cold-Decked timber..	35
(c) Immature Stands	36

<u>Logging Railway on Deep Bay Property</u>	37
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<u>Buildings</u>	39
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<u>Costs</u>	40
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<u>Appendix "A"</u>	42
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<u>Appendix "B"</u>	43
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the evidence. This figure therefore should be revised upward to \$4,000.00.

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1164) would seem to cover the range of opinions. Mr. Smith considered that the "break through" could be done for \$4,000.00 per mile but that further surfacing work would be required. Even if it was necessary to widen the rail grade, the grade itself could not have had a value of less than \$2,500.00 per mile, making a total value for the four and one-half miles utilized of \$11,250.00.

The fact that the railroad was not itself sold is not conclusive evidence of the fact that it had no value. Astute purchasers, like the officers of the H. R. MacMillan Company, realized that by not bidding for the railroad, they would receive the use of the road bed gratis.

4. Buildings:

Kagetsu claimed for the value of his buildings, which consisted of 20 family residences, 10 bunk houses, a community hall, a new office, and eight other buildings, the sum of \$4,000.00. They were insured for \$10,000.00. (transcript, page 52, Kagetsu).

The Commissioner points out (page 14 of his report, lines 30 to 33) that various witnesses testified that these buildings were not suitable for Occidental crews (principally because the bunks were short) and were therefore valueless to an Occidental purchaser. However, they had a very real value to the claimant and, although the Commissioner makes a passing reference to this as a basis for compensation, he recommends an award of a mere \$1,000.00, an obvious sop without any foundation in the evidence. This figure therefore should be revised upward to \$4,000.00.

1010

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\$7,000
\$10,000
\$6,000

1
property up to November 1951 and logging operations are still in progress. These complete scale figures were of course not available at the hearing as the cut had not been made.

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(ii) The Schultz cruise which was made in 1948 was in fact made on the basis of 1943 conditions and the Government scales bear out his estimates, yet the Commissioner stated that because of the different conditions which prevailed in 1948 the Schultz cruise could not be considered as accurate.

March 24th 1950, indicates that the Commissioner has overlooked certain vital matters and ignored others that materially affect the result, to the serious prejudice of the claimant.

(iii) Eustace Smith's cruise was not a real cruise at all a mere check of previous cruises.

(iv) On grounds which are patently unsound the Commissioner disregarded a cruise made by A. F. Sheehan which further substantiates the claim.

1. (b) Value: Corichan Lake District:

20
(a) Volume: The Commissioner valued this timber at only \$3.00 per M.B.M. but the evidence amply justifies a figure of \$4.50 per M.B.M. of the foremost forest engineers

2. The Deep Bay Property:

(a) Standing Timber:

(1) Volume:

(1) The Commissioner relied on the cruise made by Smith which was a mere check of a previous cruise.

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(2) Schultz cruised this area at 56,500 M. The Government scales up to November 1951 already

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JAPANESE PROPERTY CLAIMS COMMISSION

Claim No. 1388

Kagetsu - Deep Bay Logging Company Limited

MEMORANDUM OF ARGUMENT FOR RECONSIDERATION
OF AWARD AS TO COMPENSATION AND EXPENSES

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OUTLINE

(iv) The Report of the Commissioner on this claim, dated March 24th 1950, indicates that the Commissioner has overlooked certain vital matters and ignored others that materially affect the result, to the serious prejudice of the claimant.

The items of the claim to which these matters relate are as follows:

1. Block 195, Cowichan Lake District:

20 20

(a) Volume:

- (1) The Commissioner rejected the evidence of C. D. Schultz, one of the foremost forest engineers in British Columbia, and on the question of volume relied on the evidence of Eustace Smith, and Keith Shaw, manager of the Company which purchased the timber on sale by the Custodian.
- (2) The Government scales of the timber taken off Block 195 since the sale by the Custodian show that an overrun of over 70% more than the estimates on which the Commissioner based the compensation has actually been taken off the

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show an actual overrun of 100% over Smith's
cruise, and there is still more timber to
(c) Remains be cut. These scale figures were not and
could not be available at the hearing.

(ii) Quality:

The quality of the timber in this area was
unusually high and it was not, as the
Commissioner found, a mere salvage operation.

(iii) Price:

10 4. Buildings: The evidence amply justifies the price of
\$4.00 per M.B.M. claimed.

(iv) Additional Factors:

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- (1) The operation was a going concern when
Kagetsu left, but nothing was allowed for
this. The Commissioner made no allowance
for compulsory taking and gave no reason
for denying it.
- (2) The removal of Kagetsu from the operation
resulted in the loss of valuable personal
contacts.
- (3) The terms of sale imposed by the Custodian
had an adverse effect on tenders.
- (4) Kagetsu was denied access to his records
when drafting his initial claim.

(b) Felled and Bucked and Cold-Decked Timber:

- (1) The value of this set by the Commissioner at
\$5.00 per M.B.M. should be increased to \$6.50
per M.B.M.

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- (ii) On an additional 700 M. of cold-decked timber,

11 a further \$3.50 per M.B.M. should be added for
SUMMARY OF AMOUNTS CLAIMED IN RESPECT
yarding, cold-decking and overhead costs.

(c) Immature Stands: REEDED BY COMMISSIONER

This claim should be revised upward to at least

Block 192 \$5.00 per acre. District:

55,000 M feet at \$4.50 per M.B.M. \$247,500.00

3. Logging Railway on Deep Bay Property:

Sale price 93,000.00

This had a value of 50¢ per M.B.M. of timber, or a
Amount claimed 154,500.00
total value of \$28,260.00.

Amount awarded:

37,000 M at \$3.00

110 4. Buildings:

Less sale price 93,000.00
The award should be revised to \$4,000.00.

Amount now claimed

\$136,500.00

5. Costs:

Deep Bay Property The failure to award a proper item for expenses in

(a) Standing timber: connection with this claim results in the greatest
54,000 M at \$4.00 per M.B.M. 216,000.00
discrimination against the claimant as there was no

(b) Pelled and Bucked: justification for failing to make such an allowance
2,500 M at \$5.00 less 12,500.00
700 M pelled for loading at 2,450.00
in this particular case. As the expense of presenting

(c) Immature stands: evidence in this case was exceptionally heavy (not
5,469 acres at \$5.00 per acre 27,345.00
due to any fault of the claimant) it is submitted

that a special increased allowance should be made.

Sale price (less (a), (b) and (c)) The fact that the actual cut of timber since the sale
sold in one block 40,000.00

by the Custodian on figures now available indicates

Amount claimed 222,545.00
that the Commissioner's figures are out of line by

Amount awarded:

(a) Immature stands: 70% to 100%, is ample justification for such an
of standing timber
increased allowance. 7,500.00

(b) Pelled and Bucked:

2,500 M at \$5.00 less

\$4500. sale price 8,000.00

(c) Immature stands:

5500 acres at \$1.50 8,250.00 23,750.00

Amount now claimed

198,795.00

1 LOSSIDE FALLS SUMMARY OF AMOUNTS CLAIMED IN RESPECT
OF THE VARIOUS ITEMS SOLD BY THE
CUSTODIAN, SHOWING COMPARISON WITH
AMOUNTS AWARDED BY COMMISSIONER:

(Value to purchaser, 4 1/2 miles at
\$2,500 per mile = \$11,125.00.)

Block 195, Cowichan Lake District:

		1,000.00	
55,000 M feet at \$4.50 per M.B.M.		\$247,500.00	
Amount now claimed			27,260.00
Sale price		93,000.00	
Amount claimed		154,500.00	
Amount awarded:			
37,000 M at \$3.00		4,000.00	
per M.B.M.	\$111,000.00		
Less sale price	93,000.00	18,000.00	
Amount now claimed			\$136,500.00

TOTAL AMOUNT NOW CLAIMED \$365,555.00

Deep Bay Property:

(a) Standing timber:			
54,00 M at \$4.00 per M.B.M.		216,000.00	
(b) Felled and Bucked:			
2,500 M at \$6.50 per M.B.M.		16,250.00	
700 M piled for loading at			
\$3.50 per M.B.M.		2,450.00	
(c) Immature Stands:			
5,569 acres at \$5.00 per acre		27,845.00	18,000.00
1. Deep Bay		222,545.00	23,750.00
2. Logging Railway, Deep Bay		262,545.00	1,000.00
3. Sale price (items (a), (b) and (c)		40,000.00	1,000.00
4. sold in one block)			

Amount claimed \$489,222,545.00 43,750.00

Amount awarded:		43,750.00	
(a) Increase in volume			
of standing timber			
3,000 M at \$2.50	7,500.00		
(b) Felled and Bucked:			
2,500 M at \$5.00 less			
\$4500. sale price	8,000.00		
(c) Immature stands:			
5500 acres at \$1.50	8,250.00	23,750.00	

Amount now claimed 198,795.00

1 Logging Railway, Deep Bay:

Value to claimant, 56,520,000 feet
at 50¢ per M feet of timber \$ 28,260.00

(Value to purchaser, $4\frac{1}{2}$ miles at
\$2,500 per mile = \$11,125.00.)

Amount awarded 1,000.00

Amount now claimed 27,260.00

Buildings:

Amount claimed 4,000.00

Amount awarded 1,000.00

Amount now claimed 3,000.00

TOTAL AMOUNT NOW CLAIMED \$365,555.00

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giving a total value of \$111,000.00.

It can readily be seen that the amounts claimed and awarded differ markedly both as to the value and as to the quantity of the timber.

	Amount Claimed	Amount Awarded
1. Block 195	\$154,500.00	\$ 18,000.00
2. Deep Bay	222,545.00	23,750.00
3. Logging Railway, Deep Bay	28,260.00	1,000.00
4. Buildings	4,000.00	1,000.00

Total amount claimed, the \$409,305.00 \$ 43,750.00

Less total awarded 43,750.00

TOTAL AMOUNT NOW CLAIMED \$365,555.00

claim is based on a cruise by Charles D.

Schultz in late 1946. The Commissioner at page 6

of his report intimated that the difference in the

volumes shown in the two cruises was due to a

failure on the part of Mr. Schultz to take sufficient

1. Block 195, Cowichan Lake District:

(a) Volume:

Sale to H.R.
MacMillan
Export Co.
on basis of
Smith's cruise.

This block was sold by the Custodian to H. R. MacMillan Export Company Limited on June 15th 1943 for the sum of \$93,000.00. In respect of this timber the claimant seeks compensation of \$154,500.00 on the basis that the actual value as of the date of sale was \$247,500.00, being 55,000 M feet of timber (the volume estimated by Mr. Kagetsu himself, page 25 of transcript) at a value of \$4.50 per M.B.M., the difference being the sum of \$93,000.00 already realized. On this claim the Commissioner awarded a sum of only \$18,000.00 on

the basis of his finding that the stand contained only 37,000 M feet valued at only \$3.00 per M.B.M., Block 195 and the adjacent Block 403 were logged together after the sale and that up to September

1948 It can readily be seen that the claim and the award differ markedly both as to the value and as to the quantity of the timber. Findings in respect

of this Block depend on the passing estimate made In considering the acceptability of the tender by Mr. Keith Shaw of the H. R. MacMillan Company received from the MacMillan Company prior to the that there was about 12,000 M feet remaining on time of the sale, the Custodian relied on a cruise made by Eustace Smith. Mr. Smith estimated that after remarking that 58,000 M had already come off, Block 195 contained 31,000 M feet of timber. The claim is based on a cruise made by Charles D. Schultz in late 1948. The Commissioner at page 6 of his report intimated that the difference in the volumes shown in the two cruises was due to a failure on the part of Mr. Schultz to take sufficient

Government
Scales reveal
inaccuracy of
Smith's cruise.

Smith's and
Schultz's
reports.

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notice of the factors of merchantability and accessibility as they affected the economic conditions of the forest industry between the date of sale and the date of his cruise, and to his failure to avoid the influences of changed conditions occurring subsequently to the date

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The Government scales of timber coming off of sale. At this point, the Commissioner finds this area from the time when the scales which that it is unnecessary to reconcile the differences were filed in evidence before the Commissioner between the results of the two cruises as he feels were completed (58,752,003 feet by September 1948 that there is another method of arriving at an estimate of the timber contents of the Block, and that is by disregarding the two cruises altogether and relying on an estimate made by Mr. Keith Shaw.

These subsequent scales show that a further

Government
scales show
over 70%
overrun in
Government
Scales reveal
inaccuracy of
Smith's cruise.
logging
operations
still in
progress.

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★(See Appendix
"B")

19. The evidence from timber scales indicated that Block 195 and the adjacent Block 403 were logged together after the sale and that up to September 1948 a total of 58,752,003 feet of timber had been removed from the two blocks. From this point forward, all the Commissioner's findings in respect of this Block depend on the passing estimate made by Mr. Keith Shaw of the H. R. MacMillan Company that there was about 12,000 M feet remaining on the two areas. The actual words used by Mr. Shaw, after remarking that 58,000 M had already come off, were that he "hoped to get 70,000 M feet" (see page 913 of transcript). Mr. Shaw made no cruise -- he merely examined the area. The inaccuracy of this method of assessment is indicated by one of the witnesses -- apparently that was the old

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method of cruising timber before the modern cruising methods were adopted (see transcript page 856, Smith). There is no comparison between such an estimate and a detailed, scientific survey such as was prepared by Mr. Schultz.

The Government scales of timber coming off this area from the time when the scales which were filed in evidence before the Commissioner were completed (58,752,003 feet by September 1948 at about which time Mr. Shaw made his estimate) to date show how inaccurate were the figures on which the Commissioner relied.

These subsequent scales show that a further 19,314,699 feet of timber has been cut up to November 1951, giving a grand total of 78,066,702 feet for the two Blocks. And the logging has still not been completed. From this it is clear that there has already been a 61% overrun on the very estimate which the Commissioner used as the basis for his award to the claimant in respect of this Block.

Taking a more precise figure for Mr. Shaw's estimate -- 11,248,000 feet (70,000,000 less 58,752,000) -- the percentage of overrun is found to be 71.7%. This rough estimate of Mr. Shaw's is the basis of the Commissioner's finding with respect to Block 195 and furthermore, although this estimate has already been exceeded by nearly 72%, logging operations are still in progress.

Government scales show over 70% overrun in excess of Smith's cruise and Shaw's estimate, with logging operations still in progress.

★(See Appendix "B")

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The Commissioner adjusts the timber scale figures and Shaw's estimate by 10% to conform to 1943 conditions and yet uses this point to attack Schultz's cruise.

In addition, the comparative smallness of the volumes shown as cut during 1951 is fully explained by the fact that adverse logging conditions seriously limited the duration of the logging season in that year. An exceptionally dry summer produced a fire hazard to combat which the Forest Branch of the Government curtailed logging operations over a considerable period.

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With regard to Mr. Smith's cruise of Block 195 the following points should be stressed:

In the first place, it is scarcely credible that from 1923 when Mr. Smith made his first cruise of the Block until 1940 when he checked this cruise, the volume of timber on Block 195

should have increased only 1,000 M feet, from 30,000 M feet to 31,000 M feet, especially when one considers the increase in utilization which took place in the interval.

Schultz cruise was in fact based on 1943 conditions.

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Further, any favourable assumptions that might be made with regard to the intensity of a cruise which reveals a 3% increase in the timber content of a large tract of land are in marked conflict with the fact that two years later it was again necessary for Mr. Smith and Mr. Shaw to visit the area in order to check for "peeler" logs.

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The Commissioner makes the same criticism of the results disclosed by the timber scales and by the estimate made by Mr. Shaw that he used as a

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The Commissioner adjusts the timber scale figures and Shaw's estimate by 10% to conform to 1943 conditions and yet uses this point to attack Schultz's cruise.

basis for disregarding altogether the Schultz cruise: namely that they were based on economic conditions which varied considerably from those existing at the date of the sale. However, in the case of the scale reports and Mr. Shaw's estimate, the Commissioner makes an allowance for the variation in the conditions. He says at page 9 of the report: "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". No reason is given for not applying this discount to the extremely accurate Schultz cruise.

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Schultz cruise was in fact based on 1943 conditions.

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If this were done, on the basis that the 55,000 M feet found by Mr. Schultz equalled 110% of the volume in 1943, an approximate figure of 50,000 M feet for 1943 is arrived at. Further, while we are prepared if necessary to agree to the 10% adjustment factor for varying economic conditions, it should be stressed that the Schultz cruise was in fact made on the 1943 basis and generous allowances were made in respect of breakage and logging conditions which are noted on page 1 of the Schultz Cruise Report, Exhibit 15, being 30% for cedar, 20% for hemlock and balsam and 15% for fir.

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The Sheehan report is set forth on five pages: In the course of the inquiry it was disclosed that a cruise of this area had been made in 1925 by A. F. Sheehan who found a volume of some 49,720 M that 62% of the timber was fir.

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Sheehan's
cruise.

feet. As this cruise was made at the same time as Smith's earlier cruise and on the same basis of utilization and as, if accurate, it would dovetail very well with Mr. Schultz's findings with regard to the area, it was necessary for the Government's case that the value of Mr. Sheehan's cruise be discounted. After Mr. Smith had seen Mr. Sheehan's Cruise Report and had "talked it over with him" (transcript, page 845, line 28) Mr. Sheehan wrote a letter dated April 5th 1943 recapitulating the position taken in his Cruise Report. Unfortunately Mr. Sheehan's testimony was not available to the Commission as he was not within the jurisdiction. However, a careful examination of Mr. Sheehan's original report, which is Exhibit 5, indicates that his subsequent letter (Exhibit 3 to Exhibit 36) is not an explanation of it, but a refutation. As suggested by Counsel for the claimant at the hearing (transcript page 1223) the whole tone of Mr. Sheehan's letter is that of a man who has recanted at the suggestion of someone else. While the letter says that the 1925 cruise was made with a view to "logging and milling the timber right there on the ground" and this is the view taken by the Commissioner in his reasons, an examination of the Cruise Report reveals otherwise.

The Sheehan report is set forth on five pages:

The first page is an analysis in the form of a table showing the results of the cruise and indicating that 62% of the timber was fir.

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On the second page are some remarks by Mr. Sheehan. He refers to 6,000 M feet of fallen timber which he has not included but which could be taken out if a milling operation were carried on in conjunction with the logging. The tenor of all of Mr. Sheehan's other remarks concerning milling in conjunction with logging are along the same line as this one, namely that while the report is an ordinary cruise made without reference to the use of a mill in the woods Mr. Sheehan was strongly of the opinion from his examination of the area that such an operation would greatly increase the output to be obtained from the Block. The 6,000 M feet is not included but "if the timber is milled in conjunction with the logging ... all of this down timber (should be)

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(b) Value: accounted for" (Exhibit 5, page 2). The report continues: "There is another additional supply timber on Block 195 and on the Deep Bay property, on the ground that if properly handled could be added to the estimate." "If a small portable mill were to be put in ... "

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Kagetsu's holdings were Crown granted and therefore royalty free.

For the purposes of his cruise, Mr. Sheehan divided the Block into Lots A, B and C: On Lot A he found 17,110 M feet of timber and he finds the fir to be 25% No. 1. He adds the following remark: "If a mill were operated in conjunction with the logging, the percentages of No. 1 stock would be increased ... " Mr. Sheehan then remarks what a fine output could be had from the comparatively small hemlock, larch and cedar if a sawmill were employed.

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On Lot B Mr. Sheehan finds 16,390 M feet of timber containing fir which will run to 40% No. 1. and that "if operated in conjunction with a mill the No. 1 stock will be increased ... " There are similar remarks with reference to Lot A about the hemlock, larch and cedar. On Lot C Mr. Sheehan found 16,220 M feet, but he makes no reference to a sawmill.

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This view of the Sheehan Report was forcibly presented in argument by Counsel for the claimant and at the time of the hearing the Commissioner appears to have agreed with it (transcript, page 1224, lines 17 to 21). However, in his report he discounts the Sheehan cruise altogether (page 8). terms that the stumpage payments shall be dependent

(b) Value: market price for logs in which case the benefit With regard to the value per M.B.M. of the timber on Block 195 and on the Deep Bay property, there are certain factors which are common to both: In the first place, both of these tracts were part of the small percentage of Crown granted timber existing in the Province and were hence royalty free, a circumstance which effects a saving to the operator of about \$1.00 per M.B.M. (transcript, Byers at page 331, Brown at page 577). Further, the fact that the timber was Crown granted resulted in the additional advantage that in normal times there was a good deal of testimony to the effect the logs could be exported to more profitable markets (Schultz at page 1031). This advantage of timber, and there was also evidence that the was considered by Mr. Brown (page 570) to have an situation was favourable for logging. Mr. Smith

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Kagetsu's holdings were Crown granted and therefore royalty free.

Quality of timber unusually high.

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added value of 50¢ to \$1.00 per M.B.M. found

"good logging grounds". Mr. Schultz testified

Some attempt was made by Counsel for the Crown to draw a large distinction between sales made on a lump sum basis and those made on a stumpage basis, that is according to the amount of logs actually produced. However, while a lump sum payment produces immediate cash, the frequency with which overruns on the timber occur and hemlock were of a very good grade (page 373), and the extent of those overruns when the cruise

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Similar evidence was given by William Byers, timber broker and consultant and former Chief Sealing Supervisor of British Columbia. In his opinion, it sales on a stumpage basis net more money to the vendor. Further, contracts can be written on terms that the stumpage payments shall be dependent on the market price for logs in which case the benefit of a future rise in the log market is not lost to the vendor. On the whole, the manner of contract is very much dependent upon the parties negotiating and the circumstances of the particular case, which is shown by the wide variation between the estimates of the expert witnesses on this point. Both Mr. Pretty and Mr. Byers considered that a 10% discount for cash was a reasonable amount to be allowed (transcript, pages 635 and 326 and respectively) As evidence of the price of standing timber at the date of sale of Block 195, reference is made to the figures given on page 2229 of Exhibit 44, the Report of the Forest Branch for 1943, showing the average price on Government timber sales

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Cash value
well over
\$3.00 per M.

Quality of
timber unusually
high.

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in his report (Exhibit 53) says that he found "good logging grounds". Mr. Schultz testified that the nature of the ground made for easy road construction (transcript, page 516). With regard to the quality of the timber itself, Mr. Frederick Brown, a logger of some twenty-eight years' experience was able to say after an examination of the scales of the timber coming off this Block that the fir and hemlock were of a very good grade (page 578).

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Similar evidence was given by William Byers, timber broker and consultant and former Chief Scaling Supervisor of British Columbia. In his opinion, it was a very desirable type of timber as it contained percentages of the higher types of timber considerably above average (pages 264-265). Mr. Sheehan's Report (Exhibit 5) indicates that he thought this a very high grade of timber and this is especially apparent when one considers the relatively inferior utilization prevalent at the time of his cruise.

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The actual value of the timber on Block 195 at the date of the sale was considerably in excess of \$3.00 per M.B.M. which was the basis on which it was sold to the H. R. MacMillan Export Company Limited.

Cash value
well over
\$3.00 per M.

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The effective date of sale of Block 195 was found by the Commissioner to be June 15th 1943 (page 4 of his report). As evidence of the price of standing timber at the date of sale of Block 195, reference is made to the figures given on page BB29 of Exhibit 55, the Report of the Forest Branch for 1943, showing the average price on Government timber sales

1 during that year. The average price per M.B.M. of various species sold in the Vancouver Forest Area was:

Fir	\$2.76
Cedar	\$2.95
Hemlock	\$1.48
Balsam	\$1.42

Making allowances for royalty, value of exportable feature, and a 10% reduction for cash sale, we have the following:

	<u>Stumpage</u>	<u>Royalty</u>	<u>Export</u>	<u>Total</u>	<u>Total less 10% for cash</u>
Fir	2.76	1.22	.75	4.73	4.26
Cedar	2.95	1.22	.75	4.92	4.43
Hemlock	1.48	.60	.75	2.83	2.55
Balsam	1.42	.60	.75	2.77	2.49

20 It cannot be disputed that 10% would be the maximum deduction to be allowed for cash. The H. R. MacMillan Company acquired this timber for \$3.00 per M.B.M. and were selling it, on the basis of the prices given by Mr. Shaw at page 902, to the Stoltze Logging Company for an adjusted average price of \$3.12 per M.B.M. If the deduction for cash is greater than 10%, the H. R. MacMillan Company would in effect be selling this timber for less than they paid for it, which is scarcely credible.

30 If these prices are applied to the percentage volumes found by Schultz, namely 39.6% fir, 32.9% hemlock, 13.7% balsam, 12.6% red cedar, 0.1% yellow cedar and 1.1% pine, it is found that the average price for the timber is \$3.43 per M.B.M. But it

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must be remembered that this determination is made without consideration of the following factors:

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(a) the figures taken from the report were the average figures only, whereas the evidence clearly indicated that the quality of the timber in Block 195 was well above average and the exhibits from which these average figures were taken show that the prices actually averaged as high as \$6.50 for fir and cedar and \$5.50 for hemlock and balsam in the higher grades. Taking for example the fir which Mr. Schultz testified averaged over the Province in 1944 3% No. 1, 52% No. 2 and 45% No. 3. The consolidated scale sheet attached to this memorandum, which has been taken from the Government scale records for Blocks 195 and 403, shows the fir to be 10.6% No. 1, 62.6% No. 2 and 26.8% No. 3. The difference between these grades and those for the yearly average is obvious. Suffice it is to say that the average prices quoted above should be sharply increased before they can be applied to the timber in Block 195.

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(b) The competition in bidding for the sales which are recorded in the report was severely limited. However, these stumpage prices varied and were to be increased to the current prices at the time the logs that neighbouring operators only were interested were scaled. At page 921 to 923 the Commissioner (transcript, Byers, pages 275 and 357).

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(c) The buyer would obtain title to the land in contract made between the MacMillan and the Stoltz

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the case of a purchase of Block 195, whereas in the ordinary timber sale no title passes.

(d) There were onerous covenants limiting the time within which the timber could be held before being cut in the case of the Government timber sales. The fact that similar covenants were exacted by the Custodian should be kept in mind when considering whether the sale price obtained by him reflected the fair market value of the property.

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These additional factors are sufficient reason to increase the appraisal of the timber on Block 195 to \$4.50 per M.B.M.

Mr. Keith Shaw of the MacMillan Company gave evidence to the effect that shortly after the purchase of Block 195 by his Company, namely on August 10th 1943, a contract was executed by his Company with the Stoltze Logging Company whereby the latter Company was to buy the logs off Block 195 at the following prices:

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(1) Fir and Pine	\$4.50 per M.B.M.
Cedar and Yellow Cedar	\$3.25 per M.B.M.
Hemlock and Balsam	\$2.00 per M.B.M.

Smith's cruise only a check.

However, these stumpage prices varied and were to be increased to the current prices at the time the logs were scaled. At page 921 to 923 the Commissioner gives a resumé of the provisions of the stumpage contract made between the MacMillan and the Stoltze

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Companies, and even with the valuable provision that the price was to be on a sliding scale, he concludes with the remark that the provisions of the contract imposed an unusually heavy burden on the logger over and above what is normally in a logging contract. The figures above quoted and which were at one time the price at which the timber was sold to the Stoltze Company indicate an overall price per M.B.M. of approximately \$3.12 on a percentage analysis of the Block from cutting records of 40.0% fir and pine, 10% cedar and 50% hemlock, balsam and others. Add to the figure of \$3.12 the cost of the abnormal impositions upon the purchaser provided for in the contract and it will be seen that the contract is more inclined to show a value of \$4.50 per M.B.M. than a value of \$3.00.

The sale of the Deep Bay timber to Fletcher was on a similar basis.

E. & N. estimates indicates that it was quite usual for a purchase and Smith's cruises to cut a large overrun above notoriocally

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2. The Deep Bay Property:

(a) Standing timber:

(1) Volume:

Smith's cruise
only a check.

In the case of the Deep Bay property, liquidation proceeded on the basis of the estimate of Eustace Smith of 16,598 M feet as the volume of timber remaining on the land at the time of the sale.

Schultz's cruise is
a much more thorough
examination.

The evidence clearly shows that Mr. Smith's cruise of the area was made merely for the purpose of ascertaining the minimum volume that it

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contained. This is apparent from one of his reports to the liquidators (Exhibit 45, schedule 2) in which he says:

"I made a general examination of the timber not ... and while this was not a systematic cruise, the check I made should give a fair idea of the amounts accessible ... My check would indicate that the cruise ... is all there."

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Further, the following appears in his testimony at page 863 of the transcript:

"THE COMMISSIONER: The figure you estimate is a confirmation of the prior cruise rather than your own figures?"

A. That's right. After I had cruised it I felt sure the timber was there."

The testimony concerning the accuracy of the E. & N. cruises of the kind which Mr. Smith was checking indicates that it was quite usual for a purchase of E. & N. timber to cut a large overrun above the estimate which had formed the basis for the selling price. (pages 27, 28, 29 and 38, Kagetsu; and 383, Allison). There was also testimony to the effect that Eustace Smith's cruises were notoriously low (page 631, Pretty).

E. & N. estimates and Smith's cruises notoriously low.

It will be recalled, as mentioned previously, that the Commissioner stated ^{that} a 10% greater volume of then merchantable timber will have been removed in 1947 than a competent cruiser would to date, the following amounts of timber have

Schultz's cruise is a much more thorough examination.

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Government scales
prove an overrun
of nearly 100%

have stated to be merchantable in 1943. The overrun on Mr. Smith's cruise is nearly 100% and it would appear therefore that, on the Commissioner's own reasoning, Mr. Smith would not be classified as a competent cruiser.

The two cruises were made on entirely different bases -- one was a rough check, the other a careful inventory. Mr. Smith took five days with one other man (transcript, page 854) -- Mr. Schultz took eighteen days with three other men (page 1000). The cruises are in no way comparable.

On page 2 of Exhibit 61, which is Charles D. Schultz's report on his inventory of the timber in the Deep Bay area, it is shown that in making his estimate of the timber content of the Blocks Mr. Schultz deducted 30% for cedar and hemlock and 20% for balsam and fir to cover "breakage and defect from inspection of the ground and timber conditions". The total deduction on this account was 11,143 M feet.

While Mr. Schultz included in his cruise a report on the volume of timber between 12" and 18" D.B.H., the claimant did not include any amount in respect of this timber in his claim, because of the possible doubts that might be raised as to its "accessibility".

The Government scale records show that from the time of the sale of the Deep Bay property to date, the following amounts of timber have

Government scales
prove an overrun
of nearly 100%

been removed:

To December 1948	16,721,024 ft. (Exhibit 22)
Jan. - Dec. 1949	5,852,700 ft. (Appendix "A")
Jan. - Dec. 1950	6,002,982 ft.
Jan. - Nov. 1951	<u>2,654,128 ft.</u>
TOTAL to Nov. 1951	<u>31,230,834 ft.</u>

In addition, sufficient timber for several years' operating remains. The enforced closures due to exceptionally dry weather seriously curtailed the logging season during the year 1951 and this accounts for the drop in the volume cut in that year as compared with the previous years.

Subsequent events are tending more towards substantiating Mr. Schultz's findings of 56,500 M feet than either Mr. Smith's estimate of 16,598 M feet or the Commissioner's finding of 19,500 M feet, which included 2,500 M felled and bucked timber. It will be noticed that the Commissioner disregarded Schultz's cruise because he thought it showed 100% more than the E. & N. estimate, and yet the Government scales already show almost 100% more than Mr. Smith found in his estimate.

The evidence adduced by the claimant and the reports of the Forest Branch of the British Columbia Government prohibits any explanations of the difference between the reports of Mr. Smith and Mr. Schultz on the basis that Mr.

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Smith properly excluded hemlock on his cruise of the area. In fact, the market for hemlock was very high in both 1943 and 1944 (transcript pages 99 and 105, Burke), so much so in fact that the large New Westminster Mill of the Alaska Pine Company cut hemlock in the main rather than fir in the early forties (pages 847-848, Smith). Some logging operators took out hemlock only in 1943, one being the Pioneer Logging Company at Port McNeill (page 1095, Schultz). The report of the Forest Branch for 1943 (Exhibit 55 at page 22) shows that hemlock ranked as the next species to fir in the volume of timber cut in that year.

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Commissioner's finding means 4.5 million feet in 1948 when Schultz cruised 29.9 million and estimated a further 9.8 million.

One of the reasons for the large divergence between Mr. Schultz's findings and those of the Commissioner is to be found at page 11 of the Commissioner's Report, lines 12 to 16. The Commissioner says:

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"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 16,000 M feet, further that additional timber remained of which no estimate was furnished at the inquiry."

and at lines 31 to 32:

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"... leaving an undetermined quantity of standing timber."

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The statement that there was no evidence of the remaining timber is not correct. Reference is made to Mr. Schultz's report of his findings (Exhibit 61, page 5) which indicates that Mr. Schultz cruised 29,999 M feet of timber 18" D.B.H. and over, and estimated an additional 9,800 M feet in areas which he had not cruised.

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Commissioner's finding means 4.5 million feet in 1948 when Schultz cruised 29.9 million and estimated a further 9.8 million.

Government scales as indicated above already show that 31,230,834 feet have been removed as against 19,500 M the Commissioner estimated the stand to contain.

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The Commissioner's finding in respect of the Deep Bay timber was 17,000 M feet of standing timber as at the date of sale (bottom of page 11 of his report). The actual amount of timber scaled from the date of sale to December 1948 was 16,721,024 (Exhibit 22), but 2,500 M feet of this was already felled and bucked, leaving the amount cut at 14,221,024 feet. On the generous assumption that up to the time of the Schultz cruise in November 1948 only 14,000 M feet had been cut and for the sake of argument taking the Commissioner's adjustment figure of 10% and applying it over the whole period from the time of the sale, in order to translate the 14,000 M feet into 1943 figures we find that this cut represents approximately 12,500 M feet of the 17,000 M feet found by the Commissioner. If we take Mr. Schultz's finding -- 29,999 M feet cruised and 9,800 M feet estimated, making a total standing timber of 39,799 M feet and again merely for the sake of argument, applying the Commissioner's

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10% factor, we arrive at a comparable 1943 figure of 36,000 M feet for the whole or 27,000 M for the cruised timber alone.

This means that if the Commissioner's findings are to stand, the only conclusion can be that while the Commissioner's finding indicates that only 4,500 M of timber remained standing at the time of Mr. Schultz's cruise, Mr. Schultz in fact cruised 27,000 M feet of standing timber and estimated the total content remaining at 36,000 M feet -- and this is after making every concession against the accuracy of the Schultz report, although, as indicated above, Mr. Schultz conservatively has made very generous allowances in this respect in the report itself.

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Government scales as indicated above already show that 31,230,834 feet have been removed as against 19,500 M the Commissioner estimated the stand to contain.

There is one further matter in respect of which the Commissioner has fallen into error in assessing the volume of the timber on the Deep Bay property. At page 11 of his report, lines 19 to 26, the Commissioner sets out what is to his mind strong evidence of the inaccuracy of Mr. Schultz's report:

"The estimate by Schultz shows half as much timber on three blocks, two of which were partly logged, as the entire area was estimated to contain when bought by the claimants. Conservative as the E. & N. cruises are shown to have been, it is not conceivable that the total area contained 100% more timber than was estimated by E.

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 & N. Railway Company cruises which must be the case if the Schultz estimate is accepted."

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 This then is the basis on which the Commissioner has refused to rely on the painstaking and exhaustive enquiry made by Mr. Schultz and has relied instead on the general appraisal of Mr. Eustace Smith who was however only interested in seeing whether a previous cruise was "all there" and whose cruise was not made on a systematic basis (transcript, page 829, Smith).

It will be noted that at page 11, line 3 of his report, the Commissioner says:

"There is evidence that the entire area of eleven blocks, when acquired by the claimants from the E. & N. Railway Company was estimated to contain 88,000 M feet."

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 This no doubt is the figure which the Commissioner has in mind when making his criticism of the Schultz Cruise. In fact, as will be seen from Exhibit 63, the volume of 88,552 M feet represents the total of the E. & N. cruises for eight blocks only, namely Blocks 198, 256, 267, 276, 274, 504, 566 and 617. The same exhibit shows the volume on ten blocks as 96,585,100 feet. There was evidence that up to the time of the sale by the Custodian some 112,431 M feet had been cut from Kagetsu's Deep Bay property. Add to this Schultz's estimate of the remainder at its full amount without any allowance for changed conditions, attitude would be to disregard any cruise which

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that is 56,520 M feet, and a total of 168,520 M feet is arrived at as the total volume both before and after the sale. The difference between this and the E. & N. cruises is 71,935 M feet, which makes the overrun 74%.

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If the 10% allowance is made on the Schultz cruise, the figure for the volume remaining at the time of the sale by the Custodian is 51,382 M feet. The total volume would then be 163,815 M feet, the difference between this and the amount indicated by the E. & N. cruise is 67,230 M feet and the percentage overrun only 70.0% which is considerably below the 100% which the Commissioner held sufficiently inconsistent with his own knowledge of the subject, of which he took judicial notice, to entitle him to disregard altogether the evidence given by Mr. Schultz as to the results of his cruise.

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As indicated above, the Government scales will in a year or so show that 100% more timber has been cut than Eustace Smith estimated the Deep Bay area to contain at the time of the sale by the Custodian. Mr. Smith's cruise was, as has been shown, based on the prior E. & N. estimate. It follows therefore that the Commissioner's premise that any cruise which shows 100% more timber than the volume at which the lands was sold by the E. & N. must be disregarded, must itself fall to the ground. The more logical attitude would be to disregard any cruise which

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shows 50% of the volume at which the timber is finally sealed.

Blocks between the date of sale and the date of

In his comparison of the volume found by the Schultz cruise. However, even if these

Mr. Schultz on three Blocks with the total three Blocks did contain half as much timber as

volume disclosed by the E. & N. cruises, the the E. & N. cruises indicated the whole area to

Commissioner is no doubt referring to Blocks contain, this is not a sufficient ground on

617, 504 and 566, since Schultz shows these which to reach the conclusion that Schultz's

as containing the greatest amount of timber. estimated volume on the three Blocks is absurd

The factors of merchantability and accessibility in the absence of evidence that the relative

and the conservative nature of the E. & N. areas of all the Blocks and the quality of the

cruises rule out any possibility that the E. & N. timber stands on each were the same. In fact,

cruises included timber below 18" D.B.H., and the areas on the Blocks varied from as little

further the claim with regard to the Deep Bay as 387 acres for Block 256 to 1400 acres for

property is limited as previously mentioned to Block 276. timber of 18" D.B.H. and over. In order that

Further, as mentioned previously the volumes the Schultz cruise may best be compared with

estimated by the E. & N. are not a safe basis the E. & N. cruises therefore the estimates for

for comparison. Evidence was given that such 18" D.B.H. and over only should be referred to.

estimates have always been low (page 38). As shown in Exhibit 61 on the consolidated

Allison) and that systematic cruising methods table of volumes at page 26, the net volume of

were not inaugurated until 1940 (page 38). timber 18" D.B.H. and over which Mr. Schultz

Smith). Add to this the fact that some of the found on these three Blocks is as follows:

sales were made as far back as 1929 when utilization was considerably lower than at the

Block 617 18,602 M feet date of sale by the Customs and it is not

Block 504 7,513 M feet Block 566 2,331 M feet

surprising that the claim that the Commissioner should find such a large

TOTAL 28,446 M feet

Thus in fact Schultz has found about a quarter as much timber on these three blocks as the whole

was found to contain by the E. & N. ^{cruise} although

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this comparison does not take into consideration so much of the 16,721 M feet as came off the the Blocks between the date of sale and the date of the Schultz cruise. However, even if these three Blocks did contain half as much timber as the E. & N. cruises indicated the whole area to contain, this is not a sufficient ground on which to reach the conclusion that Schultz's estimated volume on the three Blocks is absurd in the absence of evidence that the relative areas of all the Blocks and the quality of the timber stands on each were the same. In fact, the areas on the Blocks varied from as little as 387 acres for Block 256 to 1400 acres for Block 276.

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Further, as mentioned previously the volumes estimated by the E. & N. are not a safe basis for comparison. Evidence was given that such estimates have always been low (page 383, Allison) and that systematic cruising methods were not inaugurated until 1940 (page 829, Smith). Add to this the fact that some of the sales were made as far back as 1929 when utilization was considerably lower than at the date of sale by the Custodian and it is not surprising that the claimant and his successors should find such a large overrun. Mr. Smith, while undoubtedly capable of making a more accurate cruise, was not called upon to do so on this occasion. The suspicions of Counsel for

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the claimant were at once aroused when it was noticed that the estimate by the E. & N. of the volume for Block 617, namely 7,298 M feet, was identical with the volume report by Eustace Smith for that same Block. (See Smith's letter to P. S. Ross & Son, October 24th 1944, and his report of August 16th 1923 where he says "my check would indicate that the cruise of 7,298 M feet is all there", -- schedules 8 and 2 respectively to Exhibit 45). When asked to account for this on cross-examination, Mr. Smith first denied that any reference had been made by him to the earlier E. & N. cruise (page 860, transcript), but on reconsideration he admitted that what he had done was merely to check the E. & N. cruise (page 862).

(ii) Quality:

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With regard to the quality of the timber in operation as one of salvage must therefore fall the Deep Bay area, the following opinions were expressed during the course of the hearing: Mr. Schultz's cruise shows, one-third of the The grades in fir were very much above timber content of the stand remained to be cut. average. (Byers, page 257)

(iii) Price Mr. Schultz said "it is an extensive

Price should be \$4.00 per M.B.M.
area and it is relatively speaking an area of easy country". (page 1079) which occurred at or He took strong exception to the suggestion that all that remained was a salvage operation and to the suggestion that the bodies of timber remaining here were patches. (Page 1090)

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In confirmation of Mr. Schultz's description of the operation, it might be pointed out that whereas the so-called patches which formed the Deep Bay timber sale measured respectively 994, 652 and 176 acres in size (see map annexed to Exhibit 61) the average size of Government timber sales in the Vancouver district in 1944 was only 164 acres (Exhibit 56, page 36). Fair sized operations have taken place in the area for six years.

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The Commissioner has accepted Mr. Smith's classification of the operation as one of salvage, but that conclusion must surely have been reached on the basis of the volume which he found the area to contain. As already demonstrated, the Commissioner was under a misapprehension as to the evidence which had been given and his classification of the operation as one of salvage must therefore fall with his findings as to volume. In fact, as Mr. Schultz's cruise shows, one-third of the timber content of the stand remained to be cut.

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(iii) Price:

Price should
be \$4.00 per
M.B.M.

With regard to price, the evidence of sales of comparable stands of timber which occurred at suggested at least \$3.75 per M.B.M. cash for the Deep Bay area timber. property by the Custodian should be stressed.

The average bids received by the Government Mr. W. J. Allison, a well-known logger, referred to a purchase of 16,000 M feet of timber at 56, page 5537).

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Nanoose on Vancouver Island for a lump sum payment which worked out to \$4.93 per M.B.M. (transcript, page 367). Mr. Allison thought therefore that \$4.00 per M.B.M. was a very reasonable price for the Deep Bay stand (page 405). Mr. Schultz who had in fact seen the timber to which Mr. Allison was referring, testified that it was inferior to that contained on the Deep Bay property (pages 521, 1033). Mr. Brown gave evidence of a sale of a block of timber at Harrison Bay, British Columbia, in 1944 for a price of \$2.75 per M.B.M. This block however carried royalty and the timber from it was not exportable and in Mr. Brown's opinion it would probably have fetched \$3.75 or \$4.00 if it had been royalty-free (page 577). Further, he gave evidence of a purchase of a block in 1945 eleven miles from tidewater and very comparable to the Deep Bay property for \$4.75 per M.B.M. (pages 568 to 570). Mr. Charles N. Pretty, a timber broker, told in his testimony of a sale negotiated in 1943 on which the price was according to his calculations \$4.75 per M.B.M. (pages 623 to 627). The size of this timber was comparatively small and Mr. Pretty suggested at least \$3.75 per M.B.M. cash for the Deep Bay area timber.

The average bids received by the Government for timber sales in 1944 were as follows (Exhibit 56, page DD37):

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Fir

Cedar

Hemlock

Balsam

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Additional
factors.

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adversely affected the value of the claimant's property. Fir \$2.57
Cedar \$2.95
Hemlock \$1.58
Balsam \$1.64

When similar allowances are made as were made with regard to Block 195 (see page 15 of this memorandum) we have the following result:

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	<u>Stumpage</u>	<u>Royalty</u>	<u>Export</u>	<u>Total</u>	<u>Less 10% for cash</u>
Fir	\$2.57	1.22	.75	4.54	4.09
Cedar	2.95	1.22	.75	4.92	4.43
Hemlock	1.58	.60	.75	2.93	2.64
Balsam	1.64	.60	.75	2.99	2.69

10% allowance for compulsory taking refused.

According to the percentages of the various species found in the Schultz cruise (Exhibit 61, page 3), namely fir 32.5%, cedar 12.7%, balsam 7.8% and hemlock (in which is included all other species) 47%, the average price per M.B.M. for the stand is \$3.44.

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Again noting the factors which have not been considered in this calculation -- the better than average quality of the Deep Bay stand, the slight competition which gave rise to the figures above quoted and the fact that title went with the Deep Bay land -- it is seen that a figure of \$4.00 per M.B.M. is easily arrived at.

loss of value due to personal absence of Kagetsu.

Additional factors.

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There are many additional factors which, while no numerical value can be set on them in order to ascertain the exact degree in which they have purchase a large adjacent tract of land.

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terms of sale by
custodian resulted
in lower price.

Kagetsu's
operations were
a going concern
when he left, but
not sold as such

10

10% allowance
for compulsory
taking refused.

Kagetsu was denied
access to his own
records.

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Loss of value due
to personal
absence of Kagetsu.

Documents missing.

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adversely affected the value of the claimant's property, must not be overlooked if justice is to be done.

In the first place, the Commissioner has not set any value upon the fact that the claimant's logging operation was a going concern (transcript pages 43-44). In the words of Mr. Byers (pages 266 to 267) "it was very efficiently managed and as far as forest protection and utilization was concerned it was as good as any other" and "it was what we consider one of the better managed operations".

Strong arguments were advanced by Counsel for the claimant that an additional award of 10% should be made for compulsory taking, as decided by the Supreme Court of Canada in Diggon-Hibben V. The King (1949) S.C.R. 712. The Commissioner has referred to this case at page 5 of his report but he merely says that the case is not applicable to sales made by the Custodian and gives no reason for this decision.

The removal of the claimant from the field of operations upon the expropriation and sale of his property resulted in a loss to the timber operation of the benefits to be derived from the personal contacts established by the claimant. The chief one of these was an understanding between the claimant and the officers of the E. & N. Railway Company that he would have the option to purchase a large adjacent tract of timber.

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Terms of sale by
Custodian resulted
in lower price.

Price should
be \$6.50 per
M.B.M.

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The terms of sale extracted by the liquidators were very unattractive to the industry (see Exhibits 28 and 46): there was to be no warranty of title, a provision for the immediate cutting of the timber (transcript, pages 726, 727, Wray) and a provision that the highest bid would not necessarily be accepted. Mr. Brown pointed out the adverse effect of the stipulation as to early logging as preventing any element of speculation for a future lucrative market from entering into the consideration of prospective purchasers and that this would have had a special value since at that time the upward trend of the timber market was well known (page 587).

considered to have been undervalued.

There are certain other factors which most seriously prejudiced Mr. Kagetsu in making his claim:

logs cold-decked, so that an increase of the stumpage

After the time of his evacuation, he did not have access to records which were vital to the evaluation of the various properties. He was forced to rely on his memory and to resort to

guesses even at the time of drafting his initial claim (pages 93, 115, 118, 137, 180 to 181, 184, his Kagetsu). the claimant pointed out that some

Further, certain documents which would have been of assistance at the time of the inquiry were not available because they had been lost. (page 481, Baldwin, and page 738, Wray).

For these reasons the early estimates which the claimant made as to the value and the size of

Kagetsu was denied
access to his own
records.

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700 M feet of
cold-decked logs
worth an addition-
al \$3.50 per
Documents missing.

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the logging operation should not prejudice the later claim made on the basis of more detailed information.

Price should be \$6.50 per M.B.M.

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(b) Felled and Bucked and Cold-Decked Timber:

There was some 2,500 M. feet of felled and bucked timber in the woods at the time of the sale. Since the Commissioner's finding of \$2.50 per M.B.M. as the value of the standing timber was far too low and since the value of the felled and bucked timber is dependent on the stumpage price of the standing timber (page 13 of report), an increase should be made in the value of the felled and bucked timber equal to the amount by which the standing timber is considered to have been undervalued.

For a stumpage price of \$2.50 per M.B.M., the Commissioner set a value of \$5.50 per M.B.M. of logs cold-decked, so that an increase of the stumpage price to \$4.00 means at the least that the value of the felled and bucked timber should be increased to \$6.50.

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There is a further omission by the Commissioner which should be rectified. At pages 51 to 52 of his testimony the claimant pointed out that some 700 M feet of the felled and bucked logs had been piled ready for loading.

700 M feet of cold-decked logs worth an additional \$3.50 per M.B.M.

By reference to page 2 of Exhibit 62, the proportionate cost of this part of the operation can be determined. The cost of cold-decking is estimated to be \$1.50 per M.B.M., the cost of

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 yarding alone (not including loading) can be considered as at least \$1.50 of the total of \$2.75 for the two operations. To this must be added a proportionate amount of the overhead which would very easily be 50¢. The total cost of piling logs ready for loading can therefore be considered to be \$3.50 per M.B.M. and for the 700 M feet of timber which had undergone that further stage of the logging operation, a further sum of \$2,450.00 should be awarded.

The award of \$12,500.00 made by the Commissioner under this heading should therefore be increased to \$18,700.00 made up as follows:

2,500 M feet at \$6.50	\$16,250.00
700 M feet at \$3.50	2,450.00
	<u>\$18,700.00</u>

3. Logging Railway on Deep Bay Property:

(c) Immature Stands:

Logging railway had peculiar value to claimant
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 The value of this item as determined by the Commissioner at \$1.50 per acre (page 14 of his report) is far too low and should be revised upward in line with the values shown on the letter from the British Columbia Forest Service which is copied on page 22 of Exhibit 61.

From this letter it is apparent that the Forest Service in estimating fire damage placed a value of up to \$28.00 per acre for sixty-year stands in 1944. The Commissioner purported to make his award on the basis of the value of these lands to the claimant, and yet the value which the Commissioner

Logging railway had peculiar value to claimant

Railway was worth at least 50¢ per M ft. of timber.

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has found is far below their value to the claimant.

It must be remembered that the claimant continued to pay taxes on these lands and in some instances had done so over a great number of years. The price of Government wild lands was \$5.00 per acre (transcript page 1168, Smith) and even if that value were set upon the claimant's land the award would have been \$27,500.00. Mr. Schultz's report shows a value of \$7.75 per acre on the average (Exhibit 61, page 20) based on Forest Service values.

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In these circumstances, the award should be at least \$5.00 per acre and the full award of \$43,225.00 as claimed and as supported by evidence should be given full consideration.

3. Logging Railway on Deep Bay Property:

The railway line at Deep Bay had a peculiar value to the claimant. Smaller logging operators, whose numbers increased greatly during the war, preferred to invest their money in trucking operations because of the smaller amount of capital and planning required for a successful operation. The majority of the smaller operators were not experienced in railway operations and this meant that the Deep Bay property had a greater value to the claimant or to any other logger who had had that experience.

The claimant places a value of 50¢ per M feet of timber on the railway that existed at the date of sale. It must be pointed out that, contrary to the Commissioner's understanding (page 15 of his report), this value has not been set with a view to logging any lands other than those which

Logging railway had peculiar value to claimant

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Railway was worth at least 50¢ per M ft. of timber.

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1 are the subject matter of this claim. Mr. Eustace Smith, although he did not himself consider it feasible to use the railway, conceded that if put into use, it would have a value of 50¢ on every M feet of timber for which it was available (transcript page 807). Mr. Allison, a logger very familiar with railway operations, gave testimony to the effect that just prior to 1944 railway logging was supposed to be economical (page 367). At page 368 he testified that his company computed that a railway line had a value of 10¢ per mile per M feet of available timber. As the Deep Bay property contained eight and one-half miles of standard gauge railway, a claim of 85¢ per M feet would be justified.

10 Further, there was no evidence given as to the claimant's intention of converting to truck hauling, and judging by the fact that he had just spent \$4,000.00 for a brand new speeder and by the success of the operation under his own management, it is clear that he had every intention of continuing to run a railway operation.

20 The value to the owner can therefore be considered to be 50¢ times 56,520, or such other amount as may be determined as the amount of standing timber remaining at Deep Bay at the time of sale.

30 Even if it is the value to the purchaser which is considered, which it is not, the value of \$1000.00, set by the Commissioner for the four and one-half miles of road bed actually used, is too low. The amount awarded by the Commissioner works out at \$225.00 per mile. The opinions as to the cost of roads in the Deep Bay area varied, but the figures \$6,000.00 and \$10,000.00 (page

1 5. Costs:

In preparing his claim and conducting the hearing before the Commissioner, the claimant has incurred expenses in excess of \$30,000.00, apart from Counsel fees. The Commissioner, however, obviously through an oversight, has failed to make any recommendation as to costs.

10 In the case of some of the claims, the award as to costs has been made on the basis of 5% of the total awards, but this is completely unsatisfactory in the present case, which was the largest claim before the Commission in British Columbia. The claims as to which the percentage was applied were almost entirely claims in respect of farming properties of small value and values were easy to determine. In those cases, no questions of increased utilization of timber, scaling, fluctuating market values, timber estimates and so on, arose.

20 The hearing went on for sixteen days and its detailed and complex nature necessitated the collecting of a mass of technical and expert evidence. More especially was this so because Kagetsu himself had, through the action of the Government, been forced to be absent from his operations for such a long period.

The value and importance of this evidence and particularly the major item of the Schultz cruise is borne out by subsequent events, for the Government records of the timber actually cut now prove Schultz's careful estimates to have been entirely accurate.

30 The proper basis for the settlement of the claim for costs is to make allowance for actual disbursements,

1 including travelling expenses and of course the costs
of liquidation.

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APPENDIX "A"

TIMBER SCALED FOR T'SABLE RIVER LOGGING COMPANY
UNDER TIMBER MARK 2K9 IN F.B.M.

(Exhibit 22 Figures brought up-to-date)

	Mar - Nov 1946	Jan - Dec 1947	Jan-- Dec 1948	Jan - Dec 1949	Jan - Dec 1950	Jan - Nov 1951	Totals
Fir							
#1	113,489	325,136	384,142	258,508	263,728	146,489	1,491,492
#2	1,308,632	1,532,655	2,425,077	1,902,943	2,380,671	822,311	10,372,019
#3	611,103	407,424	1,179,066	1,157,388	1,246,673	291,118	4,892,772
TOTAL	2,033,224	2,265,215	3,988,215	3,318,639	3,891,072	1,259,918	16,756,283
Cedar							
#1	72,518	144,809	12,861	41,193	84,422	119,346	375,149
#2	573,992	1,050,391	354,546	358,039	396,952	217,933	2,951,853
#3	455,187	667,435	646,138	518,246	665,819	216,212	3,169,037
TOTAL	1,101,697	1,862,635	1,013,545	917,478	1,147,193	453,491	6,496,039
Remlock							
#1	22,198	63,865	51,030	51,358	112,534	32,082	333,067
#2	149,241	625,703	177,038	166,872	265,588	108,115	1,492,557
#3	400,528	876,093	392,231	719,365	310,998	388,355	3,087,570
TOTAL	571,967	1,565,661	620,299	937,595	689,120	528,552	4,913,194
Balsam							
TOTAL	397,774	617,655	300,097	463,971	257,021	312,665	2,349,183
Cypress							
#1			1,985		1,051	3,031	6,067
#2		31,274	33,444	10,405	512	17,080	92,715
#3	8,727	80,387	97,751	66,600	3,307	47,172	303,944
TOTAL	8,727	111,661	133,180	77,005	4,870	67,283	402,726
Pine							
#1				1,322			1,322
#2	619	9,949	19,749	49,358	1,297	18,180	99,152
#3	22,941	26,519	26,715	40,363	1,667	14,039	132,244
TOTAL	23,560	36,468	46,464	91,043	2,964	32,219	232,718
Others							
TOTAL	10,094		12,886	46,969	10,742	-	80,691
GRAND TOTAL	4,147,043	6,459,295	6,114,686	5,852,700	6,002,982	2,654,128	31,230,834

APPENDIX "B"

TIMBER SCALED FOR STOLTZE LOGGING CO. LTD. UNDER TIMBER MARK 1C6

(Exhibit 23 brought up-to-date)

	Feb - Dec 1944	Jan - Dec 1945	Jan - Dec 1946	Jan - Dec 1947	Jan - Dec 1948	Jan - Dec 1949	Jan - Dec 1950	Jan - Nov 1951	Totals
Fir									
#1	81,251	553,026	776,770	604,130	800,049	309,818	69,101	123,296	3,317,441
#2	3,393,636	2,887,834	2,939,085	2,900,708	2,686,995	2,440,392	1,138,298	1,178,864	19,565,812
#3	1,407,226	920,978	1,101,860	1,439,071	1,245,839	989,182	629,660	639,114	8,372,930
TOTAL	4,882,113	4,201,020	4,017,712	4,742,207	4,124,002	2,729,292	1,837,059	1,941,274	31,256,183
Cedar									
#1	6,012	77,362	281,007	173,725	37,002	31,915	3,085	16,904	627,012
#2	210,843	715,637	1,650,139	1,022,661	607,303	218,942	75,333	97,568	4,598,426
#3	468,019	480,726	1,008,924	892,132	603,491	374,696	242,360	215,591	4,285,939
TOTAL	684,874	1,273,725	2,940,070	2,088,518	1,247,796	625,553	320,778	330,063	9,511,377
Hemlock									
#1			173,344	171,198	65,485	61,937	12,464	6,135	490,563
#2			703,714	1,015,573	690,760	670,097	198,893	85,949	3,364,986
#3			1,777,399	3,766,046	974,475	1,879,727	842,889	334,328	3,929,091
Ungraded	3,448,950	2,242,028	1,073,982	4,952,817	3,610,447	2,669,271	1,054,246	426,412	22,864,644
TOTAL	3,448,950	2,242,028	3,728,439	4,952,817	3,610,447	2,669,271	1,054,246	426,412	22,864,644
Balsam									
TOTAL	32,786	569,580	4,079,933	4,391,897	2,286,804	743,363	19,631	64,525	12,188,519
Cypress									
#1			11,316	54,797	25,258	7,007			
#2		1,976	61,318	240,054	86,656	9,511			
#3		3,243	57,369	316,423	116,841	11,082			
TOTAL		5,219	130,003	611,274	228,735	27,600			
Pine									
#1	1,238	6,318	2,194	4,461	3,988				
#2	124,639	118,971	47,610	10,282	42,927				
#3	67,525	59,112	23,862	10,157	30,086				
Ungraded			110,750	223,577	77,474				
TOTAL	193,402	184,401	184,416	244,016	135,044				
Others	2,483				19,770				
GRAND TOTAL	9,244,608	8,636,791	15,880,576	17,232,431	12,203,909	8,781,263	3,318,224	2,768,900	78,066,702

Japanese Losses Claim No. 1388 Schedule
of expenses incurred by Eikichi Kagetsu
in respect of the claims of Deep Bay
Logging Company Ltd. and the said Eikichi
Kagetsu.

Professional Services:

Allison, W.J., logger and mill operator witness at the hearing	\$14.00
Arikado, H.S., former bookkeeper of Mr. Kagetsu, services rendered in assisting in preparation of claim, travelling from the East and living expenses, 38 days	832.55
Brown, Fred B., logger, witness at hearing, one day	7.00
Brewin, F.A., Barrister & Solicitor, travelling and living expenses of attendance at hearing, 15 days (Solicitors fees of \$1800.00 not charged)	423.60
Byers, William, consulting forester and timber broker witness at hearing and general adviser	822.06
Campbell & Pound Ltd., real estate agents, valuation and compilation of comparative sale evidence	37.50
Clement, J.W., agrologist, witness at hearing, service rendered in surveying agricultural land	203.00
Gardiner, Harold, forest engineer, witness at hearing and adviser, one day	15.00
Ito, S., interpreter for counsel, travelling from the East and return and living expenses, 21 days	638.50
Johnson, Sidney L., witness at hearing	7.00
Kagetsu, E., Mr. Kagetsu's personal expenses in coming from Ontario to attend and give evidence at the hearing, travelling and living expenses for 59 days	839.05
Kagetsu, H., forest engineer, organizing evidence and technical advice, travelling from Ontario and return, and living expenses	938.10
Leckie, James, preliminary clerical work in brief- ing data from files of T.G. Norris and Custodian	100.00
Marguilese, Florence M., searching Forestry Depart- ment and Land Registry files in Victoria	
Fee	\$ 180.00
Disbursements	\$ <u>131.70</u>
	311.70
Peat, Marwick, Mitchell & Co., accountants, ad- vising and preparing statements	35.00
Pretty, Charles N., timber broker, witness at hearing, one day	<u>7.00</u>
Carried Forward	5231.06

Brought Forward	5231.06
Swanson, R.E., chief inspector, Department of Railways, witness at hearing, one day	7.00
Schultz, C.D., forest engineer, considerable ser- vices rendered in cruising and mapping on Vancouver Island	7739.54

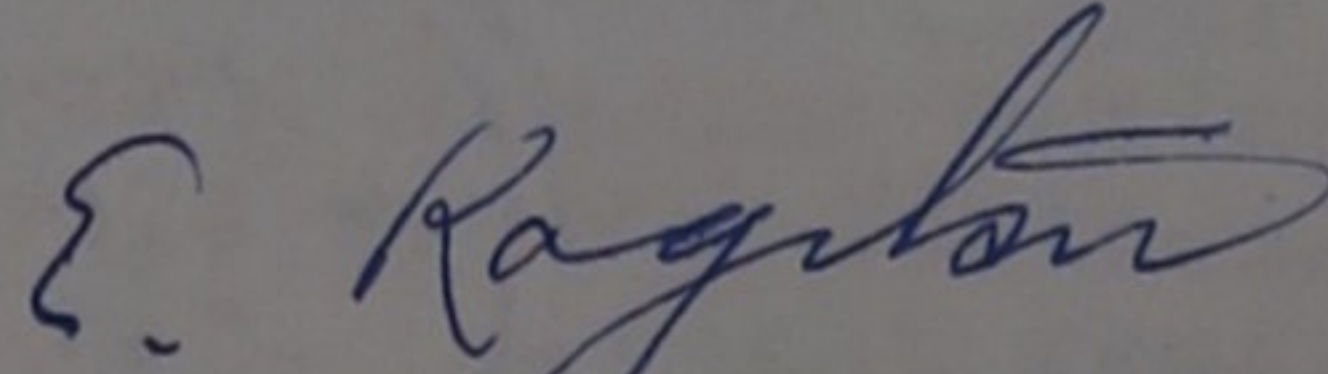
Miscellaneous

Exchange	1.87	
Express	2.32	
Forest Service	38.00	
Land Registry Office	.50	
Maps & Blueprints	11.75	
Proportionate expense of trip to Toronto by Mr. Norris in preparation for hearing	56.25	
Registrar of Companies	1.50	
Telephone and telegraph	<u>41.42</u>	156.63

Liquidation expenses charged by the Custodian

To Deep Bay Logging Company Ltd.	17,162.38
To Eikichi Kagetsu	<u>1,497.84</u>
	\$31,794.45

I confirm the above as the total of
disbursements for which I wish to
claim.



Eikichi Kagetsu

May 28th, 1951.

J. C. Osborne, Esq.,
June 2nd, 1951.
Page 2.

June 2nd 1951.

the maximum amount allowed. He should, in fact, get the total amount of his claim for expenses.

J. C. Osborne, Esq.,
c/o Messrs. Gowling, McTavish, Watt & Osborne,
Barristers, etc.,
56 Sparks Street,
Ottawa, Canada.

Dear John:

Re: E. Kagetsu and Deep Bay
Logging Co. Ltd.

You will probably remember that Mr. Justice Bird of the Court of Appeal of this Province was appointed a Commissioner two years ago to fix compensation payable to Japanese who were displaced at the beginning of the War and whose properties were sold.

I acted for E. Kagetsu and the Deep Bay Logging Company which was controlled by Mr. Kagetsu. They were the owners of certain timber limits, logging equipment, logging camp, logging railway, etc., which were taken over and sold by the Custodian of Alien Enemy Property during the War. I might mention that Mr. Kagetsu was a British Subject. The Commissioner awarded a shockingly low amount by way of compensation to my clients and I propose to endeavour to have some additional allowance made to him.

In addition to the amount of compensation awarded, those who were awarded compensation are to receive the expense of presenting their cases but not Counsel fees. For the present I am lodging a claim for these expenses and have presented the same to Mr. Fred Shears, the local representative of the Custodian of Alien Enemy Property. I enclose herewith a copy.

Shears is not sympathetic to my clients. Kagetsu has lost the fruits of his whole life's work and for years has been a most patriotic and public-spirited citizen.

TON:ET
ENCL.

I would be glad if you would keep in touch with the situation at Ottawa and see if you cannot get

J. C. Osborne, Esq.,
June 2nd, 1951.
Page 2.

the maximum amount allowed. He should, in fact, get the total amount of his claim for expenses.

I suggest that you get in touch with the appropriate official, have him advise you when Mr. Shears' recommendation comes forward, making such representations as you can on behalf of my clients to the end that the award will be a fair one.

Mr. Kenneth Wright, K.C., who was with the Custodian's Branch, has in the past been helpful. He understands my clients' story quite well as he was out here in the early stages after Japan came into the War. You might, at the same time, find out what prospect there is of having the award of compensation itself increased. I think that if necessary I can have some political pressure put upon the Government. My clients' claim was the largest one in British Columbia and, as I see it, the small claimants were treated quite generously at the expense of my clients.

After you have made your preliminary contacts, please write me and I will give you such information in answer to arguments raised against the claim for expenses as forwarded herewith.

I am leaving for Nelson on Monday and will be absent for about three weeks on some heavy litigation, but my office will be in touch with me throughout. I am anxious that this matter should go forward as far as it can in my absence and I can see that you are kept posted as to any particulars you may require as you call for them.

Kind regards.

Yours very truly,

I will be glad to have your opinion in the circumstances.

TGN:mt
ENCL.

GOWLING, MacTAVISH, OSBORNE & HENDERSON

BARRISTERS & SOLICITORS

COUNSEL

LEONARD W. BROCKINGTON, Q.C., LL. D.

TELEPHONE 2-1781
CABLE, HERSON

88 METCALFE STREET
OTTAWA, 4,
CANADA

E. GORDON GOWLING, Q.C.
DUNCAN K. MacTAVISH, Q.C.
ROBERT M. FOWLER
JOHN C. OSBORNE
GORDON F. HENDERSON
RONALD C. MERRIAM
ADRIAN T. HEWITT
JOHN CAMPBELL VIETS
G. PERLEY-ROBERTSON
DAVID WATSON
E. PETER NEWCOMBE

July 11, 1952.

RECEIVED

JUL 14 1952

T. G. NORRIS

Per Mal

Colonel T. G. Norris, Q.C.,
602 Hastings St. W.,
Vancouver 2, B.C.

Dear Colonel Norris: Re: Kagetsu

I am enclosing herewith a copy of a letter that I am to-day writing to Mr. Kagetsu together with a copy of the letter from Mr. Wright referred to therein.

The offer that has been made is, in my view, the only one that is likely to be made by the Custodian or his Associates unless we are able to bring some political pressure to bear. At one time I was even doubtful whether the 5% would be offered so that the present communication is some advance over the earlier attitude that was adopted by the Custodian. You will remember that we originally encountered a ruling that payment of a further amount for expenditures other than legal fees would not be entertained.

I will be glad to have your comments and instructions in the circumstances.

Yours very truly,

John A. Osborne

JCO:JSD
Encl.

COPY

GOWLING, MACTAVISH, OSBORNE & HENDERSON
BARRISTERS & SOLICITORS

E. GORDON GOWLING, Q.C.
DUNCAN K. MACTAVISH, Q.C.
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DAVID WATSON
E. PETER NEWCOMBE

COUNSEL
LEONARD W. BROCKINGTON, Q.C., LL.D.

TELEPHONE 2-1781
CABLE, HERSON

88 METCALFE STREET
OTTAWA 4,
CANADA

July 11, 1952.

E. Kagetsu, Esq.,
8 Mountview Avenue,
Toronto 9, Ontario.

Dear Mr. Kagetsu: Re: Japanese Claims Case

I am enclosing herewith an Official Communication
that I have received from the Custodian's Office.

I do not propose to take any action with reference
to this offer until I have heard from you and Colonel Norris. I
am, of course, sending a copy of this letter and of Mr. Wright's
letter to Colonel Norris for his consideration.

Yours very truly,

"John C. Osborne"

JCO:JSD
Encl.

C
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P
Y

LETTERHEAD OF
DEPARTMENT OF THE SECRETARY OF STATE

File No. 16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

July 10th, 1952.

John Osborne, Esq.,
Gowling, MacTavish, Osborne & Henderson,
Barristers & Solicitors,
88 Metcalfe Street,
Ottawa 4, Ontario.

Dear Mr. Osborne:

Re: Japanese Property Claims Commission
Claim No. 1388 - Kagetsu - Deep Bay
Logging Company Limited.

I am directed by the Deputy Custodian to inform you that the Secretary of State has examined very carefully the claim of the above named, covering expenses other than legal fees.

The Minister has decided to offer you 5% of the award of \$51,750.00, i.e. \$2,587.50, in final settlement of the claim for expenses incurred in the presentation of same to the Bird Commission. This 5% is authorized by the Honourable Mr. Bradley on the basis of the informal recommendation of Mr. Justice Bird in favour of certain other claims.

It has also been decided that no payment is to be made further than the award of \$51,750.00 as recommended by Mr. Justice Bird herein.

Before remitting we will require a release form, duly executed, as well as authority to pay solicitors fees direct. Colonel Norris is probably familiar with our requirements, but if not Mr. Shears, former Director in Vancouver, will furnish same. The Office in Vancouver is closed but Mr. Shears may be contacted at 4615 West 9th Avenue, Vancouver, B.C.

In accord with the request made in your letter of May 30th, 1952, I return the following Exhibits:

- Exhibit 5 - copy of Sheenan's cruise of Block 195, made about 1923.
- Exhibit 36 - P.S. Ross & Sons' report on tenders for Block 195, dated May 21st, 1943.
- Exhibit 53 - copy of Eustace Smith's report of Block 195, dated March 23rd, 1940.
- Exhibit 55 - Annual Report of Forest Branch for 1943.
- Exhibit 45 - P.S. Ross & Sons' Report on Liquidation of Deep Bay Logging Co. Ltd. dated March 19th, 1945.
- Exhibit 22 - Extract from Government Scale of logs cut under timber mark 2K9.
- Exhibit 23 - Extract from Government Scales of logs cut under timber mark 1C6.

- Exhibit 61 - Schultz's report on a forest inventory
of the Deep Bay operation, dated
December 1948.
- Exhibit 56 - Annual Report of Forest Branch for 1944.
- Exhibit 62 - Schultz's stumpage appraisal of
merchantable timber on Deep Bay
operation, dated December 1949.

Yours very truly,

"K.W. Wright"

K.W. Wright,
Chairman, Administration Board,
and Chief Chairman.

KWW/G
Encls.

Encl.

O t t a w a
December 5, 1952

Honorable R. O. Campney,
Solicitor General,
O t t a w a

Dear Ralph:

I am enclosing herewith copy of a letter which I have written to the Secretary of State in connection with a case arising out of the removal of persons of Japanese origin from the defence zone in British Columbia.

The letter is self explanatory.

As I doubt if Mr. Bradley could take any action in the matter without reference to Cabinet, I would like to discuss the matter with you at a time that would be convenient to you.

Yours sincerely,

Angus MacInnis

Encl.

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O t t a w a
December 5, 1952

Honorable F. G. Bradley,
Secretary of State,
O t t a w a

Dear Mr. Bradley:

Re: Japanese Property Claims
Commission, Claim No. 1388
E. Kagetsu, Deep Bay
Logging Co. Ltd.

My attention has been drawn to the award made by the Custodian of enemy alien property in the above claim. Perhaps I should have said the award made by the Commissioner who was appointed to look into these claims.

I have carefully examined the records in regard to this claim and I am firmly of the opinion that a grave injustice has been done to Mr. Kagetsu. It seems clear to me that the Commissioner overlooked certain important facts in connection with ~~this~~ claim. Before touching on some of them, may I say that it has always been my opinion that the initial mistake made in regard to all these claims was that the persons concerned were considered as enemy aliens and not as Canadian citizens which most of them were.

In the Kagetsu claim there were two blocks of timber as well as certain logging equipment and felled and bucked logs, etc. The timber claims were Block 195, Cowichan Lake district and the Deep Bay property. To show that there was something very definitely wrong with Commissioner Bird's calculations in respect to the timber on these tracts is the fact that in the one case 70% more timber has already been taken off the property, and logging is not yet completed, than Commissioner Bird had agreed was on the property. In the other case, 100% more timber has been cut and taken off the property than the Commissioner allowed was on the property in the first place. The figures of the timber already cut are from provincial government sources and I do not think there can be any doubt of their correctness. It might be stated that these figures were not available at the time of the hearing.

I am also informed that the timber on Mr. Kagetsu's property was of high quality and not merely a salvage operation as maintained by the Commission.

Besides these facts which would be important in any transaction of this nature, there is another aspect of this case which was not, it seems to me, given due consideration by the Commissioner. When Mr. Kagetsu was removed from the Pacific Coast of British Columbia, his property was a going concern. No allowance was made for the compulsory taking over of the property and, indeed, no reason was given for refusing it. The fact of the matter is that Mr. Kagetsu was a victim of the prejudice against persons of Japanese origin which prevailed at the time the properties were disposed of. I am almost sure that if a settlement could have been delayed for a few years, Mr. Kagetsu's properties would not have been confiscated or if they were he would have received an amount nearer their true value. Now that we have made a soft peace with Japan, who was the enemy, I think we should re-consider the deal given Mr. Kagetsu by the Commissioner.

I have given some illustrations of what I consider to be mistakes made or wrong conclusions arrived at by the Commissioner. There are many, many more. Consequently, I think his case should be reviewed in the more tolerant circumstances of the present time.

As I have already stated Mr. Kagetsu was a Canadian citizen having been granted citizenship in 1909. In 1936 he was invited to participate in the Vimy Pilgrimage. I think this should be satisfactory proof that Mr. Kagetsu was considered to be a good citizen of Canada and should not have been penalized for the actions of the Government of Japan. I would urge you to give the case further consideration. I would be glad of an opportunity to discuss this matter with you in greater detail. This is the only large claim in all of the many property claims considered by Commissioner Bird.

At the time of the Canadian Bar Association Convention in British Columbia this fall, I had the pleasure of hearing Sir John Morris, jurist of repute from the United Kingdom speaking at a special convocation of the University of British Columbia. Two sentences in his speech struck me particularly and I believe they apply in this case. He said:

"Surely there are few more satisfying experiences than to help set right an injustice. Injustice should be righted wherever, whenever and however it appears".

I believe that an injustice has been done in Mr. Kagetsu's case and I believe that steps should be taken to have that injustice righted.

Yours very truly,

Angus MacInnis, M. P.

The Hon. Mr. Justice
Executive Assistant, Department of
the Secretary of State,
Ottawa

Dear Mr. Justice

For Japanese Property Claims
Commission Case No. 1000
Kagetsu, Deep Bay Logging
Camp, British Columbia

I am well acquainted with the recommendations made by Justice Bird in the above case. My contention is that Justice Bird's recommendation is a great injustice to Mr. Kagetsu. Indeed Mr. Kagetsu has been exceptionally helped by the actions of the Government in this matter.

I do not think anything is required to disprove Justice Bird's recommendations other than the fact which I pointed out in my letter to the Minister that in the two blocks of standing timber, in one case 70% more timber has already been cut and taken off the property, and logging is not yet completed, than Justice Bird had allowed was on the property in the first place. In the other case, 100% more timber has been cut and taken off the property than the original estimate accepted by the Commissioner allowed was on the property. I also pointed out in my letter to the Secretary of State the statistics of the timber already cut are from the Canadian government sources and there can be no doubt of their accuracy.

I am convinced that regardless of what consideration may have already been given to this case that it should, in the interest of justice, be again considered.

O t t a w a
January 30, 1953

Miss Theresa Maloney,
Executive Assistant, Department of
The Secretary of State,
O t t a w a

Dear Miss Maloney:

Re: Japanese Property Claims
Commission Claim No. 1388 E.
Kagetsu, Deep Bay Logging
Company Limited.

This will acknowledge receipt of your letter of December 15th, replying in the absence of the Secretary of State to my letter of December 5th.

I am well acquainted with the recommendations made by Justice Bird in the above case. My contention is that Justice Bird's recommendation is a great injustice to Mr. Kagetsu. Indeed Mr. Kagetsu has been economically ruined by the actions of the Government in this matter.

I do not think anything is required to discredit Justice Bird's recommendations than the fact which I pointed out in my letter to the Minister that in the two blocks of standing timber, in one case 70% more timber has already been cut and taken off the property, and logging is not yet completed, than Justice Bird had allowed was on the property in the first place. In the other case, 100% more timber has been cut and taken off the property than the cruising figures accepted by the Commissioner allowed was on the property. As I also pointed out in my letter to the Secretary of State the statistics of the timber already cut are from provincial government sources and there can be no doubt of their correctness.

October 15, 1952

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa, Ontario.

I am convinced that regardless of what consideration may have already been given to this case that it should, in the interest of justice, be again considered.

Yours sincerely,

Angus MacInnis
Member for Vancouver East.

The file reveals that last summer this case was carefully reviewed by the Minister of the Interior, who was then in charge of the Department of the Interior. The file also shows that the Minister of the Interior, in his capacity as Minister of the Interior, was responsible for the decision to increase the award to \$51,750. The Minister of the Interior, in his capacity as Minister of the Interior, was responsible for the decision to increase the award to \$51,750. The Minister of the Interior, in his capacity as Minister of the Interior, was responsible for the decision to increase the award to \$51,750.

On July 7th, 1952, the Minister decided not to increase the award of \$51,750. made by Commissioner Bird, but did agree to grant an additional \$2,987.50 in lieu of interest on a claim for expenses over that legal fees incurred in the presentation of the claim.

This offer has not been accepted by Mr. Leggett and there the matter stands.

May I point out that the evidence of witnesses and presentation of argument before the Commissioner occupied 16 days, and there are 1,364 pages of transcript apart from 81 exhibits. Following thorough examination of such voluminous the Commissioner handed down his reasons for recommending the award in a 16 page document.

I should also point out that the parties of the Government in regard to the matter of claims were in that while the recommendations of the Commissioner have been accepted by the Government to as far as the award recommended is concerned, the payment of the award recommended is on a purely ex gratia basis.

With the information now supplied I trust you will agree that the utmost consideration has been extended in an effort to properly assess this claim.

Yours very truly,

Laura Muloney



THE SECRETARY OF STATE OF CANADA

Ottawa, December 15, 1952.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Japanese Property Claims Commission
Claim No. 1388 E. Kagetsu, Deep Bay
Logging Company Limited.

The Minister, as you are aware, is absent in Newfoundland and it is for this reason that I am replying to your letter of 5th instant.

The file reveals that last summer this case was carefully reviewed by Honourable Mr. Bradley following numerous representations and receipt of considerable material filed in support of an application to increase the amount of the award recommended by Mr. Justice Bird.

On July 7th, 1952, the Minister decided not to increase the award of \$51,750. made by Commissioner Bird, but did agree to grant an additional \$2,587.50 in final settlement of a claim for expenses other than legal fees incurred in the presentation of the claim.

This offer has not been accepted by Mr. Kagetsu and there the matter stands.

May I point out that the evidence of witnesses and presentation of argument before the Commissioner occupied 16 days, and there are 1,384 pages of transcript apart from 81 exhibits. Following thorough examination of such submissions the Commissioner handed down his reasons for recommending the award in a 16 page document.

I should also point out that the position of the Custodian in regard to the payment of claim awards is that while the recommendations of the Commissioner have been accepted by the Government in so far as the amount recommended is concerned, the payment of the amount recommended is on a purely ex gratia basis.

With the information now supplied I trust you will agree that the utmost consideration has been extended in an effort to properly assess this claim.

Yours very truly,

Teresa Maloney

Teresa Maloney,
Executive Assistant to
The Secretary of State.



THE SECRETARY OF STATE OF CANADA

Ottawa, March 11, 1953.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Japanese Property Claims Commission
Claim No. 1388 E. Kagetsu, Deep Bay
Logging Company Limited.

A reply to your communication of 30th January, 1953 was delayed in order to gather additional information.

May I again emphasize that this case was before the Commissioner for 16 days, and about 20 witnesses gave evidence, there were 61 exhibits (some of a very detailed nature) and 1384 pages of manuscript of evidence.

Apparently the impartial or even favourable attitude which the Commissioner accorded to each Japanese claimant was evident at all times and his insight in regard to lumber operations was commented upon by Counsel for some of the claimants.

I am of opinion that the Commissioner did not overlook any important facts.

The operations of the company, before evacuation, and its position at the time of sale, were all matters in regard to which the Commissioner gathered ample information. The remaining life of the operation, the possibility of obtaining timber adjacent to their own limits, the relation of the railway and railway equipment to the areas on which further logging was possible or for the necessity for conversion into a trucking operation, all came into adequate and extended review. Questions that had a bearing on the value of the property as a going concern were all fully dealt with and carefully considered by the Commissioner.

As to the quantity of timber on their limits, there was evidence to shew that Kagetsu's own figures at the time of his evacuation did not differ greatly from the quantity which formed the basis of the sale by the Custodian.

Difference of opinion might arise when e.g. dealing with the problem involving size of the timber. Whether 18 inches or 12 inches or any other diameter should be the basis for computing quantity was a matter which could vary from time to time and would mainly depend upon the minimum size that was considered economically "merchantable". "Accessibility" was also another factor which had a bearing in estimating quantity. Moreover "accessibility" involves far more than the question of whether the area could actually be logged, but whether it could be logged at a profit. The quantity of "Merchantable" and "Accessible" timber on a property could thus vary materially according to market conditions.

According to Mr. Kagetsu, on some blocks of timber he cut 100% more than anticipated but it appeared, that to arrive at this figure, he was cutting much smaller logs than the accepted standard then being used in cruising a timber limit. However there was no evidence to show that this was economically sound. I am informed that the Company's own Ledgers covering ten years operations, shewed operating losses averaging \$3000 a year for nine years and a profit in one year of just over \$1000.

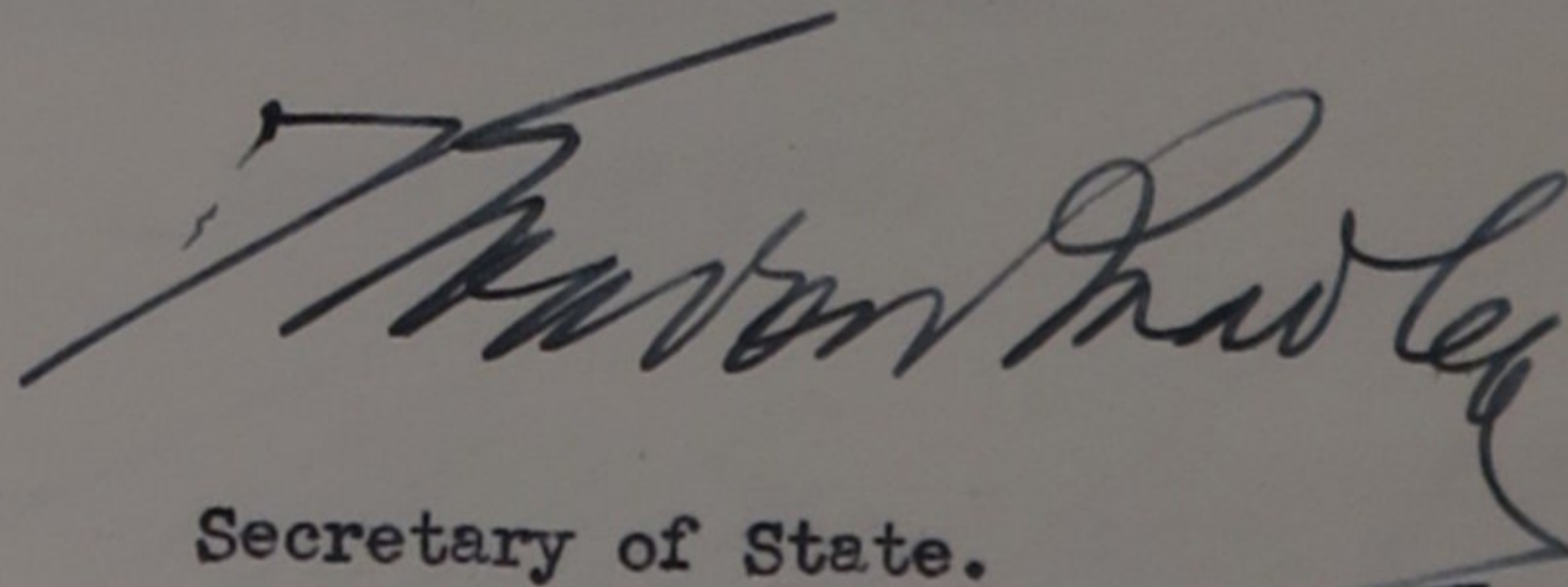
The Commissioner was fully aware of figures which might indicate a larger amount of timber being cut than the quantity which formed the basis of the Custodian's sale. He would also know from the evidence, that from 1945 onward the utilization of smaller timber was very much greater than was the case at the time of sale.

I would say that within the Terms of Reference, the Hon. Mr. Justice Bird, after dealing with a great mass of detail and with the evidence of witnesses called on behalf of the claimant, covering all the matters to which you refer, made an award, which together with the sale price, was sufficient to cover the fair market value of the enterprise at the time of sale.

I am aware that personal and political opinion may have differed in regard to the policy of evacuation but its application to Mr. Kagetsu was no different to that of all other Japanese who were evacuated from British Columbia.

The purpose of the Government in appointing a Royal Commission was to ascertain what would be fair and just to claimants and to the Canadian public generally under all circumstances. The Commissioner recommended that certain sums of money be paid as compensation. The Government concurred in the recommendation and funds were made available to meet the claims. In carrying out the recommendations of Mr. Justice Bird, the Government considers that it has discharged its obligations to those most directly affected and to the general public.

Yours very truly,



Secretary of State.



THE SECRETARY OF STATE OF CANADA

Ottawa, May 12, 1953.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Deep Bay Logging Company Limited
E. Kagetsu

I have for acknowledgment your communication of 20th ultimo.

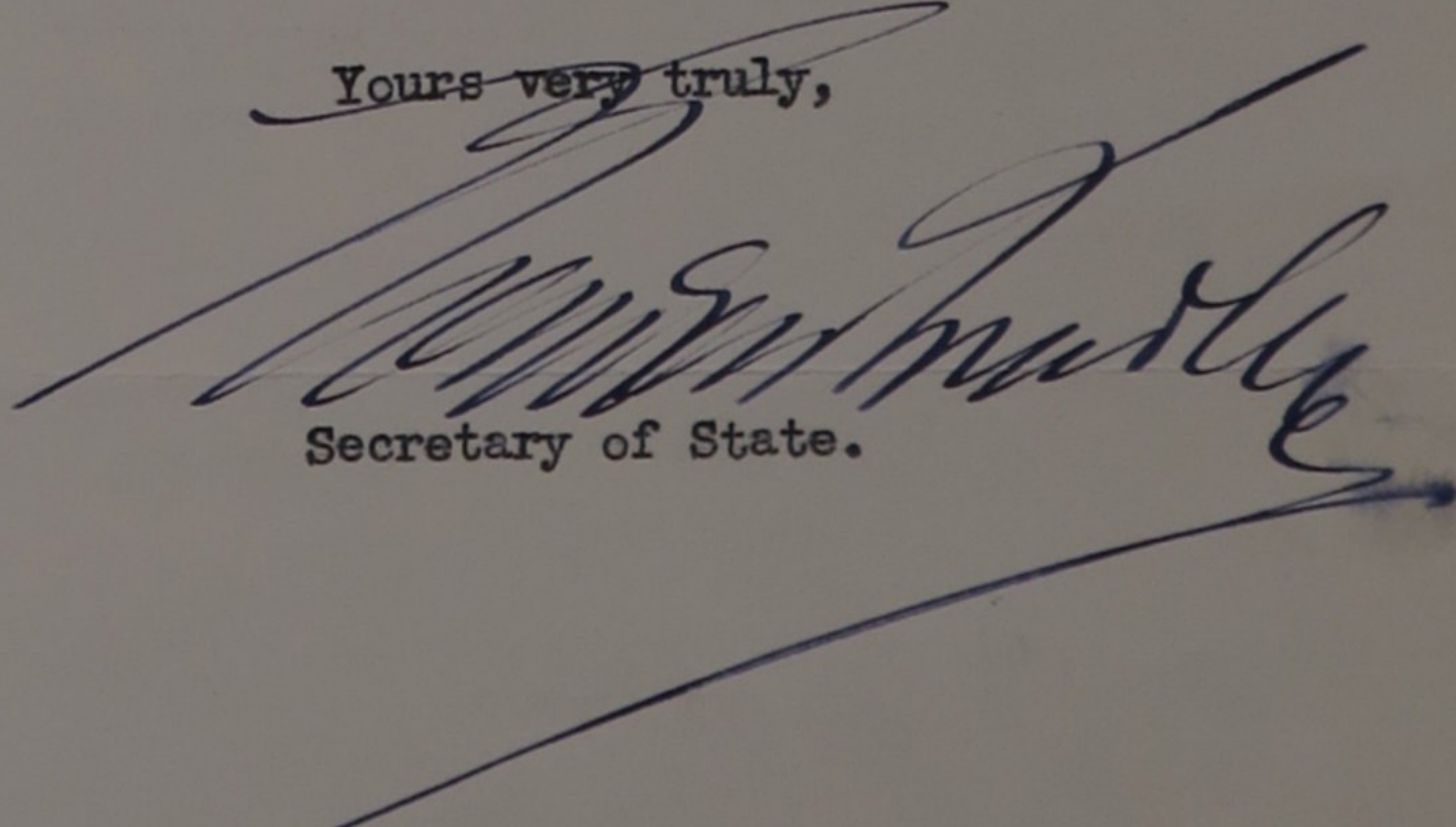
In answer to your suggestion that some important points were overlooked by Commissioner Bird, I am informed that all the matters to which you refer were dealt with and there is no reason to suppose they were overlooked by the Commissioner.

In this particular case the Commissioner allowed the claim to be amended and reamended, consented to long adjournments and granted every opportunity for Mr. Kagetsu and his Counsel to present all the evidence they wished. I am also advised that the Commissioner was more patient with the claimants herein than in any other case.

The Government accepted the conclusions of the Commissioner and when doing so relied upon his qualifications to attach the right weight of value to the facts which lay behind the matters to which you refer.

Under all the circumstances I regret to inform you that the Government's decision to accept the Commissioner's recommendation is absolutely final.

Yours very truly,


Secretary of State.