Supreme Court of Canada | Cour suprême du Canada

INVENTORY OF FILE CONTENTS

INVENTAIRE DES DOCUMENTS

Casefile No.: 11367

Nº de Dossier: _____

Date Initiated: 1968

Date du dossier: _____

Short Style of Cause: _____

Intitulé: _____

IWASAKI V. THE QUEEN

_____

MOST COMMONLY OCCURRING COURT DOCUMENTS:

DOCUMENTS COURANTS:

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- Notice of Motion on Application for leave
- Application for leave to Appeal
- Respondent's memorandum of Argument
- Discontinuance
- Minute Sheet
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A) Requête en autorisation

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- Requête en autorisation de pourvoi
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- Feuille des minutes
- Ordonnance/jugement
- Taxation des dépens

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AMENDED PETITION OF RIGHT

1. Your Suppliant, a retired gentleman, resides at 4493 West 12th Avenue, in the City and County of Vancouver, Province of British Columbia and the Dominion of Canada.

2. At all material times to this action your Suppliant was the registered and actual owner of and continues to be beneficially and lawfully entitled to certain lands and premises within the Province and Dominion aforesaid and particularly knownand described as:

> Lots 3 and 4, North Salt Spring Island, Cowichan District, including Parcel "A" thereof (D.D. 58307-1) except that part of said Lot 4 lying South of said Parcel "A" and South of the South boundary of said Lot 3 and its production East to intersection with said Parcel "A".

3. On or about the 27th day of March, A.D. 1942, the Secretary of State of Canada,the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mouat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.

4. On or about the 11th day of May, A.D. 1943, the Secretary of State acting in excess of his jurisdiction and without notice or compensation to your Suppliant and in breach of the aforesaid trust, filed or caused to be filed in the Land Registry Office, in the City of Victoria, within the Province and Dominion aforesaid, a Vesting Order No. 50930 against the title of the aforesaid lands and premises purporting to vest the aforesaid lands and premises to the Custodian contrary to the laws of natural justice and to the provisions of the British North America Acts, 1867 to 1943, and Amendments thereto, and to the provisions of the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

5. On or about the 6th day of April, A.D. 1945, the aforesaid lands and premises were conveyed by the Secretary of State of Canada, acting in his capacity as Custodian and in excess of his jurisdiction, to the Secretary of State of Canada, and in turn, conveyed by the Secretary of State of Canada, acting in excess of his jurisdiction to Salt Spring Lands Limited, a body corporate within the Province and

Exhibit 28 (continued)

the question shall be determined by the inspector who has been or who may be appointed to inspect the books, files and documents of such person, or on appeal, by the Secretary of State, and if, in the course of determining the question, it appears to the inspector or the Secretary of State, that such person has not distributed as dividends, interest or share of profits the whole of the amount properly available for that purpose the inspector or Secretary of State may ascertain what amount was so available and require the whole of such amount to be distributed. In the caseof a company, if such dividends have not been declared, the inspector or the Secretary of State may declare the appropriate dividends, and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the by-laws or constitution of the company: Provided that where a controller has been appointed under these Regulations, this section shall apply as if for references to the inspector there were substituted references to the controller.

31. Where on or after the commencement of the present war any coupon or other security transferable by delivery is presented for payment to any person andsuch person has reason to suspect that it is so presented on behalf of or for the benefit of an enemy, or that on or after the commencement of the present war it has been held by or for the benefit of an enemy, such person shall pay the sum due in respect thereof to the Custodian and such payment shall for all purposes be a good discharge to such person.

32. Where the Custodian is satisfied from returns made to him that any securities are held by any person on behalf of an enemy, the Custodian may give notice thereof to the person by or through whom any dividends, interest or share of profits, in respect of the securities or any money by way of payment of the securities are payable, and upon receipt of such notice any dividends, interest or share of profits payable in respect of, and any money by way of payment of the securities to which the notice relates shall be paid to the Custodian in like manner as if the securities were held by an enemy.

33. All moneys payable to the Custodian in pursuance of these Regulations shall be paid to the credit of the Custodian through such officers, banks or persons, and in such manner as the Custodian from time to time directs and appoints.

34. (1) Any money required to be paid to the Custodian

Exhibit 28 (continued)

under these Regulations shall be paid;

(a) within thirty days after the commencement of the present war, if the money, had a state of war not existed, would have been payable before the commencement of the present war; and

(b) in any other case, within thirty days after it would have been payable.

(2) All interest payable on any such money shall be paid to the Custodian; and any moneys not paid within the time required by these Regulations shall bear interest at the rate of five per cent per annum from the date on which such payment is so required by these Regulations.

(3) Where any money is payable or becomes payable to any enemy by contract, law or custom or in any other manner in other than Canadian currency, it shall, unless the Custodian allow or direct otherwise, be paid to the Custodian in Canadian currency at the rate of exchange equal to the average cable transfer rate prevailing in Canada during the month immediately preceding the commencement of the present war, or at such rate as may be fixed by the Foreign Exchange Control Board.

35. (1) Any payment by or on behalf of a debtor made to the Custodian shall, to the extent of the payment, discharge the debtor from all obligations and liabilities in respect of the debt, and interest shall cease to run against the debtor on the amount so paid from the date of its receipt by the Custodian.

(2) The Custodian shall have power to execute and delivery any document necessary or proper as evidence of such discharge and may deliver up to the person making such payment any note, bond or other evidence of or any security for the debt which may be in the possession of the Custodian.

(3) The Receipt of the Custodian or any person duly authorized to sign receipts on his behalf for any money paid to him under these Regulations shall be a good discharge to the person paying the same.

36. (1) In the event of failure by any person to pay to the Custodian any money payable to him under these Regulations the Custodian may take action in the Exchequer Court of Canada or in any superior court of record to recover such money.

(2) Any money owing to an enemy and admitted by the person owing the money to be due, may be certified by the Custodian to have been admitted to be so due, and on production to the proper officer of the Exchequer Court of Canad the certificate shall be registered by that officer.

Exhibit 28 (continued)

(3) Any certificate registered in the Exchequer Court of Canada as provided in section (2) hereof shall from the date of such registration have the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in that court for the recovery of a debt of the amount specified in the certificate and entered upon the date of such registration.

(4) For preparing, transmitting or producing to the Registrar of the Exchequer Court of Canada a certificate pursuant to this Regulation , the Custodian shall be entitled to recover by way of costs from the person named in the certificate as owing the money, the sum of ten dollars and also the disbursements incurred in registering the certificate, and such amounts shall be recoverable in like manner as if judgment had been obtained therefor.

37. (1) Where any securities are vested in the Custodian, he may issue a warrant stating that the securities are vested in him and requiring the person in whose books the securities are registered to cancel the existing registration and to register the securities, and issue a certificate therefor, in the name of the Secretary of State of Canada acting in his capacity as Custodian under the Revised Regulations Respecting Trading with the Enemy (1943), his nominee or transferee. Upon receipt of such warrant the person in whose books the securities are registered shall forthwith cancel the existing registration and register the securities and issue the certificate in accordance with the terms of the warrant and deliver the certificate to the Custodian, notwithstanding any law, contract, by-law, regulation or stipulation to the contrary, and notwithstanding that the Custodian is not in possession of the certificate, scrip or other document or instrument of title relating to the securities affected by the warrant.

(2) The registration and the issue and delivery of the certificate under section (1) of this Regulation shall be without prejudice to any lien or charge in favour of the person in whose books the securities are registered or to any other lien or charge of which the Custodian has notice. If any question arises as to the existance or amount of any lien or charge, the question may, on application being made for the purpose, be determined by any superior court of record or a judge thereof.

38. The Custodian may, where he considers it advisable to do so, liquidate any property vested in him and shall deal with the proceeds of the liquidation of such property in the same manner as he may deal with moneys paid to him under these

Exhibit 28 (continued)

Regulations.

39. The Custodian may at any time, at his discretion and by such notice, conveyance, transfer or release as he may think proper, relinquish any property or the proceeds of the liquidation of any property.

40. (1) The Custodian may sell or otherwise dispose of any property at such time and place and to such person and upon such terms and in such manner, whether publicly or privately, as he in his discretion shall think proper.

(2) The transfer or sale by the Custodian of any property shall be conclusive evidence in favour of the purchaser and of the Custodian that the requirements of theseRegulations have been complied with.

41. Where in exercise of the powers conferred on him under these Regulations the Custodian proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company which are vested in him, the company may, with the consent of the Custodian, purchase the shares, stock or securities, any law, by-law or regulation of the company to the contrary notwithstanding, and any shares, stock or securities so purchased may from time to time be reissued by the company.

42. The Custodian may execute any agreement or document whether indemnity or otherwise, or do anything necessary to deal effectively with any property delivered to or vested in him or subject to his control.

43. The Custodian may place on deposit with any bank or may, with the approval of the Treasury Board, invest in any securities, approved by the Treasury Board, any moneys paid to or received by him from or in respect of property vested in him pursuant to these Regulations or otherwise.

44. (1) The Custodian may, in addition to other charges authorized by these Regulations, if any, charge against all property investigated, controlled or administered by him, whether the property has vested in him or not, a fee for services rendered not exceeding two per centum of the value of the property including the income therefrom.

(2) The Custodian may employ such part of the property vested in him or the proceeds therefrom as may be necessary to pay the expenses incurred in the administration of these Regulations.

Exhibit 28 (continued)

(3) The Custodian may charge such additional fees in respect of his duties under these Regulations whether by way of percentage or otherwise as the Governor in Council may approve and the fees so charged shall be collected and accounted for by such persons and in such manner as the Custodian directs and the incidence of the fees so charged as to capital and income shall be determined by the Custodian

45. (1) The Custodian shall, in addition to his other duties, keep a record of:-

(a) Debts, (including bank balances) due to persons residing in Canada, from persons residing or carrying on business in enemy territory or proscribed territory;

(b) Other property in enemy territory or proscribed territory (including securities) belonging to persons residing in Canada; and

(c) All debts reported to him under these Regulations.

(2) Any person desiring to record such claims or property may obtain the necessary forms for that purpose from the Custodian but the action of the Custodian will be confined to entering upon the record claims of which particulars are supplied to him, and it shall in no way commit the Custodian or the Government of Canada either to responsibility for the correctness of the claim entered or to taking action on the conclusion of hostilities or otherwise for the recovery of the claim or property in question.

(3) The Custodian shall record claims against enemy Governments, as distinct from claims against other enemies, in respect of public securities of those governments held by the claimants but not any other claims against enemy Governments.

(4) The Custodian shall keep a record of all property whereof returns have been made to him or which is held by him under these or any other Regulations, or under any Order in Council or statute, and such record may be inspected by any person who appears to the Custodian to be interested as creditor or otherwise at all reasonable times, free of charge.

46. (1) It shall be the duty of every enemy or enemy subject who is within Canada, if so required by the Custodian within one month after being so required, to furnish the Custodian with such particulars as he may require of

(a) any securities issued by any person, held by him or in which he is interested,; and

(b) any other property of the value of two hundred dollars or upwards belonging to him or in which

Exhibit 28 (continued)

he is interested.

(2) Any such person who refuses or fails to furnish such particulars within the time mentioned shall be guilty of an offence under these Regulations.

47. (1) Every person in Canada to whom a debt is owing by an enemy shall notify the Custodian of such debt
(a) if the debt is owing at the commencement of the present war, within one month after the commencement of the present war; and
(b) if the debt becomes payable after the commencement of the present war, within one month after the debt becomes payable;
and shall thereafter from time to time within one month of demand by the Custodian furnish such further information and documents in his possession or power, in such form and verified in such manner, as the Custodian may require.

(2) Every person who fails to comply with any provision of section (1) of this Regulation is guilty of an offence under these Regulations and the Custodian may, by order, forever bar and extinguish any claim in respect of a debt regarding which the claimant has not complied with any provision of section (1) of this Regulation .

(3) The Custodian is not, by reason of a notification under Section (1) of this Regulation, subject to any liability with respect to the debt.

(4) Every person who furnishes false information with respect to an enemy debt is guilty of an offence under these Regulations.

48. (1) The Custodian may order the reporting of any claim against enemies not otherwise provided for by these Regulations and shall, if he so orders, cause a record to be kept of all such claims.

(2) Any person who furnishes any false information with respect to any claim reported under Section (1) of this Regulation shall be guilty of an offence under these Regulations.

49. No property held by or vested in the Custodian shall be liable to be attached or otherwise taken in execution, but the Custodian may upon an order of a superior court of record or a judge thereof, or of any Court in which judgment has been recovered against an enemy, pay out of any money or the proceeds

Exhibit 28 (continued)

of any property held by him in respect of that enemy the whole or any part of any debt due by that enemy and specified in the order: Provided that before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy in question to satisfy that debt and any other claims against the enemy of which notice verified by statutory declaration may have been served upon him.

50. The Custodian shall not be liable for any tax, assessment, mortgage, lien, charge, call, rent, interest or payment upon or in respect of any property vested in him.

51. (1) No property vested in the Custodian shall be forfeited for default in doing an act or making a payment or attached, seized or taken under legal process or distress or foreclosed or sold under a mortgage, lien, pledge or charge or sold for a tax or assessment.

(2) This Regulations does not apply to a life insurance policy or annuity contract which, by its terms, lapses; and where any life insurance policy or annuity contract would, at any time on or after the second day of September, nineteen hundred and thirty-nine, have lapsed by its terms were it not for a regulations heretofore in force with reference to trading with the enemy or enemy property, it shall be deemed to have lapsed when it would, but for such regulation, have lapsed.

52. Every document purporting to be an order, certificate or other instrument issued by the Custodian and signed by him or any other person authorized by the Custodian, shall without further proof, unless the contrary is shown, be deemed for all purposes, including its receipt in evidence, to be such order, certificate or other instrument.

53. All periods of prescription or limitations of right of action, whether they began to run before or after the commencement of the present war, shall be treated, so far as regards relations between persons who are not enemies under these Regulations and enemies, as having been suspended during the present war.

54. A certificate of the Secretary of State that any area is or was enemy territory or proscribed territory, or as to the time at which any area became or ceased to be enemy territory or proscribed territory shall, for the purposes of any proceedings under or arising out of these Regulations,

Exhibit 28 (continued)

be conclusive evidence of the facts stated in such certificate.

55. Any person who for the purpose of obtaining any authority or sanction under these Regulations or for any other reason, or in giving any information for the purposes of these Regulations or any order made thereunder, makes a statement knowing it to be false, shall be guilty of an offence under these Regulations.

56. (1) Any person who refuses or fails to make or require the making, as the case may be, of any payment, or to furnish the prescribed particulars as required by these Regulations, shall be guilty of an offence under these Regulations.

(2) Any person who refuses or fails to furnish information and particulars within the time mentioned in these Regulations, or fails to deliver to the Custodian the documents or other evidence of title pursuant to the Custodian's written request as provided by these Regulations, shall be guilty of an offence under these Regulations.

57. Any person who wilfully obstructs any person in the exercise of any powers conferred on him by or under these Regulations shall be guilty of an offence under these Regulations.

58. (1) The onus of proof rests upon a person who asserts that he has or had any interest in property or that he or any property is not subject to the provisions of these Regulations.

(2) Evidence submitted to the Custodian thereby becomes the property of the Custodian and may be retained by him.

59. The judges of the Court to which any jurisdiction is by these Regulations committed may make provision by rules for the practice and procedure to be adopted for the purpose of the exercise of such jurisdiction.

60. No prosecution for an offence under Regulations 2 or 3 of these Regulations shall be instituted except by or with the consent of the Attorney-General of Canada; provided that the person charged with such an offence may be arrested and a warrant for his arrest may be issued and executed, and such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney-General of Canada to the

Exhibit 28 (continued)

institution of the prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

61. Where an act or default constitutes an offence both under these Regulations and under any statute, or both under these Regulations and at common law, the offender shall be liable to be prosecuted and punished under either these Regulations, or such statute, or at common law, but he shall not be liable to be punishedtwice for the same offence.

62. Subject to the provisions of Regulations 60 hereof, any offence declared and any penalty or forfeiture imposed or authorized by these Regulations may in the absence of any provision for a different procedure be prosecuted, recovered, or enforced by summary proceedings and conviction under the provisions of Part XV of the Criminal Code.

63. Any person guilty of the offence of trading, attempting or directly or indirectly offering or proposing or agreeing to trade with the enemy in violation of any of these Regulations shall be liable -

(a) on summary conviction to imprisonment with or without hard labour, for a term not exceeding twelve months, or to a fine not exceeding two thousand dollars, or to both such imprisonment and such fine; or

(b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand dollars, or to both such imprisonment and fine;

and the Court may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited to the Custodian.

64. Any person guilty of an offence under these Regulations shall be liable to a fine not exceeding five hundred dollars or imprisonment with or without hard labour for a term not exceeding six months, or to both such fine and imprisonment.

65. Where a company, incorporated or unincorporated, or other body of persons, has been guilty of an offence or default under these Regulations, and the penalty or punishment provided as respects said offence or default is or includes a fine and whether or not imprisonment, additionally or alternatively, the company or other body shall be liable to the fine only (with any additional fine or fines provided by any of these Regulations with respect to continuing defaults)

Exhibit 28 (continued)

and every director, manager, secretary, or other officer of such company or body of persons and every partner or member of such unincorporated company or body of persons who is knowlingly a party to the offence or default, shall also be deemed guilty of the offence or default and liable on conviction to the like fine or fines as the company or other body of persons, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such fine or fines and such imprisonment.

66. Any restrictions on dealings with property imposed by these or any other Regulations or under any Order in Council or statute shall continue to apply to such property, not only during the continuance of the present war, but thereafter until such time as they may be removed by Order in Council, either simultaneously as respects all such property or at different times as respects different classes or items of property.

67. These Regulations shall be deemed not to limit the power of His Majesty the King by proclamation or otherwise to prohibit any transaction which is not prohibited by these Regulations.

68. Where any question arises as to whether any property has, on or after the second day of September, nineteen hundred and thirty-nine, vested in the Custodian or as to whether the Custodian has charged or was entitled, at any time on or after the second day of September, nineteen hundred and thirty-nine, to charge any fees, such question shall be decided as though Regulations 21 and 44 of these Regulations were in force at all relevant times.

69. No person shall institute any action or other proceeding to recover any sum of money paid to or received or detained by the Custodian with respect to any charge he may have made or purported to have made under these or any other Regulations.

70. These Regulations may be cited as "Revised Regulations Respecting Trading with the Enemy (1943)".

Dominion aforesaid, all of which was done without notice to your Suppliant and in breach of the aforesaid trust, and contrary to the laws of natural justice and contrary to the British North America Acts, 1867 to 1943, and Amendments thereto, and to the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

5A. The aforesaid conveyance as alleged in Paragraph 5 of the Petition of Right herein was fraudulent and constituted a breach of trust by the Secretary of State of Canada or the Secretary of State of Canada acting in his capacity as Custodian, particulars of the trust are as follows:

(a) The Secretary of State of Canada acting in his capacity as Custodian held the aforesaid lands and premises in trust for your Suppliant pursuant to Statute and Regulations and Orders-in-Council passed thereunder;

(b) The terms of the aforesaid trust were that the Custodian would return the aforesaid lands and premises to your Suppliant at the end of World War Two;

Particulars of the fraud or breach of trust are as follows:

(a) The Secretary of State of Canada acting in his capacity as Custodian conveyed the aforesaid lands and premises to the Secretary of State of Canada who in turn conveyed the aforesaid lands and premises to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid. The aforesaid conveyances of the aforesaid lands and premises were done without any notice to your Suppliant and without any instructions from your Suppliant and without any lawful authority on the part of the Custodian;

(b) The said conveyance was not made by the Custodian in good faith in that Gavin C. Mouat, agent of the Secretary of State of Canada acting in his capacity as Custodian and to the knowledge of the Secretary of State of Canada acting in his capacity as Custodian held a direct or beneficial interest in the

Certified xerox copy of document transcribed from the Privy Council Office Records preserved in the Public Archives of Canada.

(R.G.2, Series 1, Volume 2348)

Signed (illegible)
for Dominion Archivist.

Ottawa, 4 September 1968.

WH/7

P.C. 1810 amended by P.C.3737 -17/9/47
" " " 242 -22/1/48
See P.C. 243 - Jan.22/48

The Committee of the Privy Council have had before them a report dated 14th July, 1947, from the Secretary of State, representing:

That during the war persons of the Japanese race were evacuated from the protected areas of British Columbia and by Order in Council P.C.-1665 of March 4, 1942, as amended by Order in Council P.C. 2483 of March 27, 1942, it was provided that all property situated in any protected are of British Columbia belonging to any person of the Japanese Race (except fishing vessels subject to Order in Council P.C.288 of January 13, 1942, hereinafter referred to, and deposits of money, shares of stock, debentures, bonds, or other securities) delivered up to any person by the owner pursuant to an Order of the Minister of Justice or which was turned over to the Custodian by or on behalf of the owner, or which the owner on being evacuated from the protected area was unable to take with him, should be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy;

That by Order in Council P.C.469 of January 19, 1943, it was provided that whenever the Custodian had been vested with the power and responsibility of controlling and managing any property of persons of the Japanese race evacuated from the said protected area, such power and responsibility should be deemed to include and to have

Exhibit 58 (continued)

included from the date of the vesting of such property in the Custodian, the power to liquidate, sell or otherwise dispose of such property;

That by Order in Council P.C. 6247 of July 20, 1942, it was provided that all vessels and equipment not disposed of by the Committee established by the said Order in Council of January 13, 1942, should on and after the first day of August, 1942, be vested in and be subject to the control of the Custodian;

That pursuant to the above mentioned Orders real and personal property of persons of the Japanese race was disposed of and claims have been made by persons of the Japanese race that in respect of such disposition of their property they have suffered pecuniary loss; and

That it is deemed advisable to appoint a Commissione under Part I of the Inquiries Act to investigate the said claims and to make recommendations with respect thereto;

The Committee, therefore, on the recommendation of the Secretary of State, advise:

1. That the Honourable Mr. Justice Henry Irvine Bird be appointed a Commissioner pursuant to the Inquiries Act, chapter ninety-nine of the Revised Statutes of Canada, 1927, to inquire into the following claims of persons of the Japanese race who are resident in Canada at the date of this Order, namely -

(a) that by reason of the failure of the Custodian to exercise reasonable care in the disposition of the real and personal property vested in the Custodian pursuant to the above mentioned Orders, the amount received by the Custodian for such property was less than the market value thereof at the time of such disposition; and

(b) that by reason of the failure of the Custodian to exercise reasonable care in the management of personal property, such property was lost, destroyed or stolen but no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control of managements of any person, other than the Custodian, appointed by the owner of the property.

Exhibit 58 (continued)

2. That the Commissioner shall examine into each claim and make a report to the Governor in Council setting forth the claims, if any, which in the opinion of the Commissioner are well-founded and the amount which, in his opinion would fairly and reasonably compensate the claimant for failure of the Custodian to exercise reasonable care.

3. That the Commissioner shall give public notice in such manner as he deems advisable of the time for the filing of claims and for the hearing of evidence and that all claims shall be in writing, verified by statutory declaration and filed in the Office of the Custodian at Vancouver, British Columbia.

4. That the Commissioner be authorized to engage the services of such Counsel, technical advisers or other experts, clerks, reporters and assistants as he may deem necessary or advisable.

5. That the expense of and incidental to the said inquiry be paid out of money appropriated by Parliament.

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Exhibit 81

(First publication)

VINCENT MASSEY
[L.S.]

CANADA

ELIZABETH THE SECOND, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas QUEEN, Defender of the Faith.

To All to Whom these Presents shall come or whom the same may in anywise concern,

Greeting:

A PROCLAMATION

F. P. VARCOE, *Deputy Attorney General*, Canada. } WHEREAS by Proclamation dated the eighth day of December, one thousand nine hundred and forty-one, it was declared that a state of war with Japan had existed in Canada on and from the seventh day of December, one thousand nine hundred and forty-one.

And Whereas a treaty of peace between the Allied Powers and Japan was concluded in San Francisco, United States of America, on the eighth day of September, one thousand nine hundred and fifty-one, which recites the fact of the conclusion of the state of war between the Allied Powers and Japan.

And Whereas the Instrument of Ratification of the said treaty of peace was deposited on behalf of Canada on the seventeenth day of April, one thousand nine hundred and fifty-two, and that the said treaty came into force with respect to Canada on the twenty-eighth day of April, one thousand nine hundred and fifty-two.

And Whereas it is expedient and Our Governor in Council has ordered that a Proclamation do issue declaring the date on which the state of war between Canada and Japan has ceased to exist.

Now Know Ye that by and with the advice of Our Privy Council for Canada We do by this Our Proclamation declare that the treaty of peace which was concluded in San Francisco between the Allied Powers and Japan on the eighth day of September, one thousand nine hundred and fifty-one, came into force with respect to Canada on the twenty-eighth day of April, one thousand nine hundred and fifty-two, and that on the said twenty-eighth day of April, one thousand nine hundred and fifty-two, the state of war between Canada and Japan ceased to exist.

Of All Which Our Loving subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

In Testimony Whereof We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness: Our Right Trusty and Well-beloved Counsellor, Vincent Massey, Member of Our Order of the Companions of Honour, Governor General and Commander-in-Chief of Canada.

At Our Government House, in Our City of Ottawa, this Sixth day of June in the year of Our Lord One thousand nine hundred and fifty-two and in the First year of Our Reign.

By Command,

W. P. J. O'MEARA,
Acting Under Secretary of State.

(First publication)

Exhibit 13.

(Copy)

Ganges, B.C.
May 16th, 1942.

To:
Mr. G. W. McPherson,
Deputy Custodian,
Vancouver, B.C.

I hereby offer to rent the Iwasaki Garden and berry patch for the period May 1st, 1942, to August 1, 1943, for the sum of Seventy-five dollars ($75.00), payable at the rate of $5.00 monthly in advance. If this offer is accepted I agree to keep the said garden and berry patch in a proper state of cultivation at all times. In the event of the return of the Iwasaki family before August 1st, 1943, I agree to relinquish any rights I may have to the property subject to a fair adjustment on any crop that may be maturing. I hand you herewith a cheque for $10.00, being rent for May and June, 1942.

WITNESS:

(Signed) Gavin C. Mouat. (Signed) Margaret G. Simson)

I recommend the immediate acceptance of this offer.

G.C.M.

105
Exhibit 14

COPY

R.M.D.1

Salt Spring Island,
June 23rd.

Mr. G. C. Mouat,
Ganges.

Dear Sir,

I am writing to notify you that on account of the damage done to this years strawberry crop by your sheep and the consequent damage to the plants which will affect the crop next season I cannot continue to rent the property belonging to Iwasaki.

Your suggestion that in order to remedy conditions we should fence a part of the beach and raise the existing fence, entailing considerable labour on our part without your offering any assistance or cooperation in keeping your sheep off Iwasaki's land is so very one sided that it is not worth considering.

When I complain to you of the damage done by your sheep and said that I would be forced to give up the place you replied "Please yourself" so the course I have taken in writing this letter will not be unexpected.

Signed. MARGARET G. SIMSON.

Exhibit 15.

R.M.D.1
Salt Spring Island
June 24th.

Office of the Custodian
Japanese Section
RECEIVED
Jun 25 1942

Mr. G. W. McPherson,
Royal Bank Building,
Vancouver.

Dear Sir,

I enclose a copy of a letter which I have sent to Mr. G. C. Mouat, acting Custodian of Japanese property here.

Because of the damage done by the sheep which broke in continually, numbering from a dozen to twenty-two, on one occasion there has been no fruit at all on many of the rows and the following are the amounts we have been able to pick,

June 11th	1½ pounds
13th	½ crate sold to Mouat Bros.
18th	1 crate " " " "
	5 lbs. jam berries
20th	3/4 crate donated to War Effort Funds
23rd	6 lbs jam berries
	Household table use 12 pounds.

In addition to the rent paid I employed a man for two days to help in weeding, etc.

I am,

Yours faithfully,

Margaret G. Simson.

Exhibit 16

C A N A D A
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

Japanese Evacuation Section

Phone Pacific 6131
Please refer to
File No. 3271

506 Royal Bank Bldg.
Hastings & Granville
Vancouver, B.C.
July 4th, 1942.

Mr. Torazo Iwasaki,
Greenwood, B.C.

Dear Sir:

Your cow and three calves have been sold to G. C. Mouat for $90.00 and your garden was rented to Mrs. Simpson at the rate of $5.00 per month, commencing May 1st. At the end of June she decided to give it up. I have how given Mrs. G. C. Mouat the right to take any fruit now ripening or to ripen until the end of August, for the sum of $10.00.

This makes a total amount of $110.00 received on your behalf and cheque for this amount is enclosed herewith.

Yours truly,

"Gavin C. Mouat"

GAVIN C. MOUAT.

GCM:MD
Encl.

108
Exhibit 17

OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131

PLEASE REFER TO
FILE NO. 3271

506 ROYAL BANK BLDG.,
HASTINGS AND GRANVILLE
VANCOUVER, B.C.

July 29th, 1942.

Mr. Torazo Iwasaki,
Greenwood, B. C.

Dear Sir:

Would you kindly send us by return mail full information regarding your agreement and dealings with Mr. A. Pednault of Salt Spring Island.

Thanking you.

Yours truly,

R. P. Alexander
Manager

GCM:ND

Jamie C. Mowat's initial.

Exhibit 18.

August 27, 1942.

3271

Mr. T. Iwasaki,
Registration #10123,
Greenwood, B.C.

Dear Sir,

We have received a letter from Mr. F. E. Larnder as follows:

"I am interested in purchasing a piece of property on Salt Spring Island, a portion of 600 acres at present owned by T. Iwasaki. The particular part I wish to acquire comprises 75 acres on which the buildings are at present located.

In the event of this property being put up for sale at any time, I would much appreciate being notified.

Thanking you in anticipation of your kind attention."

We are aware the you have sold the merchantable timber and trees on your property but we are not sure whether this would include the part on which your buildings are located and the adjacent land.

Will you kindly give us some information regarding this and also advise us if you would be interested in selling the part referred to in Mr. Larnder's letter, and if so would you let us have an idea of the price which would be satisfactory to you.

For your information the following is a copy of a letter received from the Glen Lake Logging Co., Ltd.:-

"Replying to your letter of the 12th instant, we beg to say that the last transaction we had with Torazo Iwasaki was on the 10th April 1942, when we paid him the sum of $446.00 for stumpage for logs. Since then we have not got or taken any logs off property, and we have a record that should we take any logs off the propery we will pay the royalty under the agreement to you as Custodian of Japanese Evacuation Section.

We were forced to discontinue operations on this

said Salt Spring Lands Limited.

6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada.

7. At all times material to this action your Suppliant has been and is a citizen of Canada.

Your Suppliant therefore humbly prays that this Honourable Court grant judgment against the Queen's most excellent Majesty for:

(a) A Declaration that the Secretary of State of Canada acted in excess of his jurisdiction and in breach of trust in filing or causing to be filed Vesting Order No. 50930 against the title of the herein described lands and premises;

(b) A Declaration that the Secretary of State of Canada, acting in his capacity as Custodian, acted unlawfully and without or in excess of his jurisdiction and in breach of trust in conveying or causing to be conveyed the herein described lands and premises to the Secretary of State of Canada;

(c) A Declaration that the Secretary of State of Canada acted unlawfully and in excess of his jurisdiction in conveying the herein described lands and premises to Salt Spring Lands Limited;

(d) A Declaration that Vesting Order No. 50930 at all times material to this action was and continues to be invalid;

(e) A Declaration that the conveyance of the herein described lands and premises on or about the 6th day of April, A.D. 1945, by the Secretary of State of Canada, acting in his capacity as Custodian, to the Secretary of State of Canada was and is unlawful and

Exhibit 18 (continued)

property by reason of the fact that we had a considerable quantity of timber that had been on other property on the north end of Salt Spring Island which had been scorched by a bush fire, and it was necessary to take this timber out this season, in order to save it.

We will be returning to the Japanese timber during the coming winter, as it is more of a winter operation than a summer one."

Any comments which you may have in regard to this will be appreciated.

Yours truly,

F. G. SHEARS,
Assistant Manager.

FGS/PMH

111
Exhibit 19

Shears
Telephone E-2214

HAROLD A. BECKWITH
Barrister-at-Law
Solicitor,etc.

Office of the Custodian
Japanese Section
RECEIVED
Sep.15 1942

Japanese Evacuation Section,
Office of the Custodian,
506 Royal Bank Building,
Hastings and Granville Sts.,
Vancouver, B.C.

Dear Sirs: Re: T. Iwasaki --
Your file -3271

The above-named is I understand a naturalized Japanese now resident in house #134, Greenwood, B.C. Some time ago I attended to the making of an agreement with Glen Lake Logging Co., Ltd. with regard to certain timber cutting privileges on this man's land. I have just recently heard from Iwasaki with the request that I arrange to have stumpage paid to me by the Glen Lake Logging Co. and the statement that "Mr. Green, Custodian" said it made no difference whether I looked after the property or the Custodian. I do not want to approach the Glen Lake Logging Co. in the matter without first having referred to you so as to ascertain whether you consider the Custodian is entitled to control the agreement in question and receive the stumpage.

I shall be glad to hear from you on this at your early convenience.

Yours truly,
" H. A. Beckwith "

HAB/IH

Exhibit 20

September 19, 1942.

3271

Harold A. Beckwith, Esq.,
Suite 206,
Union Building,
Victoria, B.C.

Dear Sir,

Re: Torazo IWASAKI

We are in receipt of your letter of the 17th instant in which you referred to the Agreement between The Glen Lake Logging Co., Ltd. and Mr. T. Iwasaki.

We have on our file a copy of this Agreement dated 10th December 1940.

On August 12th we wrote to the Secretary of the Glen Lake Logging Co., Ltd. for a statement of their more recent dealings with Iwasaki and received from them a reply as follows:-

"Replying to your letter of the 12th instant, we beg to say that the las transaction we had with Torazo Iwasaki was on the 10th April 1942, when we paid him the sum of $446.00 for stumpage for logs. Since then we have not got or taken any logs off the property, and we have a record that should we take any logs off the property we will pay the royalty under the agreement to you as Custodian of Japanese Evacuation Section.

We were forced to discontinue operations on this property by reason of the fact that we had a considerable quantity of timber that had been on other property on the north end of Salt Spring Island which had been scorched by a bush fire, and it was necessary to take this timber out this season in order to save it.

We will be returning to the Japanese timber during the coming winter, as it is more of a winter operation than a summer one."

Except for the completion of the Logging Company's operations to be not later than the 31st December 1945, the Logging Co. would appear to be within their rights to delay operations until next winter as mentioned in

Exhibit 20 (continued)

their letter. There would, therefore, not be any stumpage fees due for some time and as you will note this royalty under the agreement will be paid by them to this office.

Unless you have any particular reasons to contact Glen Lake Logging Co., Ltd., as far as we can see there is no reason for you to approach them concerning the affairs of Iwasaki.

We may say that we advised Mr. Iwasaki on August 27th of the information which we received from the Glen Lake Logging Co., Ltd. with regard to the time they expected to resume operations.

Yours truly,

F. G. SHEARS,

Assistant Manager.

FGS/PMH

DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

506 ROYAL BANK BLDG.,
HASTINGS AND GRANVILLE
VANCOUVER, B.C.

E PACIFIC 6131

E REFER TO
NO. 3271

114
Exhibit 23

April 20th, 1943

Mr. Torazo IWASAKI,
Registration No. 10123,
Greenwood, B. C.

Dear Sir:-

We have received and credited to your account $7.00, being payment from Mr. Bert Collinson for an anchor. Mr. Collinson says this was arranged last spring and unless we hear from you to the contrary, we shall assume that this transaction is quite in order.

Yours truly,

H. F. Green
Protection Department

HFG:IF

DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO. G/59

115
Exhibit 24

LAND REGISTRY
RECEIVED
596 ROYAL BANK BLDG.,
HASTINGS AND GRANVILLE
VANCOUVER, B.C.
JUL 12 1943
VICTORIA, B.C. 10th July 1943.

The Registrar,
Land Registry Office,
Victoria, B. C.

Dear Sir:-

I enclose Certificates of Vesting covering the lands owned by the persons below listed, which please register, thereupon sending me Certificates of Encumbrance covering the lands affected and showing these registrations:

File No.	Name	Police Reg. No.	Title No.
File 3271	Torazo IWASAKI	10123	122796-I
File 1530	Masazo MORI	11971	73214-I
File 1428,	Tsunekichi YAMADA	12031	17067-N
File 1442 &	Shigeharu NAKAGAWA	11867	"
File 13948	Iwakichi ISOZAKI (deceased)		"

Yours truly,

Ian Macpherson
Title Examiner.

IM:EB.
Encl:

50930
50931
50932

2121

C
O
P
Y

116
Exhibit 25

E-125

May 11, 1943.

Mr. Torazo Iwasaki,
Japanese Registration No. 10123,
Greenwood, B. C.

Dear Sir:

We thank you for your letter of the 4th instant, and in view of the fact that 1943 taxes are now due, we have taken the opportunity of paying these at the same time, the total amount for 1942 and 1943 being $23.84, which will leave you with a credit balance of $249.96.

Yours truly,

P. Douet,
Administration Department.

PD:BT

COPY

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Exhibit 26

June 10th, 1943.

Mr. Torazo-IWASAKI,
Registration No. 10123,
Greenwood, B. C.

Dear Sir:

We are in receipt of your letter of the 8th instant, and as requested therein, we are today paying 1943 taxes on your Salt Spring Island property.

This payment leaves a balance of $132.76, for which amount we enclose our cheque as desired by you.

Yours truly,

R. G. Bell,
Administration Department.

RGB/P

ENCL.

C

O

P

Y

June 15th, 1943.

Mr. Torazo IWASAKI,
Registration No. 10123,
Greenwood, B. C.

Dear Sir:

Re: Norwich Union Fire
Policy No. 10223464

The above numbered policy has been issued to cover for $500.00 on dwelling and $150.00 on tool-shed and outbuilding situate on your property described as Lot 3, North Salt Spring Island, B. C.

The premium for three years amounts to $13.75. As you have no funds on credit at this office will you kindly let us have your cheque for this amount.

We trust that this arrangement is satisfactory to you, but if on the other hand you prefer that no firs insurance be carried on your property and if you are willing to take the risk yourself, then of course we will instruct the Insurance Company to cancel the policy.

Yours very truly,

S. M. Gibson
Insurance Department.

SMG:KT

Exhibit 30

June 27th, 1944.

3271

Capt. Smith,
"The Maples"
Ganges, B.C.

Dear Sir,

Re: Catalogue Number 552.
Salt Spring Island, B.C.

This will acknowledge receipt of your letter of June 15th, 1944, enclosing cheque for $425.00 and offer to purchase the above property for the sum of $4,250.00.

Before we can advise whether your offer can be considered it is necessary for us to secure an independent valuation on this property. We will endeavour to secure this as soon as possible and will then communicate with you further.

Yours truly,

F. G. Shears,
Director.

FGS/AM