CASE NO. 1388

JAPANESE PROPERTY CLAIMS COMMISSION

BEFORE

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

Vancouver, B.C.

November 8th, 1948.

IN THE MATTER OF THE CLAIM OF

THE DEEP BAY LOGGING COMPANY

(Eikichi Kagetsu)

PROCEEDINGS AT HEARING

Discussion on details of claim 1-11

Kagetsu chief. 11-76.

cross. 76-93c.

The Commissioner

CASE NO: 1388

IN THE MATTER OF THE "INQUIRIES ACT"

PART I, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

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November 8th, 1948, 10:00 A.M.

IN THE MATTER OF THE CLAIM OF

THE DEEP BAY LOGGING COMPANY

(Eikichi Kagetsu)

PROCEEDINGS AT HEARING

APPEARANCES:

G. W. McPHERSON, Esq., appearing for the Dominion Government.

MESSRS. T. G. NORRIS, K.C., F. A. BREWIN, A. BALDWIN, appearing for the Claimant.

A. WATSON, Esq., Secretary.

MRS. E. SMITH, Official Interpreter.

MRS. E. BLYGH, Official Reporter.

THE COMMISSIONER: The appearances, gentlemen.

MR. NORRIS: I appear, Mr. Commissioner, with Mr. Baldwin and Mr. Brewin for the Claimants, the Deep Bay Logging Company and Eikichi Kagetsu.

MR. McPHERSON: I appear for the Government, my lord.

THE SECRETARY: This is case 1388 -- Deep Bay Logging Company and Eikichi Kagetsu.

THE COMMISSIONER: Yes, Mr. Norris?

MR. NORRIS: This claim, Mr. Commissioner, has reference in the main first of all, to a timber limit known as Block 195, Cowichan Lake District, which had not been cut, and was not being developed at the time it was taken over by the Custodian. It is timber land.

The value, as set out in the claim for that timber limit, is the sum of $275,000.00, and it was sold by the Custodian for $93,000.00, and the loss claimed is $182,000.00.

I have a white print showing this block -- Block 195, Cowichan Lake District, and I would like to put it in, on the understanding that the markings on it, save the boundaries, are not to be considered. I am merely putting it in for the purpose of showing the boundaries of Block 195.

THE COMMISSIONER: What was the date of the sale?

MR. NORRIS: The date of sale of this was the 28th June, 1943 -- no, -- oh, yes, the 28th June, 1943, and the other property I will deal with in a moment.

(WHITE PRINT MARKED EXHIBIT NO. 1388-1)

Discussion.

The next claim, Mr. Commissioner, has to do with certain property at Fanny Bay, on Vancouver Island, consisting of Blocks 504, 566, 617, 274, 263, 234, 267 and 276, and Lot 88 in the Newcastle District, Vancouver Island, with buildings and contents, on the Deep Bay Logging Company's operation: Certain foreshore rights, booming grounds, dumping ground, landing, bridges, coal dock, road beds, coal beds, comprised in the sale to the H. R. MacMillan Export Company.

Now, that should be considered, Mr. Commissioner, with Items 3 and 4, because this was a going concern. It has been divided up in accordance with the form of claim into these several parts -- the value set, and that , as I say -- that value should be considered with the other values-- the value set is $142,781.00. Now, that sale took place in April, 1944, but I have not the exact date. Mr. McPherson, will you give me the exact date of the sale of the Deep Bay property?

MR. McPHERSON: It was in September of '43, but I don't think the documents were completed until 1944.

MR. NORRIS: Do you know the date in September?

MR. McPHERSON: No, I don't.

THE COMMISSIONER: I do not know whether there is any importance to be attached to that.

MR. NORRIS: It was sold by the Custodian for $40,000.00, and the loss claimed is $102,781.00.

Now, the next item is Item 3, consisting

of certain equipment on the Fanny Bay property: 60 ton Shay locomotive; 18 logging railway cars; a flat railway car; two push cars; two speeders; eight miles of railroad and 60 tons of coal, and the value new is stated to be $37,029.00 and was sold by the Custodian for $14,500.00. The loss claimed is $22,529.00.

That equipment, I understand, was sold from time to time-- at various times, some time in 1942.

(Item 4: A Clyde gas donkey; Empire gas donkey; a Skagit gas donkey; a Cletroc tractor; compressor and accessories of a value of $22,925.00, and which was sold by the Custodian for $13,000.00, with a loss of $9,925.00.

And the next item 5, Mr . Commissioner, should be considered with the other three items: That is to say,that Fanny Bay operation: Wire rope, blocks, straps, clevises, etc.; falling,and bucking /and miscellaneous tools, $15,591.80, and which were sold by the Custodian for $7,104.53, the loss claimed being $8,487.27.

Now, the next item is house property in Vancouver, on MacKenzie Street -- the description being given in the claim, as residence property; value of $5500.00 and sold by the Custodian for $4300.00, the loss claimed being $1200.00. That was sold on the 18th August, 1943.

And a Pontiac sedan, 1942 model, value

$1396.00 and sold by the Custodian for $1025.00, the loss claimed being $371.00. That was sold on the 31st August, 1942.

And Item No. 8, certain boom chains and wire rope; the loss being valued at $726.75. 1200 feet of wire rope at 8 cents a foot-- a loss of $96.00 -- there being a total loss under this item of $822.75.

THE COMMISSIONER: May I have the date of the car sale again? Was it August, 1942?

MR. NORRIS: August 31, 1942.

THE COMMISSIONER: Were the boom chains also sold in 1942, or was that later?

MR. NORRIS: Well, the boom chains were lost. The boom chains and the wire rope were lost. I may say the boom chains -- the claim for valuation in respect of the boom chains was the price that the Custodian got for those that he did sell.

THE COMMISSIONER: I see.

MR. NORRIS: And I will put in at this time a map of the Fanny Bay operation and Newcastle District property, and again it is submitted merely to show the outline of the lots and the other markings thereon should not be considered.

THE SECRETARY: Exhibit No. 2.

(MAP MARKED EXHIBIT NO. 1388-2)

MR. NORRIS: Now the lots are all set out under Item 2, Mr. Commissioner, as 504, 566, 617, 274, 263, 234, 267, 276 and Lot 88.

THE COMMISSIONER: This was all E. & N. land, was it?

MR. NORRIS: It was all E. & N. land.

Now, I willput in a letter of January 9, 1948, from the firm of Norris & MacLennan to you, Mr. Commissioner, reading as follows: (Reading same).

THE COMMISSIONER: Was not the Amending Order-in-Council permitting the presentation of corporate claims founded upon that letter?

MR. NORRIS: Yes, as I understand it.

THE COMMISSIONER: In other words, the Government, relying upon that letter, granted an amendment, which permitted corporations to claim.

MR. NORRIS: Yes. I put this in mainly because my friend has raised the question as to possible action, and it may not be quite clear, so I will put it in. The letter says, "Barring our clients from the Courts".

THE SECRETARY: Exhibit no. 3.

(LETTER REFERRED TO MARKED EXHIBIT NO. 1388-3)

MR. NORRIS: And I will put in a map of the southern portion of Vancouver Island, showing the location of both these properties: The Fanny Bay property being shown on top of the map -- the north end of the map, opposite Denman Island, and the other propety, Block 195, being shown south east of Cowichan Lake, both properties being in the railway belt on Vancouver Island.

I have outlined them in red. They are a little difficult, perhaps, to see, but if you have any difficulty, Mr. Commissioner, I will be

glad to point them out.

(MAP MARKED EXHIBIT NO. 1388-4)

THE COMMISSIONER: Is Fanny Bay property also timber land?

MR. NORRIS: The Fanny Bay property is timber land and was a timber proposition in actual operation, andfor that reason I am stressing the matter that this is a claim with respect to the Fanny Bay operation as a going concern, not withstanding the fact that the items of claim have been shown separately.

Now, I would ask my friend to produce certain documents, and perhaps he might let me have them at this time. Has your lordshipd discovered it, (referring to plan)?

THE COMMISSIONER: Yes, I see it.

MR. NORRIS: With regard to the Cowichan Lake property, your lordship will see that it is of a very irregular shape. It is a V-shaped piece of land in the centre going into it. It is in two parts -- that is, Block 195 -- it goes right across.

THE COMMISSIONER: And 7-A is the property of someone else, is it?

MR. NORRIS: Yes, 7-A is the property of someone else. The word "block" -- "Bk.", and the word 195 show the two parts of this block.

Now, my friend apparently is having a little difficulty in producing these letters and I suggest that I might go on while he is looking them up. I have given him notice to have these letters

and he is finding some difficulty --

MR. McPHERSON: No, I am not encountering any difficulty at all, but I have a letter of November 4th from MR. Norris asking me to produce certain letters, and I am now referring to a letter in October, and I assume it was more or less settled and I presume this letter of November 4th would be a picture of what was required by him for this morning, and I can produce those documents based on that letter, and I shall endeavour to obtain any letters that are missing.

MR. NORRIS: There are a great many letters missing, I may say. I was supplied with copies of letters, and they are only one sided, and my friend can dig those up.

MR. McPHERSON: I can dig them up, but I object to the suggestion that only the one side was given to Mr. Norris. The files were all given to Mr. Baldwin and Mr. Kagetsu, and they have been --

MR. NORRIS: I am not going to enter into an argument on that.

THE COMMISSIONER: I am paying no attention to it.

MR. NORRIS: I do not suggest there was any effort to hide these letters.

Now, Mr. Commssioner, you will see that the claim covers these two logging operations -- the Irving Real Estate and the claim for logs.

The general submission of the claimant is that the Custodian did not receive the fair market value for the assets which he sold, be-

cause the sale was a forced one and not by a willing vendor to a willing purchaser.

That had Kagetsu been left in possession at the Deep Bay Logging Company -- that is, had the Deep Bay Logging Company been left in possession, they would have been willing vendors at prices greatly enhanced beyond those realized by the Custodian, and the Custodian not being able to make the best use of the property was not a willing vendor and his hands were tied.

Further, with regard to the timber limits, there was no reason for selling those limits at the time, save that the Custodian was under constant pressure from the Timber Controller; and I understand evidence of that fact appears in the general evidence, and I will adduce other evidence to the same effect. That is not a matter, of course, which in fixing compensation should be held against Kagetsu.

Now the Custodian's policy in liquidating these properties conformed with the practice of Ross & Sons accountants, and liquidators, and in the liquidation and winding up, unless the sale is carried on for some time the sale must be regarded as a forced one by the liquidator.

We say the purchasers of these properties were not willing and anxious purchasers. First, that the Custodian's advertising was inadequate, and was insufficient to stimulate normal competition.

Discussion.

That the Custodian's advertising contained a very serious limitation -- a condition as to logging, which was not conducive to obtaining the best price. That there was at that time a general idea that the assets of the Japanese who had moved from the coast should be sold at a relatively small price, and that this was a sort of a bargain market, and it would appear, and I think the evidence taken all in all will show that while there may not have been a regular ring formed by purchasers -- thatis, in the sense a definite ring, it was in the case of purchasers holding back -- those purchasers holding back, because they thought they could get another property at a smaller price, and there was a general disinclination to bid up, so that the prices would affect other possible purchasers, and all possible purchasers were holding back and not making definite offers because they had an interest in buying similar property.

The market, in any event, was not normal inasmuch as there were many more, or other assets under sale than would usually be the case in view of the Japanese evacuation.

Then further, (and this is an extremely strong point) the property could not under the circumstances be sold in a normal way, especially the Fanny Bay property-- I am speaking of it as a going concern -- because of the conditions that existed at that time, that tended to depress the

price.

With regard to the logging equipment, the argument is the same. It was part of this general going concern, and it was sold in the same way; and again, the vendor was not a willing or anxious vendor and the purchaser was not a willing and anxious purchaser; and with regard to the urban real estate, the same argument holds to the same extent. And with regard to the automobile, no proper appraisal was made and not enough details were obtained before sale.

THE COMMISSIONER: Was the car sold prior to the establishment of the ceiling price?

MR. NORRIS: That is my understanding. I will check on that. I will have that checked.

THE COMMISSIONER: Very well.

MR. NORRIS: Now, the Custodian, of course, owed a duty not only to the people of Canada, but he owed a special duty to the owners of this property: In fact, his main duty, I submit, to these owners, particularly as this was a very substantial property. It was a going concern, and as a going concern was of great value.

I propose now, Mr. Commissioner, to call Mr. Kagetsu.

EIKICHI KAGETSU, being first duly sworn, testified through the interpreter as follows:

DIRECT EXAMINATION BY MR. NORRIS:

MR. NORRIS: While Mr. Kagetsu speaks English slightly,

I think it would be hopeless to carry on without an interpreter. I have had to use an interpreter myself.

THE COMMISSIONER: Will you swear the interpreter, please Mr. Watson.

(MRs. Irene Smith, sworn as interpreter).

MR. NORRIS: Q: Mr. Kagetsu, you are by occupation a logging operator?

A Yes.

THE COMMISSIONER: Now, Mr. Kagetsu, insofar as you can will you answer in English? If you are in doubt as to any question, let your counsel know at once and it will be interpreted to you.

A Yes.

MR. NORRIS: Q: And you are now living in the city of Toronto? A: Yes, sir, No. 8 --

Q Well never mind the address, you are living in Toronto? A: Yes.

Q And you came to this country in 1906?

A Yes.

Q And in 1909 you were naturalized?

A Yes.

THE COMMISSIONER: He would be naturalized in two years?

MR. NORRIS: Well, things happen, Mr. Commissioner.

THE WITNESS: You will see there 1909.

MR. NORRIS: The prior natrualization certificate was issued on the 12th November, 1909 -- which was probably a tribute to Mr. Kagetsu's res-

ponsibilities.

Q And you have lived in this province until you were evacuated --since that date --since the date you came here? A: Yes.

Q And you have taken an active interest in public affairs in Vancouver and in British Columbia?

A Yes.

Q Now, Mr. Kagetsu -- Mr. Commissioner, I want to refer now to a matter of which Mr. Kagetsu is very proud -- and it is not necessary to go on the record. Mr.Kagetsu, in 1936 you were invited by the Government to attend the unveiling of the Vimy Memorial? A: Yes.

Q And you went there and you were received by the King and Queen? A: Yes.

Q Now, in 1908 you commenced your logging business?

A Yes, in 1908.

Q When did you start to export timber?

A 1916.

Q At that time, where were you operating-- in 1908, first of all, where did you commence operations?

A Sechelt.

Q At Sechelt? A: Yes,and in 1916 operated up in Seymour Creek.

Q Where? A: Seymour Creek.

Q You operated in Seymour Creek in 1916?

A Yes.

Q And when did you first go to Fanny Bay?

A In 1923, I started in to logging business -- the Deep Bay Logging Company, I started.

Q And in 1923 you commenced to log at Deep Bay for the Deep Bay Logging Company, Limited, and you were a director of the DeepBay Logging Company?

A Yes.

Q And a principal shareholder?

A Yes.

THE COMMISSIONER: I might ask you, Mr.McPherson, there is no question but that this claim is one that falls within the Terms of Reference, having regard to shareholding.

MR. McPHERSON: None at all, my lord.

THE COMMISSIONER: And perhaps I might refer to it now- it was understood that Mr. Kagetsu's personal claim was to be taken at the same time. Is that satisfactory to you, Mr. McPherson?

MR. McPHERSON: Yes.

THE COMMISSIONER: We will proceed with the corporate claim and conclude it before you go on with the personal claim, please.

MR. NORRIS: Yes, but I am afraid it will be a little difficult, Mr. Commissioner, to split those things because we have evidence that is applicable to both.

THE COMMISSIONER: Well, perhaps counsel might discuss the situation between themselves.

MR. NORRIS: Perhaps we might do it at noon.

THE COMMISSIONER: It is immaterial to me, but I can quite appreciate, though, that Mr. Hunter has probably prepared himself with thepersonal claim and it is quite conceivable Mr. McPherson knows

nothing about it. I gather that from my past experience with these things.

MR. NORRIS: Well, the thing was so involved -- and it was so interlocked -- you see, it was a logging operation.

THE COMMISSIONER: Well, counsel can discuss it together at the luncheon adjournment.

MR.NORRIS: Now, first of all, dealing with the Fanny Bay operation -- you left Fanny Bay in April, 1942? A: Yes.

Q And you went to Minto, British Columbia, in May, 1942, -- you were evacuated?

A Yes.

Q From the time in 1923, when you began logging operations, until the time you were evacuated, you had been purchasing timber at Fanny Bay from the E. & N. Railway company?

A Yes, they bought all the timber except the house--

Q I beg your pardon? A: Except the house, I bought all the timber from the E. & N.

Q The standing timber--the timber limits he bought from the E. & N.

A Yes.

Q Did you buy them all at one time,or did you buy them progressively?

A I was friendly with --

Q Will you just speak up, Mrs.Smith.

A He bought them from the E. & N? but not all at once.

Q I did not get the answer.

A I was friendly with the E. & N. people, and they did not let me have them altogether at once.

Q Now, at Fanny Bay you had a railway-- a logging railway-- and was that all built at once?

THE COMMISSIONER: Do you think you need to go into all these details? I am aware that logging railways take some time to build.

MR. NORRIS: What I am trying to develop here is that this was a progressive development, and he had other timber that he was to get -- as affecting the values.

A The railway was built in many years.

Q Yes, as he could. Now, you also operated a logging campe at Cowichan Lake in 1930?

A Yes, in 1936, wasn't it?

Q 1936? A: Yes.

Q Were you cutting on Block 195 at that time?

A No.

Q No interlocking property?

A I cut practically the whole of 566 and --

Q The other property? A: Yes.

MR. McPHERSON: My lord, I was just going to suggest that if my learned friend likes to lead Kagetsu, I will not object -- I will only object if there is anything to object to, but he can lead and speed up the case.

MR. NORRIS: Well, I have been doing that pretty well.

Q Now, with regard to Block 195 -- I want to get it clear-- 195 is his personal claim. Does my learned friend want me to leave that for the

moment?

MR. McPHERSON: No, my lord, I am handling Block 195.

MR NORRIS: Where does Mr. Hunter come in?

MR. McPHERSON: Mr. Hunter only comes in on his house claim.

MR. NORRIS: Well, that is very simple, then. We can leave that out.

Q Block 195 you purchased in 1937 for $17,000.00 from Mr. TisdalL? A: Yes.

Q And you bought that through Mr. Whitham?

A Yes.

THE COMMISSIONER: May I have that date again?

MR. NORRIS: In May, 1937.

THE COMMISSIONER: That was $75,000, 00,was it?

MR. NORRIS: Yes.

Q Now in 1942, when you left, had you logged that Block 195 at all?

A No, I hadn't. I didn't.

Q Had there been any cutting on that block -- any logging on that block before you bought it?

A No, I went to see it myself and there was no logging.

Q "I went to see it myself"?

A Yes.

Q Now, by the year 1942, what had that block cost you, having in mind taxes andinterest, by 1942, when you left? A: It was worth about $120,000.00,including the taxes and interest.

Q Was that the money he had in it? Was that the

money he had in it?

A Yes.

Q Thatis, you had $121,515.00 in it?

A Yes.

Q I am not referring to the sale value. Tell him that. A: That is all what I had spent on it -- not the sale price.

THE COMMISSIONER: I presume it does not include interest on his investment, I take it. You had better pursue that further. That apparently does not include interest on his investment. From what he says, that was the money he actually laid out.

MR. NORRIS: I think he mentioned interest.

Q Does that figure of $120,000.00 include interest on your investment?

A Yes, it includes the tax and the interest -- all the money.

THE COMMISSIONER: You had better ask him what rate of interest he is calculating on.

MR. NORRIS: What rate of interest would you figure that at-- $75,000.00?

A 6%.

Q 6%. Was that the rate of interest you were paying? A: Yes, 6%.

Q Now, you were buying that from the E. & N. on time. He was buying it from Mr. Whitam.

A He was buying it from Whitam, and he says the E. & N. advised him to buy it.

Q It had been E. & N. land and you purchased it

Block 195

from Whitam? A: And he made anyway a deal with him all at once for $75,000.00.

Q But was he buying it on time -- on terms -- so much a year? A: Yes.

Q Andit carried interest at 6%?

A Yes.

Block 504

Q Now, Block 504 -- we are coming to Deep Bay -- Block 504 -- at Deep Bay -- which was purchased in July, 1939, from the E. & N. Railway.

A He said he has got all his particulars in his little notebook. Will he be allowed to refer to it?

THE COMMISSIONER: You have no objection to that, Mr. McPherson?

MR. NORRIS: That is all right.

MR. McPHERSON: I have no objection, my lord, if Mr. Norris would just state the date and the amount -- I have no objection to his using it.

MR. NORRIS: I must get it from the witness.

THE COMMISSIONER: Since counsel proposes that should be done, I will accept it on that basis.

Block 566

MR. NORRIS: All right, Mr. Kagetsu. Then I will make this statement in accordance with Mr. McPherson's consent: 504 was purchased in 1939 from the E. & N. Railway by Kagetsu for $19,000.00, Block 566 was purchased by Kagetsu for the Deep Bay Logging Company, Limited, from the E. & N. Railway in September, 1940, for $8,000.00.

A Yes.

Q Block 276 was purchased --

THE COMMISSIONER: All right, I see it -- 276.

Block 276

Block 617.

Blocks 274, 263, 234, 267, 88

agricultural land.

MR. NORRIS: It was purchased by the Deep Bay Logging Company from the E. & N. In February, 1932, for $65,662.00?

A Yes.

Q And Lot 617 was purchased by the Deep Bay Logging Company on the 17th November, 1941, from the E. & N. Railway Company for $8,000.00?

A Yes.

Q In addition, Blocks 274, 263, 234, 267 and 88 were purchased from the E. & N. Railway from time to time?

A Yes.

THE COMMISSIONER: From time to time between what years?

MR. NORRIS: Between what years did he purchase them? The reason I am dealing with those generally, Mr. Commissioner, there was no timber value there. They have a value as agricultural land, but they had been logged off and it is not very material, unless my learned friend wishes that evidence.

THE COMMISSIONER: I thought it was a claim for timber.

MR. NORRIS: There was very little timber, and the main value is for agriculture.

THE COMMISSIONER: They were substantially logged off at that time?

MR. NORRIS: Yes, but there was a little timber there.

Q Was he going to say something?

A Block 88 was bought from Fruitlands.

Q Block 88 was bought from Fruitlands. It is a company there?

A Vancouver Island Fruitlands.

Q Otherwise, the others were bought from the E. & N.?

A Yes.

Q Now, in these purchases from the E. & N. Railway Company, did he pay interest, or were they time purchases over a period of years?-- the purchases made payable over a term of years?

A Yes, I was paying interest.

Q I suppose it would not matter very much, because it would be interest on his investment.

A Either 5½ or 6% -- he is not quite certain.

Block 195

Q Now coming back to Block 195, -- Block 195 -- when you purchased that in '37, you obtained a cruise report, did you, on Block 195?

A What?

Q A cruise report, a timber cruise?

A Yes, I received two -- two from Mr. Whitam.

THE COMMISSIONER: I am sorry, you will have to speak up. I cannot hear you.

Q Yes, I received two. One was the original and the other was a copy.

MR. NORRIS: Q: And who did you get those from?

A I think-- I am not quite sure,-- I think it was from Mr. Lytton.

Q Mr. Lytton was the sales agent of the E. & N. Railway Company? A: Yes.

Q Now, I will produce to you a cruise report purporting to be made by T. F. Sheehan, 37 Imperial Building, covering Block 195.

THE COMMISSIONER: What was the date when the cruise was made?

MR. NORRIS: The cruise was madein 1923 -- he believes in 1923. I think it was some time about that time.

Q Was that on your files?

A I was told about it, -- the report was made in 1923.

Q Yes. He was told it was made in 1923. You got that? Is that one of the copies you got from Mr. Lytton? A: Yes.

Q Did you have another copy?

A Yes, I did, but --

Q Where is it now?

A I mislaid it in Toronto and I don't know where it is.

Q This was a copy which was given you at the same time? A: It is exactly the same.

MR. NORRIS: We will mark that.

(COPY OF CRUISE REPORT MADE EXHIBIT NO. 1388-5)

MR. McPHERSON: My lord, I wonder if my friend is intending to call Mr. Sheehan so that I can examine him on his cruise?

MR. NORRIS: No, I cannot call Mr. Sheehan, he is out of the jurisdiction.

THE COMMISSIONER: Was this timber cruised subsequently?

MR. NORRIS: Yes, it was cruised by Mr. Eustace Smith, but originally it was cruised by Mr. Sheehan.

THE COMMISSIONER: Well, Mr. Norris, you will appreciate it cannot be given the same value it otherwise would if you had the witness here who

made the cruise.

MR. NORRIS: I cannot get the man, he is out of the jurisdiction. He is in Seattle, and there is no way that I can get him here.

THE COMMISSIONER: Have you tried to get him?

MR. NORRIS: I believe some effort was made to get him, and we will try and see if we can get him.

THE COMMISSIONER: If there is any marked difference between Mr. Sheehan's cruise and the cruise made by Mr. Eustace Smith, you will appreciate I cannot give any weight to this document.

MR. NORRIS: Simply this --Mr. Eustace Smith did not make a cruise at all.

MR. McPHERSON: I object to that statement. My learned friend does not know what Mr. Eustace Smith is going to say.

MR. NORRIS: I have this from my friend.

THE COMMISSIONER: Do not worry about that, Mr. Eustace Smith will speak for himself.

MR. NORRIS: And this document should be taken for what it is worth, and if I can I will get Mr. Sheehan here.

MR. McPHERSON: I object to this document. This document shows 49 million feet. Mr. Norris has been given a copy of Mr. Eustace Smith's cruise, which gave 30 million, and I think if he is going to produce this document he should produce the man who made the cruise then.

THE COMMISSIONER: Well, I will accept it for what it is worth, but I warn you it cannot be given very

Block 195

weight in the circumstances.

MR. NORRIS: If I can get him, I will do so, but my friend has interviewed Mr. Sheehan and Mr. Eustace Smith has interviewed Mr. Sheehan, and they all know about this.

MR. McPHERSON: Does my friend suggest that I have interviewed him. I have not interviewed him.

MR. NORRIS: Well, in view of my friend's suggestion, I suggest my learned friend should be called. He knows more about these matters than anybody. He has been acting for the Custodian in all these matters and he can very easily clear these matters up by going into the box.

THE COMMISSIONER: Mr. Norris, if you can get Sheehan here, I would like you to do so.

MR. NORRIS: Yes, it is to my interest to get him.

THE COMMISSIONER: I cannot give any weight to this document, unless there is someone here to back it up.

MR. NORRIS: Yes, or unless there is something to tie it in with other evidence.

THE COMMISSIONER: Yes, and that is the only reason I am allowing it in now, because it may be helpful in the cross-examination of Mr. Eustace Smith.

MR. NORRIS: I will just put that in.

Q Now, you made a summary of that cruise. Where is that other copy?

THE COMMISSIONER: Incidentally, has this timber been logged since?

MR. NORRIS: No, ithas never been logged.

THE COMMISSIONER: Up to the present time?

MR. NORRIS: No.

MR. McPHERSON: I think it has been completely logged up to the present time.

MR. NORRIS: You mean since the date --

THE COMMISSIONER: I mean at this date.

MR. NORRIS: Yes, it has been logged.

THE COMMISSIONER: Then there would be no difficulty in ascertaining what has been cut from the limit.

MR. NORRIS: There would be a slight difficulty, which your lordship knows.

THE COMMISSIONER: That deals with the same thing.

MR. NORRIS: We may be able to get it later.

THE COMMISSIONER: Can you not get it from the Forest Branch?

MR. NORRIS: I am sorry, -- not satisfactorily. You see, the timber mark covers more than this block.

THE COMMISSIONER: I see.

MR. NORRIS: Now, just for the sake of convenience, Mr. Kagetsu, you made a summary of that Sheehan cruise, didn't you?

A Yes.

Q And is that the summary?

A Yes.

Q Well, as a matter of convenience, apart entirely from the admissibility of the original cruise, I will ask my friend if he will admit this is a summary of the cruise. He has had it.

THE COMMISSIONER: Who made it, Kagetsu? He says it

Block 95

it is a summary.

MR. McPHERSON: I don't object, my lord. I thought that was a part of Mr. Sheehan's cruise, but I see it isn't.

MR. NORRIS: Well, I will put that in. I will put that in as part of the summary and you can just mark that page, then.

(SUMMARY MARKED EXHIBIT NO. 1388-6)

Q Now, Mr. Kagetsu, youhave been logging-- running a logging business since 1909-- 1908,

A Yes.

Q Have you since that time been estimating standing timber -- any timber -- does he know about estimating standing timber?

A I have estimated it, because I have been in the business for 35 years. I know. I don't buy timber unless I see it myself.

Q And you are a practical cruiser -- a practical cruiser? A: I don't depend on the other people's cruising. I depend on mine.

Q Now, did you go over this block 195 before you purchased it? A: I went to see it and I went over it minutely to check up before I bought it.

Q Now, how did your observations compare with Sheehan's cruise?- the result of your observations, how did they compare with Sheehan's cruise?

A I cruised more than Sheehan reported. I thought there was 55 million.

Q I want you to compare it with Sheehan's report.

Q You found more than 55 million --

THE COMMISSIONER: Now, dealing with Exhibit 6, it appears to be a sub-cruise of Sheehan's -- not, it is not -- attached to it is a substantial part of Sheehan's report.

MR. NORRIS: It is the same thing, except I have added that summary. I have put in that copy.

THE COMMISSIONER: I think it does not include the first page-- yes, it does.

MR. NORRIS: It was just a matter of convenience to put in the copy. The other was an original document he had with him.

Q Now, what sort of fir did you find on Block 195?

A It was the very best that I have seen.

Q At the price at which you bought it, I suppose this would be a good buy, would it?

A At that time the timber was about 1,000 feet- $9.50 to $10.00. I thought the value was very high.

Q Those were the log prices in Vancouver?

A Even then I thought the $75,000 was very cheap.

Q Now, Blocks 504, 566, 276 and 617 on the Deep Bay operations, had they been cruised by the E. & N. before you bought them?

A When I offered to buy those timber blocks, then they sent a man to report -- a timber cruiser.

Q Now, did you cruise those blocks yourself?

A After I bought the timber, I went over it carefully.

Q And what did you find?

Cruised Block 504 also 566, 576, 276, 617.

A My cruise will be about double the E. & N. -- but if you wish me to explain, I am willing to do so.

Q Yes, I want your explanation. You found your cruise made double what the E. & N. cruise showed. Now, will you explain that.

THE COMMISSIONER: Now, just one moment. Let us have part of this interpreted.

MR. NORRIS: Yes, I don't know much about the Japanese language, but it seems to me a great many words are being used.

A The E. & N. timber in this includes the green timber, about 12 inches tall.

THE COMMISSIONER: Yes, up to a 12 inch top.

MR. NORRIS: Over 12 inch-- from 12 inches up.

A And the E. & N. does not include the dead timber or the timber that had fallen, but I made a cruise on it -- I am experienced -- to distinguish what is good and what is not, and so I can tell you -- even if it is dead or fallen, I can tell.

Q Does he mean that they are recoverable-- that there is a recoverable value to be got from that timber?

A About the hemlock, I don't consider it very good, but the cedar and firs are very good.

Q Ask him if he means there was a high percentage of recovery? A: And very often there is very good pine.

THE COMMISSIONER: Mr. Norris, we have adopted a practice of recessing for a short time in the morning

session. Will now be a convenient time?

MR. NORRIS: Yes.

(PROCEEDINGS ADJOURNED AFTER SHORT ADJOURNMENT)

THE COMMISSIONER: Yes, you may proceed, Mr. Norris.

MR. McPHERSON: My lord, could I just raise the question--if my learned friend does not object at this moment. Mr. Keith Shaw has been subpoaned, as I understand, by your lordship, and I do not know what my friend's ideas are as to when the Commissioner's witness should be heard. As for myself, of course, my idea is that your lordship should have a complete picture of both sides and then your lordship, having called a witness, would be in a position to ask the questions, knowing the two sides at the same time. Mr. Shaw is now here, but he does not wish to sit here for ten days -- if this case is going to take ten days--before being called.

THE COMMISSIONER: What arrangement can we make to accommodate Mr. Shawe, Mr. Norris?

MR. NORRIS: I am very glad to accommodate, Mr. Shaw. I was willing to accommodate him from the beginning, but I do not agree that his cross-examination should end this hearing, because my friend has had access to Mr. Shaw, which I haven't had, you see, and therefore I think he should be called at some time -- perhaps just a little later, and I will be glad to give Mr. Shaw reasonable notice of when I would like him to come.

MR. McPHERSON: My lord, I am a very peaceable man, but I do not like these insinuations of my friend -- that I have talked to Mr. Sheehan and now I have talked with Mr. Shaw. And I would like to state, for the record, I have never discussed this case with Mr. Shaw. He telephoned me to say he had been subpoenaed and I did state seeing that he was the Commissioner's witness, neither counsel should have any communication with him, and it is for your lordship to decide when he should be called and your lordship would be in a position to ask questions once you know the claimant's case and the Government's case.

THE COMMISSIONER: I take it the evidence Mr. Shaw can give relates to the quantity of timber on some of thistimber land, which is the subject of the claim here. I would like to have the evidence of both sides before I call Mr. Shaw.

MR. NORRIS: Might I, Mr. Commissioner, first of all deal with this question of insinuations. There has been no insinuation on my part. I made a statement, which apparently has turned out to be correct, that he had access to Mr. Shaw, which he has had. I know that is notimportant in this hearing and we want to get on with it. Now, as far as the time when Mr. Shaw will be heard shortly, may I, with the greatest respect, submit that at some early stage that is convenient he might be called to give the evidence that he will give. You see, as I have shown

you, we have to depend to a great extent on the Custodian and on his records, and on this other evidence, and in preparation, in the normal course, -- in the ordinary preparation of my case, I would have interviewed Mr. Shaw.

THE COMMISSIONER: Well, you have not been able to. We will leave it at that. If anything should transpire it is more convenient to call Mr. Shaw at a different time than at the Government stage, that will be done.

MR. NORRIS: Well, may I ask if I am free to make an application later?

THE COMMISSIONER: Yes, you are always free to make an application. Mr. Shaw, you may be excused now and we will let you know when we want you.

MR. NORRIS: Well, before he goes, my friend Mr. Baldwin has certain information which he would like to have Mr. Shaw bring-- such as plans and any information as he has got.

THE COMMISSIONER: It would be quite helpful to me, Mr. Shaw, if you would get the information that either counsel would give me, so long as you are prepared to furnish it?

MR. McPHERSON: In view of thatruling, my lord, have I the right to get in touch with Mr. Shaw to bring this information here?

THE COMMISSIONER: I would suggest that both counsel might intimate to Mr. Shaw by letter theinformation you desire. Thank you, Mr. Shaw.

EIKICHI KAGETSU, resumes stand:

DIRECT EXAMINATION CONTINUED BY MR. NORRIS:

Q Now, Mr. Kagetsu, we had got to the stage that the cruises did not take into account this fallen timber , of which you considered a large percentage was recoverable.

A The cruise was only green wood, and not the ones that are fallen. I accompanied Mr.Regan, of the E. & N.,several times and had a good talk with him, and that is how I know they don't include thefallen trees.

Q Now, what would he say about the percentage of cut the cut runs over, and above the estimated volume or quantity of standing timber?

A I consider about one and a half of overrun timber of the E. & N. cruising.

THE COMMISSIONER: What is that?

A One and a half.

MR. NORRIS: What does he mean by one and a half.

A About ~~15%~~ 50% overrun.

Q About ~~15%~~ 50% overrun? A: Yes.

THE COMMISSIONER: I suppose a great deal depends on the cruiser, doesn't it?

MR. NORRIS: Yes, a great deal depends on the cruiser.

Q Did you go out withthe E. & N. Cruiser when you bought these properties?

A I went with Mr.Regan two or three times.

Q Mr. Regan. A: Regan.

Q Now, before they cruised these limits, do the E. & N. make a survey?

A When they give me the report of cruiser, I send the surveyor.

Q He sends a surveyor? A: Yes.

Q You mean he or the E. & N.?

A He does.

Q And in connection with these cruises by Regan, was he with Regan on all these cruises or some of them? A: Mr. Regan was the E. & N. cruiser. He was employed by the E. & N.

Q Yes, and did Kagetsu go with him on the cruise?

A Yes, I did, once or twice.

Q Now, is there any royalty payable on any of this timber- that is, either 195 or the other blocks?

A No, I didn't pay any royalty- it is a reserve of C.P.R. There is a block reserve.

THE COMMISSIONER: You need not waste any time on that as far as I am concerned, unless you want it on the record.

MR. NORRIS: Well, it is a question of values, and it is royalty free.

THE COMMISSIONER: I am quite familiar with the nature of the E. & N. holdings.

MR. NORRIS: All right, my lord.

Q Now, is that timber an exportable timber?

A Yes.

Q And the Crescent mark indicates what?

A The crescent mark takes away all the tax, or the royalty -- the export tax.

Q Now, on 195, what percentage of No. 1 fir would

you think there was on there, when you had it?

A There was about ~~15%~~ 14% No. 1 fir.

Q And No. 2? A: I cannot tell you exactly, but there was about 30%.

Q Now, on the Fanny Bay operation, what percentage of No. 1 fir would be there?

A About 12% of No. 1.

Q And No. 2 -- can he estimate it on the Fanny Bay operation? A: About 40%. I cannot say exactly.

Q No, it is an estimate.

A Roughly.

Q Now, at Fanny Bay you had this equipment. What condition was the equipment, in, generally speaking?

A It was in the best condition. I engaged very high wage men and they wanted very good equipment, and I always saw that they were the very best.

Q Was it inspected? A: Yes, the boiler was examined every year.

Q Now, the railroad, what was the condition of it?

A The railway was examined and examined by Mr. Swanson of the railway company here every year. And sometimes between the time he would come up.

Q Did he extend that railway into Block 617?

A Yes.

Q Why did he extend the railway into 617? Was it an expensive operation?

A I was in the logging business and I never considered the expense, and in 1942 I had expected to cut this timber down, so they were all there --

Q That is 617?

A Yes.

Q If your lordship will give me a minute.

THE COMMISSIONER: Yes.

MR. NORRIS: Q; Now with regard to this railway extension into 617 you put that in the year before -- did you, the year before you logged it?

A Yes, I put it in in 1941.

Q Expecting to log it in what year?

A I expected to log it in 1942.

Q What was the timber like on 617?

A It was very good timber.

Q Now, Mr. Commissioner, I find in setting out the claim, two blocks were omitted. It does not affect the total. That is, under item 2, there should be added blocks 198 and block 256.

THE COMMISSIONER: 198 and 256.

MR. NORRIS: Yes, Mr. Commissioner.

THE COMMISSIONER: Were those blocks logged or do they still carry timber.

MR. NORRIS: 198 and 256 -- there is still timber on 198 and 256? A. There was a little, but it was not reported to the Custodian and I was going to ask him what had happened to it.

Q He means it was not reported to him. But was there timber on it when the Custodian took over?

A Yes, there was quite a lot.

THE COMMISSIONER: Would you put the further question to him: had those two blocks been logged.

MR. NORRIS: Yes, Mr. Commissioner.

Q Had 198 and 256 been logged at all?

A Yes, they were almost logged. All of them were logged but there were a few left on those blocks.

MR. McPHERSON: I am not consenting at this time to an amendment to the claim. I propose to make some remarks about this amended claim after Mr. Kagetau's claim is in .

MR. NORRIS: Why shouldn't he consent. This was sold and it was simply a stenographer's error or a clerks error.

THE COMMISSIONER: Are you at any disadvantage Mr. McPherson in having it included?

MR. McPHERSON: I am at no disadvantage, except that I am going to attack this amended claim after I hear Mr Kagetau's evidence.

MR. NORRIS: If my friend is going to object to the claim he should have done it at the opening of this hearing.

THE COMMISSIONER: We are not proceeding in any strict way, Mr. Norris. I am assuming now that the claim has been amended to include those two items. It may be subject to attack later and it is open to Mr. McPherson to make an attack on it if he so desires, but I want to get at the root of this difficulty and I do not propose to allow any technical matters to interfere with the investigation.

MR. NORRIS: Q: Now, Mr. Kagetau, I am going to ask you about your camp now. There were 23 residences for married people? A. Yes.

THE COMMISSIONER: This is at Fanny Bay, is it?

MR. NORRIS: Yes, this is at Fanny Bay. That is the only case, Mr. Commissioner where there was a camp.

Q And ten bunkhouses? A. Yes.

Q And two kitchen buildings?

A Yes.

Q One community hall?

A Yes,.one community hall, yes.

Q A powerhouse? A. Yes, a powerhouse.

Q An office? A. Yes.

Q A blacksmith's shop? A. Yes.

Q A workshop? A. Yes.

Q A double storage garage?

A Yes, it was on the highway.

Q And some smaller structures?

A Yes.

Q Now what was the nature of these buildings?What was the condition of them?

A I had insured the structures for $10,000 and they were in perfect condition for them to live in.

Q Were they built on cedar sills?

A It was lumber. He calls it lumber -- sawmill lumber.

Q Cedar? A. No, only the foundation was cedar.

Q Only the foundation. They all have cedar foundations. And your community hall, how big was that -- how many people?

A He says my employees was 70 to 75, and their wives and children included were about 170, and on Saturdays and Sundays I used to hold cinemas there.

Q Cinemas for those people?

A Yes.

Q 175? A. Yes.

Q And there was a kindergarten there?

A During the weekdays I had a kindergarten teacher for the little children.

Q And you had a baseball field constructed?

A Oh, yes.

Q Now was the land around the camp cleared?

A I cannot tell you exactly how much, but a great deal of it was cleared.

Q Had he some of it planted in fruit?

A I was just trying the fruit trees and some vegetable garden too.

Q How many fruit treds would he have there?

A There were only about five or six.

Q Oh, just to start with?

A I bought two dozen but I gave some away.

Q How many acres did he have under cultivation?

A I cannot tell you exactly.

Q Did you have some oyster b eds there?

A I leased the oyster on the Coast from E.& N.

Q From the E. & N? A. Yes.

Q For your community?- for the men there?

A Yes, it was a very good place for oysters, they yielded very well.

Q At Fanny Bay you had a booming ground?

A I leased the foreshore rights and I built a warehouse on the wharf.

Q And you had a foreshore lease?

A Yes.

Q And a booming ground? A. Yes.

Q And a dumping pier? A. Yes.

Q Now all these were included in the sale by the Custodian, were they?

A Yes.

Q Now, Mr. Commissioner, I would like to go back just a moment to the percentage by which theE. & N. cruises were low, and I am not quite sure that the answer was interpreted as Kagetsu gave it.

THE COMMISSIONER: All right, proceed.

MR. NORRIS:Q: I asked Kagetsu a little while ago by what percentage the E. & N. cruises were below the exact cut, or the cut?

A If the E. & N. cruise was five million mine was general ten or eleven million.

Q I am speaking of Fanny Bay.

THE COMMISSIONER: He is not answering the question.

MR. NORRIS: No. By what percentage -- below what?

A 100% -- they were about 100%.

Q I am speaking now of Fanny Bay. Now perhaps your lordship would like to cross-examine him on that point. I do not want to cross-examine the witness.

THE COMMISSIONER: I do not believe the witness understood the question.

Q Mr. Kagetsu, do I understand you say the E. & N. cruises were exceeded on being but by 100%?

A Uncut, do you say?

Q Were exceeded -- wait a minute. Perhaps I can put it a little more clearly. I understood him to say when the E. & N. cruise showed 5 million feet

in his experience he cut 10 million feet from the same area? A. Yes, I do. I mean that.

Q The E. & N. cruise must be very bad.

MR. NORRIS: Well, of course, they are done for a different purpose entirely.

Q Now, Mr. Kagetsu, you have some pictures here (Producing same). Is that your booming ground?

A That is the booming ground. Yes, it is.

(EXHIBIT No.1388/7 PHOTOGRAPH)

Q And is that your wharf?

A Yes, that is a logging wharf.

Q Yes, and what is this?

A This is loaded on the carriage.

Q This is the railway?

A Yes.

Q And this is your logging engine?

A Yes.

THE COMMISSIONER: You can put all those photographs in as one exhibit, Mr. Norris.

MR. NORRIS: Yes, Mr. Commissioner.

Q And is this a picture of your camp?

A Yes, this was taken for the purpose of advertising. It is a very old one -- I have a film -- a cinema made of all those places.

Q Yes -- west -- on this plan, Exhibit 2, I think it was, wasn't it --

THE COMMISSIONER: The blueprint?

MR. NORRIS: The blueprint.

THE COMMISSIONER: Yes.

MR. NORRIS: Q: On the west boundary of that -- yes, the west boundary of that, there is a river shown -- Tsable River? A. Yes.

Q Now west of that river was there a large block of timber? A. Yes, there was quite a lot. It was roughly examined in 1935 but there was about 200 million.

Q 200 million? A. The E.N cruise of the timber -- that is the E. & N. timber, and I made cruises.

Q Now was that available to you at that time or had you made any negotiations about purchasing it?

A It was in 1935 when I sold it. There was such a lot of it and I approached Mr. Lytton to sell me quite a lot of timber and I thought my camp could be in operation for about ten or twelve years.

Q Had any one blocked or prevented you, or bought timber in there, that would have prevented you from getting access to that timber?

A No. I was very friendly with Mr. Lytton so there was no fear of anybody --

Q -- blocking it? A. No.

Q Which way, or in which direction were your operations progressing? Which way were they gradually working?

A Up to 1942 and 1943 this was the direction and then I would have gone straight on right up to here.

Q That was due west? A. Yes.

Q And what was over due west was that 200,000, or rather 2 million feet of timber?

A Yes.

THE COMMISSIONER: While you are examining on that subject, Mr. Norris, will you ascertain whether there were any other log operators in that vicinity?

MR. NORRIS: Were there any other logging operators in that vicinty?

A There was the Victoria Lumber.

Q Where were they operating?

A I was in the Newcastle part and they were on the Nelson side.

THE COMMISSIONER: That does not help at all.

Q Where was the Victoria Lumber operation in relation to this 200,000 feet tract that you speak of?

A This belongs to Victoria Lumber.

Q This piece here. That is the piece shown here.

MR. NORRIS: Yes, that belonged to the Victoria Lumber.

Q Were they operating it?

A Yes, they were operating.

Q Which way were they working - north?

A Yes.

Q They were operating North?

THE COMMISSIONER: And the Tsable River valley runs north and south?

MR. NORRIS: Yes.

THE COMMISSIONER: You see we have had evidence in the other casesto this effect, the E. & N. policy was to hold tracts of timber for contiguous operators and when the witness states that this 200 million tract was available to him he is not asserting that it was available to him and no one else.

MR. NORRIS: No, he is simply asserting in his consultations

with Mr. Lytton he would have some of it. Some one else did buy a part of it and substantially blocked the extension of that operation. The correspondence shows that someone bought 25 million acres, I believe, and effectually blocked it.

THE COMMISSIONER: When did that purchase take place?

MR. NORRIS: That purchase took place after Kagetsu had been evacuated -- after he left.

THE COMMISSIONER: Before the sale?

MR. McPHERSON: I can state the fact on that if my learned friend Mr. Norris does not object. The government realized the value of this timber limit was affected adversely by the option given to certain other people but that option was given before the Custodian sold this property and the government will produce evidence as to that.

THE COMMISSIONER: The option was given before the Custodian sold the Deep Bay logging?

MR. McPHERSON: Yes, and evidence will be given to show the Custodian did everything possible to have it cancelled.

MR. NORRIS: I do not know whether your lordship understands the point I am making. The availability of that timber enhanced the value of the operation to Kagetsu and it was open at the time he took the property over.

Q Now what is this -- I only aksed him what it was?

A This is the letter written in 1935 explaining about Victoria Lumber Company and how much lumber was in there and near ours.

Q Who did he write this letter to?

A To a man named Friga Sar (?) a friend of mine.

Q And what are these notes on the back?

A This is the diagram to show how high it was above sea level -- 1500 feet above sea level.

Q And was this more accessible to the Victoria Lumber Company or to your operation?

A It is just about the same.

Q Yes, now who bought this 25 million parcel -- who got the option on it? Probably my friend can tell me.

MR. McPHERSON: It was the Alaska Pine or Mr. Horner, I think, my lord.

MR. NORRIS: It was the Alaska Pine. Has the Alaska Pine anything to do with the Victoria Lumber Company?

A I don't know.

Q I don't think they have.

MR. McPHERSON: I will admit that.

THE COMMISSIONER: As far as I am aware they are two separate and distinct companies.

MR. NORRIS: Perhaps I could find out about this from another witness. Perhaps you could translate for me at noon.

A Yes.

THE COMMISSIONER: Are you starting now on a new phase of your examination, Mr. Norris.

MR. NORRIS: Yes.

THE COMMISSIONER: Well, we adjourn at 12.30 in any case and we will adjourn now. All right, Mr. Secretary we will adjourn to resume at two o'clock.

(PROCEEDINGS ADJOURNED UNTIL 2.00 P.M.)

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

E. Blyth
Deputy Official Stenographer

(2:00 P.M. PROCEEDING RESUMED PURSUANT TO ADJOURNMENT)

EIKICHI KAGETSU, resumed the stand:

DIRECT EXAMINATION BY MR. NORRIS, RESUMED:

Q Mr. Kagetsu, I produce to you a letter dated March 31st, 1942, written by you to Major Taylor, Chairman of the B.C. Security Commission. I am not going to read it all. Do you remember writing that letter?

A Yes, I do.

Q And that was a letter in which you said that you wished to stay on the property to log it off, "Unfortunately in this district . . . problems will be solved". Do you remember writing that letter? A: Yes.

Q And you got a reply from the Security Commission? Did you get that?

A Yes.

THE COMMISSIONER: How do the contents of that letter touch on the issues before me?

MR. NORRIS: He is pointing out in this letter at that time to the Security Commission that it was a going concern and there was a good market for the logs and if he was allowed to remain there the logs would be marketed, and so on.

THE COMMISSIONER: I appreciate that, but how does that touch on the issues before me?

MR. NORRIS: The issue before you, as I understand the Commission, is as to the value of this operation, the fair market value of this

operation. It is a market value of an operation which as a going concern --

THE COMMISSIONER: It is greater as a going concern than some of its parts, I appreciate that.

MR. NORRIS: What I mean is this does show -- perhaps strengthens the evidence with regard to this being a going concern and he intended to stay there.

THE COMMISSIONER: I do not think it has any bearing here.

MR. NORRIS: If your Lordship rules that way, I am not going to press it.

THE COMMISSIONER: My position here is this, that we start with the premise that the evacuation policy was right.

MR. NORRIS: I don't propose to suggest that this evacuation was wrong, but it had these effects whether it was right or wrong.

THE COMMISSIONER: I do not think this letter advances your position at all. I assumed you were putting it in as a criticism of the evacuation policy.

MR. NORRIS: Oh no. I may have my own views on that, but I don't intend to inject them into this, and I certainly don't intend to inject into this hearing any criticism of any bald matters of policy. I mean, there it is.

THE COMMISSIONER: I have nothing to do with them.

MR. NORRIS: I quite appreciate that. However, I suppose your Lordship can take notice of the fact that these people didn't want to go, and

would have carried on.

THE COMMISSIONER: That is perfectly obvious.

MR. NORRIS: Q: This 200 million feet of timber we spoke about, do you remember that?

A Yes.

Q Was it accessible where it lay to you or to the Victoria Lumber Company?

A It was really mine. It was more accessible.

Q To your property? A: Mine went south-west and the Victoria Lumber Company went north, so mine was more accessible.

Q Were there any physical barriers or any hills or valleys, and so on, which would make the situation different as between the Victoria Lumber Company and your property with regard to accessibility?

A Yes, there were many.

Q Many what? A: Many things to make it more difficult.

Q More difficult for whom -- for you or the Victoria Lumber Company?

A It was more difficult to the Victoria Lumber Company than my company. There was a creek.

Q And what about hills?

A Yes.

THE COMMISSIONER: There were hills, I take it.

MR. NORRIS: Yes. I don't just fully understand the procedure here, my lord. I take it this claim is in as an exhibit.

THE COMMISSIONER: Yes, I treat it as a pleading.

MR. NORRIS: Q: Will you take that claim, Mr. Kagetsu? You see Block 195, item 1?

A Yes.

Q That shows a value of $275,000.00.

A Yes.

Q Is that a fair value for that timber or is that a fair value to put on that timber as at the time of sale?

Q That was the fair market value.

THE COMMISSIONER: Can I have the date of sale again?

MR. NORRIS: Block 195 on the 28th June, 1943; and the Deep Bay property, my friend, Mr. McPherson, tells me the negotiations were concluded, as I understood him, in December, 1943, but the documents weren't completed until April, 1944. I would like an opportunity to check that later with Mr. McPherson.

Q That is the value as at the 28th June, 1943?

A Yes, it is.

Q I show you item No. 2, Blocks 504, 566, etc.,-- this is the Fanny Bay property -- and over the page it shows a value of $142,781.00.

THE COMMISSIONER: There is no need for you again to verify the values. He has already sworn to them. If you simply want him to say that the value he has put on them is the fair market value, there is no need for it.

MR.NORRIS: That is all I wanted him to say.

Q Before you left the Fanny Bay operation,

the Deep Bay Logging Company property, before you left that, the Custodian had some men go up there? A: Yes.

Q And they took an inventory ?

A It was from my inventory.

Q They took it from your inventory ?

A Yes.

Q If you look at item 8 on page 3 of that claim, you will see that there were 640 boom chains?

A Yes.

Q The Custodian has only credited you with 317?

A Yes.

Q Were there 640 chains there?

A I read it myself so I am sure it was there.

Q Did these men count the chains?

A No.

MR. NORRIS: I take it the claim with regard to the wire rope is admitted, Mr. McPherson.

MR. McPHERSON: My lord, we are not yet sure that is the same wire rope we consider the Government lost. If it is the same, it is admitted, but we haven't been able to identify whether that is the 1200 feet of spool that was taken away, but I will admit there was a spool stolen and the Government admits it was lost. Whether it was this 1200 feet, I haven't been able to find out.

THE COMMISSIONER: If there is any question about it, you had better prove it.

MR. NORRIS: Q: If you look at item 8, page 3,

1200 feet of wire rope at 8 cents a foot, was that there at the time the Custodian took over? A: Yes, there were 1200 feet, but that was the large coil. Out of that large coil 1200 feet was stolen, missing.

THE COMMISSIONER: Q: I did not hear what the word was after "large". Was it "coil"?

A Yes.

Q On a spool?

MR. NORRIS: Q: Was it on a spool, a drum?

A A drum.

Q Is eight cents a foot the proper charge for that? A: Yes, that is the ordinary market value.

MR. NORRIS: WITH regard to the chains, the charge is $2.25 each. I think that is the amount which the Custodian has allowed with respect to those he has given credit for.

Q At page 2, item 3, there is 60 tons of coal. Was that there at the time?

A When I was evacuated it was there.

Q Was it included in that coal for which these are invoices?

A Yes, and I had to pay everything in cash in advance in those days.

Q And this was not touched?

A But it was half used.

Q There are two invoices, one of which shows 34 tons that wasn't touched, and the other

41 tons, part of it had been taken?

A Yes.

THE COMMISSIONER: Where is the claim for loss of coal?

MR. NORRIS: Page 2, item 3(a), included in that.

THE COMMISSIONER: I see.

MR. NORRIS: If my friend wants these in, I will put them in.

Q Felled and bucked timber. Have you got a record of your felled and bucked timber in your book?

A Yes.

Q The quantity?

THE COMMISSIONER: Before you leave the lost articles, would you bring out where the articles were left at the time of the evacuation?

MR. NORRIS: Q: Mr. Kagetsu, when you left the boom chains, where were they?

A 610 in the blacksmith's shop.

Q Were there any in the booming ground?

A Thirty.

Q And how many in the blacksmith's shop -- 610?

A Yes.

Q Where was the wire rope?

A In the powder house.

Q And it was in the powder house on the Fanny Bay operation? A: Yes.

Q Have you got some notes about the felled and bucked timber in your book?

A Yes.

Q Before going on with that, about this coal, it was just before you left -- February 28th,

1942, and March 24, 1942?

A Yes.

Q And you paid for it at the time of delivery?

A Yes. A week or two before I paid cash.

Q Where was that coal?

A In my coal bunker.

Q Where was that? A: Fanny Bay.

Q The value of that coal, I take it, you paid these invoices? A: I paid freight, too.

MR. NORRIS: $283.78 for 34 gross tons and $342.02 for 41 gross tons -- $7.00 a ton for the coal plus a surcharge of the Wartime Prices & Trade Board of 30 cents a short ton, and freight to Fanny Bay approximately $35.00 to $41.00.

Q We were dealing with the felled and bucked timber. How much felled and bucked timber was there at Fanny Bay?

A 2,568,064 feet.

Q All these items on page 2 and the items 3, 4, and 5, were at Fanny Bay on the property?

A Yes, these were all there.

THE COMMISSIONER: Is this felled and bucked timber claim included in the claim for timber?

MR. NORRIS: It is included in the gross.

THE COMMISSIONER: $275,000.00.

MR. NORRIS: No, there was nothing felled and bucked in 195. That is $142,000.00.

THE COMMISSIONER: It is included in the $142,000.00?

MR. NORRIS: Yes.

THE COMMISSIONER: You might ascertain what value he puts on felled and bucked timber laying in the woods. I presume that is where this timber was.

MR. NORRIS: Q: There was first of all the cold-decked timber? A: Yes.

Q How many thousand feet of that?

A 1,371,718 feet,-- half of that.

Q Half of it? A: Yes.

Q It was a little over 700,000 feet?

A Yes.

Q And what price do you put on that a thousand?

A $12.00.

Q $12.75 you have got here, is that correct?

A Yes.

Q The felled and bucked timber, apart from the cold-decked timber, will you look at your book again? That works out to $8,925.00 for the cold-decked, my lord.

THE COMMISSIONER: Yes.

MR. NORRIS: Q: The felled and bucked timber, how much; what quantity?

A About $1,868.00.

Q 1,868 thousand, is that correct?

A Yes.

THE COMMISSIONER: That would be the balance. We have 700,000 feet of cold-decked.

MR. NORRIS: And the other was 1,868 thousand, the balance.

THE COMMISSIONER: Yes.

MR. NORRIS: At $10.75. He says $11.00. I think the calculation is based on $10.75.

Q Your buildings were insured for how much?

A $10,000.00.

Q What value do you put on those in this claim?

A $4,000.00.

Q Now, the farmland, do you know what you valued that at as farmland? A: Thirteen hundred.

MR. NORRIS: As a matter of fact, -- I don't know whether my learned friend objects -- $1,175.00 was the value of the farmland.

THE COMMISSIONER: This was a developed farm.

MR. NORRIS: No, this is the value of the land logged off for agricultural purposes.

THE COMMISSIONER: And the value he put on it.

MR. NORRIS: $1775.00. And the balance including standing timber and everything else, that is stated there, the dock, and the foreshore lease, and so on, it come to $108,000.00.

THE COMMISSIONER: What does that $108,000.00 include?

MR. NORRIS: That includes the standing timber.

THE COMMISSIONER: Where; on what?

MR. NORRIS: On the Fanny Bay property.

THE COMMISSIONER: On 504, 506, etc.

MR. NORRIS: Yes, that includes the standing timber and everything else set out in item 2.

THE COMMISSIONER: I follow you.

MR. NORRIS: Q: Are there any other trees not included in this value you have given? Did you include your Christmas trees, small trees?

A I want to tell you something about it.

Q What do you want to say about it?

A About the second growth trees.

Q Yes. Did you plant them? A: I cut about 1923 and 1924. That is the second growth. That makes about four inches or five inches diameter, second-growth. I was protecting the B.C. Forest property.

Q You were adopting proper methods of conservation?

A Yes.

Q How many feet of standing timber do you figure there was there?

A There was so many I couldn't tell you.

Q I don't mean Christmas trees. I mean the standing timber. How many thousand feet of standing timber on the Fanny Bay property?

A 27 million feet.

Q 27 million feet of standing timber?

A Yes.

THE COMMISSIONER: That would be the timber standing and uncut on 504, 566, 617, 274, 263, 234, 267, 276.

MR. NORRIS: That is right, my lord. As I explained to your Lordship, that figure is a figure of this operation as a going concern, that total.

THE COMMISSIONER: The total money claim, you mean?

MR. NORRIS: Yes.

THE COMMISSIONER: How does he arrive at his 27 million feet? Is that simply his own estimate or has he cruised for it or what?

MR. NORRIS: Q: How do you figure 27 million feet standing timber?

A It was I who estimated it and I haven't made a mistake.

THE COMMISSIONER: It is his estimate?

MR. NORRIS: Yes.

Q At Fanny Bay you had built a new office building, hadn't you? A: Yes, I did.

Q For your son? A: I had a contract with Mr. Lytton, and as my son was graduated from the University I built a new office for him and furnished it.

Q Your son is a graduate in forestry?

A Yes.

Q You had paid taxes from time to time on your land after you logged it?

A I paid taxes all the time on everything so that I would have access to all the logs and protect the forest.

Q I am referring to the property after it was cut? A: Yes.

MR. NORRIS: It may be necessary, my lord, to ask your Lordship's permission to recall Mr. Kagetsu later after I have had some further information.

THE COMMISSIONER: Very well.

MR. McPHERSON: With respect to the amended claim generally, the Government takes the position that there are certain items in this claim which were not included in the original claim, certainly items that Government counsel was not aware of at all until the examination of Mr. Kagetsu commenced this morning, and the Government, therefore, requests that certain of these items be struck outof the claim on the ground that they were neither received within the time set by your Lordship's Order for the filing of claims, nor were they received in January, 1948, when the company was allowed to file a claim, nor were they received after July 17, 1948, when Government counsel forwarded the file to opposing counsel. In addition to that Government counsel has been in touch with Mr. Norris and Mr. Baldwin concerning this claim on several occasions endeavoring to get a breakdown of the claim, and I would point out to your Lordship that the original claim of the company is dated the 6th January, 1948.

THE COMMISSIONER: I have the claim the 25th November, 1947.

MR. McPHERSON: That is another Kagetsu claim, my lord. The two claims have now been consolidated.

THE COMMISSIONER: Yes.

MR. McPHERSON: On November 25th, 1947, Mr. Kagetsu

completed a claim, but the day that claims were called for was the 30th November, 1947, as your Lordship is aware.

THE COMMISSIONER: Yes.

MR. McPHERSON: Subsequently to the filing of that claim, the company filed a claim, or Mr. Kagetsu filed a claim for the company's assets, that being dated the 6th January, 1948.

THE COMMISSIONER: I have that before me.

MR. McPHERSON: I would point out to your Lordship that the original claims do not make any reference whatever to agricultural land, to this property as a going concern, to reforestation, if that is what these Christmas trees are. Those items were not included in the original claim.

THE COMMISSIONER: Where are they found in the claim as amended?

MR. McPHERSON: Under item 2 of the claim, November 3rd, 1948, received by Government counsel on the 4th November.

THE COMMISSIONER: Wait a moment. You are talking now about the claim you are now proceeding with.

MR. McPHERSON: Item 2, I take it, is where this claim for agricultural land is hidden away somewhere.

THE COMMISSIONER: But you say there is no express claim for anything in relation to agricultural land, is that the situation?

MR. McPHERSON: That is correct, my lord.

THE COMMISSIONER: Yes.

MR. McPHERSON: For the purposes of the record, my lord, I wrote a letter July 17th, 1948, to Mr. Norris, enclosing the claim file, and requesting him to let me have any amendment, and asking him for details of the claim -- the customary letter which your Lordship has heard about in other cases. Having written that letter and having received no amendments, I wrote again on September 17th and asked for a reply to my letter of July 17th and didn't receive a reply. On November 2nd, I wrote again and asked for these amendments, and subsequent to that I had a discussion with my learned friend, Mr. Baldwin, and we discussed particulars of the claim and I requested information about the breakdown of item 2 in the amended claim. Your Lordship will note that in the original claim there is noreference to agricultural land and there was no reference to another item which Mr. Baldwin advised me was part of their claim, which I haven't yet heard. I think it would have to be dealt with now; but the item 3 of their amended claim, Mr. Baldwin has advised me, that includes a claim of fifty cents a thousand for 28 million feet; that in that $37,000.00 there is some kind of a claim of 50 cents a thousand for timber as increasing the value of the railway.

MR. NORRIS: No, that is not right.

THE COMMISSIONER: It does not appear in item 3 and it has not been suggested to me it is included.

MR. NORRIS: I would ask your Lordship's permission to deal with that. It was just an oversight it wasn't dealt with.

THE COMMISSIONER: I will hear Mr. McPherson first.

MR. McPHERSON: That is the details I got for item 3.

THE COMMISSIONER: Just a moment. Let us deal with one thing at a time. You opened in regard to the question of agricultural land. Have you finished with that now?

MR. McPHERSON: No. But he has told me that item 3 indicates he was giving particulars about something that didn't appear there. Now, I am going back to say that at the time of that discussion I was not advised or had not been advised until today that there was any claim for agricultural land or reforestation. The Government is in no position today to consider such a claim because we had assumed that our learned friend would give me the details of his claim.

THE COMMISSIONER: What did the Custodian do with the logged off land?

MR. McPHERSON: He sold it, my lord, the same as in the Royston case, to the purchasers of the larger timber.

THE COMMISSIONER: Was the property sold as a going

concern?

MR. McPHERSON: No. The timber was sold separately and the equipment was later liquidated piecemeal, but the timber itself in the lands was transferred to the purchaser of the timber which in 1943 was then sold, as I endeavoured to show in the Royston case, but the problem then was to bring this in line with the advertisement under which the assets were sold; that is, set it up as parcels.

THE COMMISSIONER: Does it come down to this, that you cannot adduce evidence to meet this claim for agricultural land? Is that the gravement of your complaint?

MR. McPHERSON: No, my lord, I am prepared to admit I could get witnesses to look over this property, but I am suggesting that these people are not entitled to amend their claim. I am getting tired of having opposing counsel give me amended claims two or three days before I come in.

THE COMMISSIONER: Mr. Norris, I suppose, has enough of a problem in the case we are now concerned with, and I have no doubt he is prepared to shoulder that burden but not those of the other Japanese claimants.

MR. McPHERSON: You will also appreciate, my lord, that in this claim -- your Lordship has read the amended claim -- I am unable to find these oyster beds included in it. I didn't know

- there were any claims for Christmas trees.

THE COMMISSIONER: These claims are well concealed if they are there.

MR. McPHERSON: I didn't know they were claiming it as a going concern. I presume that is a claim for goodwill, although the goodwill may be hidden in the value of the assets. If that is the case, the Government should have been advised not three days before the trial but last July, and as Government counsel I would ask that the claims for these amounts should be struck out.

THE COMMISSIONER: There is one item for agricultural land, and the second item is some claim for fifty cents a thousand as an increased value of the railway.

MR. NORRIS: I haven't dealt with that, my lord.

MR. McPHERSON: The claim for the oyster beds, whatever it may amount to, and the hidden claim as a going concern, whatever the increased value for that is, and one other item at the end of the claim, which is in item 3, the claim for the coal.

THE COMMISSIONER: There is a claim for coal, is there not?

MR. McPHERSON: Yes, sixty tons in the amended claim, and there was a claim for oil, gasoline and coal in the original claim of the company. The inventory which my learned friend hasn't filed, Mr. Kagetsu's inventory which he referred to, which I will be filing if my learned friend

doesn't file it, makes reference to only five bags of coal for a blacksmith's forge. When I considered this claim in July when I was preparing the Government's defence, I went through it very carefully and I found five bags of coal and I knew nothing about sixty tons and Mr. Kagetsu didn't include it in his inventory, and we never knew there was coal there. That is really a matter of evidence, but the other items, I suggest, are definitely outside this case at this time.

THE COMMISSIONER: Are not the other items matters of evidence as well? For instance, the claim as presented, speaks of a total value under item 2 of various blocks of timber and plant and equipment. If the claimant comes in here now and asserts that total value is made up of something in addition to that which he has given in his particulars, are you seriously embarrassed?

MR. McPHERSON: I am, my lord, on this question of agricultural land and reforestration, and I am very much embarrassed because I had been suspicious of this being in here -- at least I shouldn't say suspicious --

MR. NORRIS: Why didn't you ask us then?

MR. McPHERSON: I did ask on several occasions for particulars, and I was worried and looking for a claim for reforestation. As your Lordship heard, the Royston case was the first case in

which there was a claim for agricultural land and reforestation. So I was looking for it in this claim, and I asked Mr. Baldwin on the 'phone several times and only the other day I tried to get him to break it down but I never heard of it until this morning. If I have to defend the Government on the question of agricultural land, I will have to hire a man like Mr. Cobb, for instance, and send him out, I will have to go over this land and see whether or not it is suitable for agriculture, I will have to find out whether it was cleared or timbered, so that I will know how old the stumps are; and the whole claim only involves $1,175.00.

THE COMMISSIONER: In the circumstances I think you have cause for complaint. I will hear from Mr. Norris on that. Now, as to the other items in the claim for the oyster beds, that, I agree, is introducing something new to the picture presented by the claim. Christmas trees appear to be the same thing. There is the item of fifty cents for the land, oyster beds, Christmas trees, and what other?

MR. McPHERSON: The Christmas trees, if they included reforestation, then it is just the Christmas trees. I am not sure whether the witness was talking about reforestation or not.

THE COMMISSIONER: Those are the four items.

MR. McPHERSON: Yes. I am leaving the coal aside as a matter of evidence.

MR. NORRIS: It is not necessary for me to submit to your Lordship that we are not in the Police Court and that --

THE COMMISSIONER: There has been no suggestion of it up to date, Mr. Norris.

MR. NORRIS: My learned friend has suggested that in some way he has been deceived. There is no suggestion of deceit at all.

THE COMMISSIONER: You seem to be unduly sensitive, Mr. Norris. I never heard anything about deceit. I have heard a complaint by counsel that he is being faced with claims now that were not disclosed in the claim.

MR. NORRIS: With respect, my lord, he says he gave Mr. Baldwin the opportunity to tell him and Mr. Baldwin didn't disclose it.

THE COMMISSIONER: I am not paying very much attention to that.

MR. NORRIS: Very well. With great respect, your Lordship has known me for a long time, and I think your Lordship knows I am not a very sensitive person.

THE COMMISSIONER: Let us get on with the meat of it.

MR. NORRIS: These matters are pure elements of value. Take the agricultural land. What more could be said? If you look at item 2, Blocks 504, 506, 276, 617, 274, 263, 234, 267 and Lot 88, whether that was going to be used for agricultural land or nonmatter what for, there

it was. It was all known to my friend. He has known about this for a long time.

THE COMMISSIONER: The picture is rather different from that. Counsel has to prepare in advance for a matter of this description, and I think you will fully appreciate that Government counsel can't get information as to whether this land is fit for agricultural purposes or otherwise.

MR. NORRIS: But surely, my lord, the claim was always in respect of those blocks.

MR. McPHERSON: No, the claim was for timber land.

MR. NORRIS: Well, timberland, no matter what it was, it was sold as one block. The Custodian sold it, my lord.

THE COMMISSIONER: And in other cases we have had evidence that such timber land as a rule is retained by an operating company for the purpose of protecting its right-of-way or something.

MR. NORRIS: I don't know anything about the other cases, but I do know that had I been faced with this claim, I submit with respect, I would have found what the elements of value are.

THE COMMISSIONER: There is where another feature of Mr. McPherson's complaint comes in.

MR. NORRIS: He says he asked for particulars and didn't get them. He didn't ask for these particulars. He sold this as a block. The

particulars we got here refer to the sale as a block. He sold this as a going concern.

THE COMMISSIONER: Let us stay with the one point, Mr. Norris. We are talking about whether you disclosed to him your claim for some value as agricultural land.

MR. NORRIS: I submit it was disclosed. It is only an element of value. I submit that isn't a matter for particulars but it is a matter of evidence and really he is not entitled to it, I submit.

THE COMMISSIONER: I do not think it is. I think it is a matter of some moment if the claim is being made in respect to logged-off land as having a peculiar value because of its worth from an agricultural point of view.

MR. NORRIS: May I suggest to your Lordship that all agricultural land in this particular province is logged off land?

The COMMISSIONER: But you and I, Mr. Norris, have lived long enough in this province to know that logged-off land as a general rule has very little value.

MR. NORRIS: Still this was a lot of logged-off land. Apart from that I had to get a man here from the east. We were faced with much greater difficulties than my friend was. I have had in a very short space of time to take the burden of other work, which is not your Lordship's concern, I suppose, to deal

with this man, to get him here and find out what this picture was.

THE COMMISSIONER: The total claim you are making with respect to it is $1,175.00 as part of a claim running into $500,000.00.

MR. NORRIS: Yes.

THE COMMISSIONER: As such are we not spending a lot of time on it?

MR. NORRIS: Then I submit that is a matter for the Government. The Government could afford to be generous with regard to it.

THE COMMISSIONER: I am not disposed to hear evidence as to its value as agricultural land.

MR. NORRIS: May I submit with the greatest deferance -- I know your Lordship will bear with me -- here is a case of the gravest hardship, if we are not entitled to put in all the elements of values. Surely, my lord, -- I would ask if necessary to reserve that, and consider it; but it does seem to me it doesn't matter what the element is --

THE COMMISSIONER: If it were possible, Mr. Norris, to read out of the particulars given in "A" any suggestion that this logged off land had a peculiar value for agricultural purposes, then I would agree with you.

MR. NORRIS: But my point is I am not required to do that. My submission is I am not required to do that because that is an element of value. Whether it is of value for agricultural

purposes, no matter what for -- I don't know what use these people might put it to --

THE COMMISSIONER: You have had my view on it, Mr. Norris.

MR. NORRIS: Does your Lordship make the definite ruling? I would ask your Lordship to consider that because it is the gravest hardship.

THE COMMISSIONER: I have ruled on it. You may go on to the next point.

MR. NORRIS: Does your Lordship rule I may not submit any evidence with regard to its value for agriculture?

THE COMMISSIONER: With regard to its having a peculiar value as agricultural land.

MR. NORRIS: Then it has no value at all.

THE COMMISSIONER: No, it probably has a value, or some part of it has, for the railway right-of-way.

MR. NORRIS: No, because it is away from the railway. What your Lordship has ruled in effect is -- I don't want to strain your Lordship's patience -- that certain of that land may not be taken into consideration.

THE COMMISSIONER: You are quite wrong. I have said that I don't propose to hear evidence as to its having a peculiar value as agricultural land in view of the fact you have failed to give particulars over a considerable period of time when you were asked.

MR. NORRIS: No, my lord, with the greatest respect I

was not asked specifically for it.

THE COMMISSIONER: I noticed from what has been read to me from these letters that you were asked to particularize what this claim means.

MR. NORRIS: No. This claim went in November 4th.

THE COMMISSIONER: Let us have the letter again.

MR. NORRIS: My learned friend had the opportunity since November 4th --

THE COMMISSIONER: Just read the letter, Mr. Norris.

MR. McPHERSON: There are several letters dealing with this question. The first was July 17th.

THE COMMISSIONER: Let Mr. Norris read it himself and he may change his mind.

MR. McPHERSON: I trust your Lordship will appreciate that I couldn't ask whether they were asking for particulars of agriculture. (Reading letter referred to).

MR. NORRIS: As your Lordship knows all through the month of July when we are able to deal with these things, I endeavoured to get in touch with my learned friend. He promised to meet me on several occasions and I was never able to get him.

THE COMMISSIONER: This claim was filed in November, 1947, and we are now in November, 1948.

MR. NORRIS: I appreciate that fact, but, surely, my lord, if there is to be inconvenience as between two parties, surely the person whose property is taken should be given the benefit of any consideration your Lordship can give.

THE COMMISSIONER: So little consideration is shown by the claimant. Here is the situation, Mr. Norris. I have a great many of these claims. I am going to have to sit for another six months to a year. I have specifically asked each counsel concerned to endeavor to be ready when a case goes on and I have asked both counsel co-operate to permit the hearings to be proceeded with expeditiously. I do not think in this case the claimant's solicitor, has given the information that would warrant government counsel in thinking there was going to be any claim made for agricultural land, and I will go further in that and say I do not think Mr. Norris thought about it until it was brought up for the first time in the presentation of the Royston case.

MR. NORRIS: I may say I know nothing about the Royston case. Your lordship will appreciate we could go on with these things from month to month. I have done my best to present my case.

THE COMMISSIONER: But in this case I think you have quite unwittingly taken government counsel at a great disadvantage in that he cannot now get the information in regard to the wealth of this land as agricultural land unless this case is put over for a matter of several weeks.

MR. NORRIS: He had this claim on November 4th. This is November 8th. He could have got that information within two days. I got it within two days.

He could have got that. He waited until Mr. Kagetsu gave his evidence and then he made his objection.

THE COMMISSIONER: Wherein could government counsel ascertain from the statement made in this amended claim that a claim was being made in respect of a truly agricultural value to this land.

MR. NORRIS: It is the value of the land, my lord,. The elements of value is a matter of evidence.

TH ECOMMISSIONER: I do not think so. I am not going to hear evidence on this claim unless counsel agree we adjourn for a matter of a week. That is going to cause me a great deal of inconvenience personally, but that is something I have to put up with, I fancy.

MR. NORRIS: I am in your lordship's hands, but it does seem to me -- I have the greatest respect for your lordship -- in being handicapped in the presentation of this case --

THE COMMISSIONER: It is a matter that I think you should be allowed to present so long as an adjournment is granted.

MR. NORRIS: I can give my friend -- he has the appraisal and it is made by a well known Vancouver agricultural appraiser.

THE COMMISSIONER: He has to employ his own men, and have them properly examined. These I take it are sections of what?

MR. NORRIS: Blocks.

THE COMMISSIONER: What is a block?

MR. NORRIS: It is an irregularly shaped piece of land.

THE COMMISSIONER: It would run into a substantial number of acres and for a man to make a proper check of this land for its worth as agricultural land purposes or otherwise I think would take some time. Maybe I am wrong.

MR. NORRIS: I don't think it would take more than a day.

THE COMMISSIONER: I think you would have to walk pretty fast.

MR. McPHERSON: On the question of an adjournment I am in a very difficult position. I think your lordship will agree that government counsel has leaned over backwards to supply opposing counsel in all cases with information. I went to the trouble before these cases opened --

THE COMMISSIONER: Do not let us go over the ground.

MR. McPHERSON: This is my ground. I went to the trouble to throw the case open at the request of your lordship to meet all counsel who might be attending in your Chambers. Mr. Baldwin attended, representing Mr. Norris. You made certain definite rules which were transmitted to the counsel in writing by the secretary. One was the government counsel was entitled to such particulars as he might require to meet the claim. Then subsequent to that I had some meetings when I attempted to get particulars, not knowing there was a claim for agricultural land. There was no reason for me to ask whether they were claiming for agricultural land, oyster beds, or Christmas trees. It was not until

last week -- Mr. Norris gave me the impression the other day that we might be --

THE COMMISSIONER: I do not think we need go into that. Let us confine ourselves to the issue before us.

MR. McPHERSON: As your lordship knows, it is impossible for me to agree to an adjournment at this date. Your lordship said that when these cases started we were to go ahead. I have made arrangements to be out of this court by the 1st of December. I had to put it ahead , and since the cases were late in starting, I would have to oppose it.

MR. NORRIS: I haven't asked for an adjournment.

MR. McPHERSON: If I figured that Mr. Norris had any grounds for complaint about government counsel's actions in the matter, I would be prepared not to oppose an adjournment, but I feel here is something they knew they were claiming that wasn't apparent from the claim, and I was dealing with them not at arms length but supplying them with all my defence and everything else. And when I telephoned for information it isn't until November 4th I get a new claim for $60,000 more than the original claim.

THE COMMISSIONER: Under what head?

MR. McPHERSON: Under the whole thing. They bumped the claim to a total of $60,000. And since Mr. Kagetsu arrived in the west-Mr. Brewin has been acting in this matter in the East and Mr. Kagetsu had counsel available and therefore I cannot agree to an adjournment.

MR. NORRIS: May I ask your lordship -- we will be some time on this claim -- could my friend get these particulars before this claim is over.

THE COMMISSIONER: That was running through my mind. What length of time are we likely to be occupied on this case?

MR. NORRIS: Certainly all of this week.

THE COMMISSIONER: So far as the agricultural land is concerned, Mr. McPherson, could you be ready to meet that phase of the game by say, Monday next?

MR. McPHERSON: The particular man I would have got was Mr. Cobb, and he is in Montreal, I noticed in the paper by accident. I would have to find out who I could get to look at the property.

THE COMMISSIONER: I suppose you would want to get rid of this claim along with the rest. You do not know when Mr. Cobb is returning?

MR. McPHERSON: No, my lord. I noticed he went to Montreal. I don't know whether I could get anybody else or not.

THE COMMISSIONER: I am going to hold this phase over until the morning. You find out whether you can get the witness you require, say by Monday next. Now, Mr. Norris, as government counsel has said, there was an oyster bed on the foreshore of this land.

MR. NORRIS: There is no value put on that. It is just a matter of general evidence. There is no claim purely in dollars and cents in respect of the oyster beds.

THE COMMISSIONER: Just a little trimming.

MR. NORRIS: It is an element of value.

THE COMMISSIONER: And so far as the Christmas trees are concerned?

MR. NORRIS: It is just another thing to show the nature -- it isn't put in at any specific value.

THE COMMISSIONER: And you are putting no specific value on that?

MR. NORRIS: No.

THE COMMISSIONER: What about this 50 cents a thousand increasing the value of it by virtue of the railway or something of that description.

MR. NORRIS: It is an element of value with respect to the railway. Again we come back to this matter of having a going concern and having been sold at a time it was a going concern. The element of value is simply the value of that railway. In fixing the value of that railway to that land, one would have to figure on the basis of 28 million feet at 50 cents, a matter of $14,000. The railway was there and would have been used. It is purely and simply an element of value.

THE COMMISSIONER: Let me see if I understand you. Assuming there was no development back of this land other than say 5 million feet, you would then say the railway had less value than if there were 50 million feet available to be cut -- ~~xx~~ I am just taking a supposititious case -- you say the logging railway has a greater value because of their being a large quantity of timber available than if only a smallquantity of timber available.

MR. NORRIS: That is it.

THE COMMISSIONER: I do not think you are going to be in any difficulty in that regard, Mr. McPherson. I will deal with the question of agricultural land first thing in the morning. Do you think you will be able to get the necessary information by that time, Mr. McPherson?

MR. NORRIS: I will be glad to supply my learned friend with a copy of my valuation.

THE COMMISSIONER: I think you should do so. Then I won't name any specific time, but I would like you to speak to it in the morning and intimate when you think you could be ready.

MR. NORRIS: Q: You have included in your claim, Mr. Kagetsu, a claim for the value of the railway for that land for logging purposes?

A I estimate the railway at $3.00 per thousand feet.

THE COMMISSIONER: I do not understand that.

MR. NORRIS: It is really a matter for somebody else to give evidence on. I am just proving it generally through this witness.

THE WITNESS: I have still 20 million feet of timber over to log and I have to get the expense out of this railway.

Q What did the --

THE COMMISSIONER: Just a minute. If you are going to call another witness, are we going to get very far with this witness?

MR. NORRIS: No, I don't think so.

THE COMMISSIONER: I think it might be much better if you leave it until you call your other witness on this subject.

We will take a short recess.

(PROCEEDINS RESUMED AFTER SHORT RECESS)

MR. NORRIS: I think I had better put in the two invoices referred to.

THE COMMISSIONER: Very well.

(TWO INVOICES MARKED EXHIBIT No. 1388/8)

MR. NORRIS: Mrs. Smith tells me that he didn't understand the questions I asked with reference to the 50 cents and the 28,000, so perhaps that will be borne in mind by your lordship in considering his answers.

THE COMMISSIONER: I was taking it as if those questions had not been asked at all.

CROSS EXAMINATION BY MR. McPHERSON:

Q Mr. Kagetsu, I show you a J.P. form. Is that your signature? A. Yes.

(J.P. FORM MARKED EXHIBIT No. 1388/9)

MR. McPHERSON: That is dated the 22nd May 1942, my lord.

Q Now, Mr. Kagetsu, in this J.P. form you stated that you had executed a general power of attorney to Carl McLennan Stewart, a solicitor in the City of Vancouver, is that correct?

THE COMMISSIONER: Mrs. Smith, would you ask Mr. Kagetsu to please confine himself to answering the question. He is asked simply if he gave a general power of attorney to Carl,McLennan Stewart, pripr to his

evacuation? A. I signed something, but I didn't know what it was for, as we were all very confused, and he told me if I signed it the Custodians would deal with everything.

MR. McPHERSON:Q: Mr. Kagetsu, didn't Mr. Carl Stewart act for you through the year 1942 and in 1943? Didn't he act for you in Vancouver. Didn't he attend to the business for you?

MR. NORRIS: To the extent that is a question of law, my lord, that he acted for him.

THE COMMISSIONER: A statement is apparently made over the signature of the claimant that he executed a power of attorney.

MR. NORRIS: If he addresses himself to that of course, I can't object, but the question as to whether or not he represented him in Vancouver, the question arises whether he represented him or represented the Custodian.

THE COMMISSIONER: I wish the witness would answer the questions put to him instead of having long conversations with the interpreter.

A Yes, when I was operating he was doing my work sometime.

MR. NORRIS: That wasn't the question. Perhaps Mr. McPherson, you could give him the years.

THE COMMISSIONER: Apparently it is something volunteered by Mr. Kagetsu.

MR. McPHERSON:Q. Mr. Kagetsu, I show you a letter dated April 13th,1942. Is that your signature?

A Yes.

Q Is this the letter that you gave to the Custodian at the time you delivered the inventory sheet?

A Yes, that is the list of the things.

Q Is this the inventory sheet. Do you ever remember meeting a Mr. Murray?

A Yes, I remember him. He come to my camp.

Q Did he check this inventory sheet?

A Yes.

Q You were there when he chacked it?

A Yes.

MR. McPHERSON: I would file a copy of Mr. Kagetsu's letter dated April 14,1942, addressed to the Custodian, in which he says he is enclosing an inventory, and I would file the letter and the inventory together as one exhibit, if it please your lordship?

THE COMMISSIONER: All right.

(LETTER DATED APRIL 14,1942 AND INVENTORY MARKED EXHIBIT No. 1388/10)

MR. McPHERSON: Q: Mr. Kagetsu, do you recall whether or not at the time you delivered that inventory you were in the Custodian's office?

A Yes.

Q Am I correct that Mr. Carl Stewart was there with you? A. No.

Q Mr. Carl Stewart was not with you?

A No.

Q Would I be correct if I said at that meeting you agreed ethat the company's assets should be sold?

A No.

Q You didn't agree then?

A No.

Q Would I be correct if I said that the company had considerable debts and didn't have any money to pay for a watchman?

MR. NORRIS: What date was this?

MR. McPHERSON: 1942.

MR. NORRIS: What date, may I ask?

MR. McPHERSON: I am talking about the meeting of April 13th,1942.

A I never had any debt. I had a little to E. & N. but nothing to speak of.

Q You didn't have many debts?

A No.

Q Am I correct that you were indebted to the Yokohama Species Bank on the 13th April 1942 in the sum of $23,000? A. I had security for that, so it didn't matter at all; it didn't count.

Q Am I correct that with respect to Block 195 you still owed $16,000 approximately?

A Yes.

Q So you had some debts? A. Yes; some Vancouver wholesaler or something.

Q Can you tell me whether or not the company had enough money to pay Mr. Murray the watchman's fees?

A Yes.

Q Am I correct that Mr. Stewart was selling certain equipment for you and he was to use that money to pay the watchman's fees?

A No. It was to pay my life insurance.

Q Do you know whether or not the Custodian advanced money topay the watchman's fees?

A I never knew that money was paid to the watchman until I saw the Custodian's paper.

Q You were evacuated May 28th,1942, weren't you?

A Yes.

Q When did you close down the operations at Fanny Bay?

A March 8th.

Q If you closed down March 8th,1942, why did you buy 34 tons of coal according to this Exhibit 8, dated March 24, 1942?

A It is customary for the coal mines to have the money in advance about a month or six weeks; and in my place there had to be certain cart (?) opened up in the front or something. So it was very difficult to get that.

THE COMMISSIONER: Q: But the question asked is this. Why, if you closed your operations March 8th, should you have been buying coal three weeks later. Show the document to the witness so that he can understand it? A. The order was given about a month or six weeks before this.

MR. MxPHERSON: Mr. Kagetsu, didn't you go back to the property after the meeting in the Custodian's office, April 13th?

A Yes, I went back very often.

Q My learned friend produced a letter to you this morning addressed to Austin Taylor, dated March 31st,1942, in which you requested permission to remain to take out the felled and bucked timber. Now at

at that time was your operation continuing?

A Half of the people had to leave on the 8th March, so half the operation stopped. I was so confused I stopped operations for the time being on March 8th.

Q And you were not logging at all after March 8th; you never logged after March 8th?

A Yes, I did. I had hoped to continue after I asked permission from Mr. Austin Taylor. So I did some.

Q Am I correct, Mr. Kagetsu, that you didn't stop operations on March 8th?

A Half of my employees were taken March 8th so I had to stop operations, and on the 13th all of them had evacuated. I am not certain but about the 13th -- I have it with me at the hotel -- but I think it was the 14th March.

Q I show you a letter that my learned friend didn't put in this morning, but the government would like to put it in for a different purpose. It is addressed to Austin Taylor. Is that your signature?

A Yes.

MR. McPHERSON: This is the same letter of March 31st,1942, addressed by Mr. Kagetsu, to Austin Taylor, and I would like to file a copy of that as an exhibit.

(LETTER MARCH 31st, 1942, MARKED EXHIBIT No.1388/11)

Q Mr. Kagetsu, after your evacuation am I correct that you came back to Vancouver in June 1943?

A Yes, I remember that.

Q And am I correct that you came back to Vancouver for the purpose of discussing the question of

the company's assets with your solicitor, Mr. Stewart?

A No, I didn't come to talk over disposal of any property.

Q When you came back to Vancouver in 1943, did you see Mr. Stewart?

A Yes.

Q Did you also see Mr. Robert Wray in Mr. Frederick Field's office?

A I don't quite remember.

Q Do you remember seeing Mr. Wray and discussing the question of your debts to the YokahamaSpecies Bank and the question of the debt on Block 195?

A I don't quite remember.

THE COMMISSIONER: I would like you to carry on a little further. I assume you are going to lead evidence to the effect that he did.

MR. McPHERSON: Yes.

THE COMMISSIONER: Will you put the question for the witness and give him an opportunity now to meet it.

MR. McPHERSON: Q: Do you say you did not discuss your debts with Mr. Wray in June 1943?

MR. NORRIS: Does he know Mr. Wray . Is Mr. Wray here?

MR. McPHERSON: Q: You know Mr. Wray, don't you, Mr. Kagetsu? A. I don't remember discussing the debts with him at all.

Q How much timber did you tell Mr. Wray or Mr. Carl Stewart was on the Deep Bay property in 1942.

THE COMMISSIONER: Just a moment. What kind of timber?

MR. McPHERSON: Standing timber, my lord. How much standing timber?

MR. NORRIS: Does he mean tell Wray or Stewart. Which is he asking?

THE COMMISSIONER: Would you reframe the question, please.

MR. MCPHERSON: Q: Mr. Kagetsu, how much timber did you say to Mr. Wray in April, 1942, was on the Deep Bay property as standing timber, which includes your own blocks in that area?

A I never said anything to Mr. Wray, as I expected to return there. I never discussed it.

Q Would you say I was wrong if I say you stated you had seventeen to eighteen million feet of standing timber on the Deep Bay property?

A I don't remember saying anything to him about it.

THE COMMISSIONER: Do you say you didn't do so or don't remember. I would like you to put the question does he say he does not remember.

Q Do you mean that you don't remember or that you didn't talk to Mr. Wray on that subject?

A I don't remember ever discussing it.

MR. McPHERSON: Q: Mr. Kagetsu, when you cruised your own timber, what size timber did you incoude in your cruise, down to what size?

A Ten-inches.

Q Would that be ten-inches diameter breast high?

A Ten inchs diameter.

Q When you log it and when it is fallen you take the measurement from the top?

Q Ten inches at the top?

THE INTERPRETER. I don't know what he means. He says he cuts up to ten inches diameter, it doesn't

matter if large or small.

MR. McPHERSON:Q: When you were logging, what was the smallest diameter tree you were cutting, that is what was its diameter at the stump?

A Stump or top.

Q Stump? A. Maybe 12 inches.

Q Mr. Kagetsu, were you cutting 12-inch trees in 1941? A. I can't tell you, as I cut so many.

Q You should know as an expert woodsman, as you have been qualified this morning, 35 years in the woods -- you should have some idea how big the trees were you were cutting in 1941?

A Yes.

Q What was the diamter of the trees you were cutting?

A You want the average?

Q I want the diameter of the trees?

A The largest is 30 inches and the smallest would be about ten inches.

Q Am I correct that you are saying that your company in 1941 was cutting trees 30 inches down to 10 inches at the stump diameter?

A Stump.

THE COMMISSIONER: I would like you to wait until the interpreter translates the question into Japanese before you answer. I am afraid Mr. Norris that this man is not understanding a great many of the questions. It is inconceivable to me that he is asserting he was cutting down to ten-inches stumps as logs.

MR. NORRIS: My lord, my position sitting here there are

a lot of things I would like to do about it, but I am afraid I can't.

THE COMMISSIONER: Some of your assistance may be able to tell you whether he is understanding the question.

MR. KAGETSU, JUNIOR: I think I can make him understand a little better.

THE COMMISSIONER: Is the question being put in Japanese to the witness correctly?

MR. KAGETSU, JUNIOR: Generally I think, yes.

THE COMMISSIONER: Then, it is up to him. He will have to look after himself.

MR. KAGETSU, JUNIOR: But some of these tecnhical matters such as diameter and top and stump diameter I think I could do a little better.

THE COMMISSIONER: If you wish to have the question put through your own interpreter.

MR. NORRIS: I would, my lord, and then Mrs. Smith can check him.

THE COMMISSIONER: That is satisfactory. Put your question again on this subject of diameter. Swear the interpreter. What is your name?

MR. KAGETSU, JUNIOR. Kagetsu.

THE COMMISSIONER: You are Mr. Kagetsu's son?

MR. KAGETSU, JUNIOR: Yes.

(HAJ KAGETSU, SWORN AS INTERPRETER)

MR. NORRIS: Will your lordship explain to the interpreter that he is to put the question exactly as it is put to this witness.

THE COMMISSIONER: Your function is to translate from

A Yes.

Q In these logs that the 12 inches in diameter, how many logs would you get out of one tree on the average, can you tell me?

A Just one.

Q Was there a good market for 12 inch logs in 1941?

A We sold it with mixture of other timbers so I don't know.

Q That is 12 inch logs at the but?

A No, D.V.H. breast high.

Q But now he has cut the logs he has got a 12 inch log at one end, hasn't he, breast high?

MR.NORRIS: He didn't say he cut it breast high. He asked the diameter of the logs breast high.

MR. McPHERSON: Q; To what height did you cut logs in 1941? A. About two and a half feet for the smaller timber up to about four feet for the larger.

Q And to what height did you cut 12 inch timber in 1941? A. About two and a half feet or three feet, depending on the tree.

THE COMMISSIONER: Just a moment, before leaving that. What is two and a half feet. I am free to confess I do not understand. If he says he is cutting logs to a 12 inch diameter, and now talks about two and a half feet,

MR. NORRIS: Two and a half feet from the ground but 12 inches in diameter breast high, that is the difference. They would be a greater diameter as they went down.

THE COMMISSIONER: I did not appreciate he was cutting them two and a half feet above the ground.

MR. McPHERSON: Q: When you cruise timber do you take into consideration in your cruise trees that are 12 inches at breast high?

A If I can get a log out of such a tree, I include it. Sometimes such a tree will not give one log and I don't include it then.

Q Do you agree with me that in 1941 it was not customary to cut timber less than 18 inches breast high? A. The rangers came around and examined the cut-over area and complained there were trees left, that is greater than 12 inches D.V.H.

Q With respect to the fallen timber you mentioned that you included in this cruise of yours, what makes the tree fall? why does the tree fall?

MR. NORRIS: Which tree?

MR. McPHERSON: I am asking the questions, my lord.

THE COMMISSIONER: I would like to have the question repeated.

MR. McPHERSON: Q: Today my learned friend attempted to qualify him as an expert cruiser and he mentioned his cruises were 100% over the E. & N. cruise / and he cut these small trees from fallen timber. This is before it is logged he goes into a virgin stand --

THE COMMISSIONER: Your question is now, what makes the tree fall.

MR. McPHERSON: I can put the question in another way.

Q Mr. Kagetsu, am I correct that fir trees, which are

down on the ground, as a general rule are down because they are rotten at the butt?

A A lot of them are uprooted and fall that way.

Q But isn't it correct that a lot of timber that is down is down because it is punk; it is bad wood; it is rotten? A. No, the wind blows them down.

Q When you say your cruises are 100% above the E. & N. cruise, are you saying that the E. & N. cruise of Block 195 would be half of 55 million, which is what I understand you are claiming?

A The E. & N. didn't cruise that, and therefore I wouldn't want to make that statement.

Q With respect to this timber that is down and you include in your cruise with respect to the downed timber, isn't it a fact that the wind blows it down because it is bad timber?

A No, often times it falls because they have a lot of limbs on them and they are perfectly sound.

Q What sized limbs do you include in your cruise in order to get 100% over the E. & N. cruise?

A It is difficult to say., Sometimes they make No. 3 logs. Are you asking do I utilize the limbs?

Q I am asking whether the 100% includes any limbs?

A No.

Q With respect to the timber back of Deep Bay, at the time you left Vancouver in April --

THE COMMISSIONER: Wait a minute. What timber back of Deep Bay. You are now talking about the 200 million?

MR. M cPHERSON: Yes.

THE COMMISSIONER: Make that clear to him.

MR. McPHERSON:Q: With respect to the timber behind Depp Bay, that is the two hundred million feet you mentioned today, when you left here in April 1942, did you have an option on that timber?

A No, I didn't have any formal option; just a verbal one.

Q Did you obtain that verbal option from Mr. Lytton?

A On 60 million of it we got it from Mr. Lytton.

Q That was a definite verbal option from Mr. Lytton, was it? A. Yes, it was a definite verbal option although I didn't have any papers.

Q How much were you to pay for it?

A It hadn't been cruised, so it hadn't developed that far.

Q So you got an option for 60 million feet of timber that hadn't been cruised yet, is that right?

A I had cruised it but the E. & N. hadn't.

Q What position did Mr. Lytton hold in the E. & N. railway? A. He was the only man in charge of the forest for the E. & N.

Q At Victoria? A. Yes.

Q And when you bought timber from the E. & N. Railway, did you buy here in Victoria or in Vancouver?

A Victoria.

Q When did you get the option for 60 million feet, about what date?

A November 1941.

Q And how much did you think you would have to pay

a thousand. Did you have any figure in mind?

A It would have depended on their cruise.

Q Why does it depend on a cruise as to the quantity then what I am asking is, what price per thousand were you going to pay?

A On the average $1.75 to $2.00, but I want to limit that by saying not everybody had access to that timber.

Q So that in 1941 you were considering buying timber from the E. & N. at $1.75 to $2.00 a thousand?

A Yes.

Q Withrespect to your original claim, item No. 2, block 617.

THE COMMISSIONER: Is this November 28th?

MR. McPHERSON: This is the claim dated January 6th, 1948, my lord.

THE COMMISSIONER: Where is the item?

MR. McPHERSON: Item No. 2, Block 617.

MR. NORRIS: That claim is abandoned. We have given an amended claim.

MR. McPHERSON: I look in the amended claim and under Item 2 I see, parcels A. B. C. etc., (Reading) Will we take that out of there, my lord?

THE COMMISSIONER: What do you say?

MR. McPHERSON: Block 617 you are claiming something for.

MR. NORRIS: But my learned friend is referring to the earlier claim.

MR. McPHERSON: I think I am entitled to refer to the earlier claim in order to get a break-down of this

claim.

MR. NORRIS: No, my lord.

THE COMMISSIONER: Why not.

MR. NORIS: Because we have abandoned it entirely. We are not relying on it at all. We say it is recast entirely, it is a different claim. If we are going into that --

THE COMMISSIONER: In January 1948, a claim is made in respect of Block 617, wherein the estimated fair market value is shown as $32,000. That claim is sworn to as his amended claim, now filed. What is the basis of your objection.

MR. NORRIS: Simply this, that we find it was incorrect, and we have said in effedt , "This is incorrect, it was incorrectly sworn, we are putting a new claim in".

THE COMMISSIONER: This is cross examination. I will allow the question. I would prefer to let the witness explain for himself rather than have counsel explain in the course of the examination.

MR. NORRIS: Surely, my lord, you are doing me an injustice because there is no suggestion -- I am not trying to explain anything to this witness.

THE COMMISSIONER: Let the question be put.

MR. McPHERSON:Q: On January 1948 in the City of Toronto, you apparently signed a claim form. Is that your signature?

A Yes.

Q At the time you signed that form, Mr. Kagetsu, you referred to Block 617, and you claimed that the

estimated fair market value of that lot of timber at that date was $32,000. Is that correct?

A Yes. I did write that, but at the time --

Q I don't want any explanation.

THE COMMISSIONER: He says he did write it in. If he has an explanation, we will hear it.

A I didn't have any access to any data so couldn't do any ground work. All I did was discuss it with Mr. Brewin and submit a rough claim.

Q Mr. Kagetsu, in view of your wide knowledge of timber and the fact that you knew the Deep Bay timber, are you suggesting you didn't know how much timber the Deep Bay Logging Company had in 1942?

A I knew.

Q How much timber did the Deep Bay Logging Company have in 1942, the day you were evacuated, standing timber? A. About 27 million.

Q In your claim for Block 617 of $32,000 how much timber did you estimate was on that block when you made that claim?

A At that time I figured about 11 or 12 million, but I had no exact idea.

Q So, if there were 11 million you were claiming $3.00 a thousand, is that correct?

A I didn't know the existing market value and therefore I did use roughly that figure.

THE COMMISSIONER: Q: That is the $3.00 a thousand?

A Yes.

MR. McPHERSON:Q: Under your amended claim, Mr. Kagetsu, you are claiming for Block 617. How much timber do

you claim is on that block?

A I only considered the block cumulatively.

Q If you considered the block cumulatively, you arrive at what figure. What is the total claim you are making for standing timber?

A 27 million.

Q How did you arrive at 27 million?

A I sent out estimators to get that figure for me.

Q When did you sent the estimators out?

A Four or five days before.

Q Have they given you their estimate yet?

A Just the rough figure.

Q The timber estimators youss ent out have made a report, have they?

A Not yet.

Q Mr. Kagetsu, how can you claim 27 million feet of timber if you don't know if there is 27 million feet there or not?

A I knew myself there was 27 million feet from the start.

Q How much timber do you know there was on Block 617? A. About 12 million.

Q How much are you claiming for the timber on block 617 out of the total claim of $142,781.00?

A $4.00 a thousand.

Q Am I correct that you bought this block of timber in November 1941 for $8,000?

A Yes.

THE COMMISSIONER: Just a moment. That 12 million feet at $4.00 a thousand would show a price of $48,000, would n't it?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: I wonder if now would be a convenient time to adjourn. We have gone on longer than usual today. Would that be satisfactory to you?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Or do you prefer to finish this phase of your cross-examination?

MR. McPHERSON: No, I will be a day yet. I might say if my learned friend has the cruise of these blocks of timber, I could greatly shorten the cross-examination I have supplied him with my cruise of the timber. If he could let me have his, it would simplfy the cross-examination.

THE COMMISSIONER: If you have them, Mr. Norris, you might discuss that situation with counsel.

MR. NORRIS: Whatever material has been obtained has been obtained for the purpose of this hearing and I will discuss it with Mr. Kagetsu.

MR. McPHERSON: Before your lordship adjourns, I have had this same reply placed before me on other occasions by Mr. Norris, that I wasn't entitled to something of this kind because it was a part of his case. I understood from your lordship's ruling some time ago that both sides are entitled to reports, and cruises, and so on, and I would point out as an example, my lord, that this whole question you have spent so much time discussing today that Mr. Norris had a report November 1st before I even talked to him on this agricultural proposition, so if I had been given this, then I would have been in a better

position, and if he could give me his cruise --

THE COMMISSIONER: It would facilitate matters very much if you would furnish information of that character to government counsel. I have directed him to open his entire files to claimant's counsel for examination and permit them to extract any documents and copies. It seems to me reasonable that claimants counsel should provide the same facilities to government counsel that is furnished by government counsel to the claimant.

MR. NORRIS: May I say this, my lord, with respect to these cruises, they aren't complete yet. That is the sort of rush we have been in to try to get these particulars completed.

THE COMMISSIONER: You have had only a year, Mr. Norris. You may not have had the time, but certainly the claimant has.

MR. NORRIS: Well, my lord, we have done our best to give my learned friend -- of course, there is no use my discussing that with your lordship again, but I have given him everything he has asked directly.

THE COMMISSIONER: I am simply throwing out the suggestion to you that it will facilitate these hearings if this information can be given to him in advance; otherwise we are going to take much longer.

MR. NORRIS: Before your lordship concludes, I would like an opportunity of meeting your lordship with my learned friend in your Chambers.

THE COMMISSIONER: I will be glad to see you now.

(PROCEEDINGS ADJOURNED TO 10.00 A.M. NOVEMBER 9,1948)

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

Deputy Official Stenographer

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1, REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

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

Vancouver, B.C.,

November 9th and 10th, 1948.

CASE NO: 1388

Burke chief 94-99
Cross 99-107
re-exam 107-111.
Kageteu cross 111-149.
Discussion 150-171.

IN THE MATTER OF THE CLAIM OF

DEEP BAY LOGGING COMPANY and

EIKICHI KAGETSU.

PROCEEDINGS AT HEARING

The Commissioner.

Vancouver, B.C.,

November 9th,1948, 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: My lord, with my learned friend's permission we are calling another witness now, who will be examined and cross-examined.

THE COMMISSIONER: Very well.

JOHN NUGENT BURKE, a witness called on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Burke?

A Vancouver.

Q At what address? A: 6187 Sperling Street.

Q What is your occupation, at present?

A I am manager of the B. C. Loggers' Association.

Q And how long have you served in that capacity?

A Since February,1942.

Q Now,what business were you in prior to that?

A I have been in the logging business in British Columbia since 1923.

Q In what particular phase of the logging business?

A Well, I was manager of a logging company here when I came in 1923 to the coast, and was with them until they finished operations in 1939.

After that I was working for myself and in business in connection with others in logging until I took the position I have.

Q Would you tell the Commissioner, briefly, what

knowledge you have of log prices in your present capacity? A: One of my duties --

THE COMMISSIONER: Mr. Burke is well known to me. I think I know pretty well what his duties are.

MR. BALDWIN: Very well, my lord. For the record I wanted it, that was all.

THE COMMISSIONER: Unless you particularly want it on the record, I know it.

MR. BALDWIN: No, my lord.

Q You are familiar, then, with log prices from 1942 on? A: I am.

Q Would you tell the Commissioner what the trend was from 1942, further up through the years -- what it has been?

THE COMMISSIONER: Should we not limit it to the date of the sale by the Custodian of these timber limits?

MR. BALDWIN: Yes, my lord. None of the sales were made in 1942.

THE COMMISSIONER: 1943.

MR. BALDWIN: I was getting the trend.

THE COMMISSIONER: Bring it up from the year 1942 until the date of the sale. Do you think there is any purpose in calling evidence beyond that date?

MR. BALDWIN: A little bit longer. I think the dates after the sale have equal probative value as the ones immediately before.

THE COMMISSIONER: Very well. What was the date of this sale? June, 1943, was it?

MR. BALDWIN: One was in June, 1943. The other agreement for sale was signed in March, 1944.

THE COMMISSIONER: Concluded in September of 1943, was that not it?

MR. NORRIS: There is a question about that. That will have to be developed, as far as the documents are concerned.

THE COMMISSIONER: Very well. Carry it on until the documents were signed, then.

MR. BALDWIN: Q: Would you outline to the Commissioner the prices of, for example fir, from 1940 up through 1944, then 1945 and 1946.

A May I refer to a memorandum I have with me?

Q Yes. A: In the summer of 1940, the prices of fir logs were pegged by voluntary agreement between the operators and the Timber Controller at $13.00, $18.00 and $25.00 for three, two and one logs respectively.

THE COMMISSIONER: Q $13.00, $18.00and $25.00.

A Right. Fir peelers were pegged at $24.00 and $30.00. These prices were held at that level by the Timber Controller until July, 1942, when an increase of 50 cents on all grades was authorized.

On February 1st, 1943, the Timber Controller granted an additional increase of one dollar, making the prices for standard fir logs $14.50, $19.50 and $26.50.

Q That was February, 1943, Mr. Burke?

A Yes, Mr. Commissioner. Just prior to that, in

January, 1943, they established, by order of the Timber Controller, a price on pulp logs of $29.00 and $36.00.

On June 15, 1943, another advance of $1.00 was authorized by order of theTimber Controller, bringing the prices to $15.50, $20.50 and $27.50 for saw logs, but the prices of peelers was left at $29.00 and $36.00.

On April 1st, 1944, the Timber Controller advanced the ceiling price on standard logs $1.50, making a price of $17.00, $22.00 and $29.00, and at the same time set the peeler prices at $31.50 and $37.50. Those prices remained in effect until after the period you are referring to, actually until November 17, 1945.

MR. BALDWIN: Q: Mr. Burke, in the case of these advances it was a flat rate for all species, wasn't it -- a lump sum added?

A I don't think that is quite an accurate statement. You will notice the peelers were advanced exactly the same as standard logs, but the usual practice was to grant an advance of 50 cents, $1.00, or in one case to $1.50.

Q Would you be good enough to outline briefly to the Commissioner the similar advances made in the prices of cedar, hemlock and balsam?

A In cedar, the price was pegged voluntarily in August, 1941, at $13.50, $20.50 and $26.50, with the price at $22.50 and $28.50 for lumber ceiling.

On February 1st, 1943, there was a dollar

advance on all grades.

Q Excuse me, Mr. Burke; should we perhaps deal with hemlock and balsam at the same date, to save you going back again?

A I think it is more simple the way I am doing it, and I won't become confused.

On June 15, 1943, another $1.00 advance on all grades of cedar.

April 1st, 1944, a $1.50 advance on all grades of cedar, and those prices remained in effect until the control was removed on November 17, 1945.

The hemlock price in 1940 was $12.00, with a select ceiling of one to two dollars over that price. It dropped in the Fall of 1940 and the Spring of 1941 to $11.00, advanced slowly to $13.00 to October 1st, 1941, when the Timber Controller set a ceiling of $13.00 for hemlock, as of December, 1941.

There was an advance granted on April 15, 1942, to make the price $15.00.

On February 1st, 1943, there was an advance of $1.00 for pulp hemlock and a lumber grade was established, pegging logs 20 inch and up suitable for the manufacture of lumber, and a price of $18.50 was set on that grade.

On June 15, 1943, there was a one dollar advance in both grades.

April 15, 1944, an advance of $1.50 on both grades, and that remained in effect until the

ceiling was removed in November, 1945.

The price of balsam was the same as hemlock up until June 28, 1946, when the price of pulp balsam was set at $25.00 and lumber at $30.00.

July 10, 1947 -- oh, these are past the date, I am sorry, I am going beyond the date.

MR. BALDWIN: I don't think my friend or the Commissioner is interested in anything beyond that date.

Q What would you say, Mr. Burke, as to the relation between the ceiling price fixed by the Timber Controller and the sale price?

A By early 1942, or perhaps late 1941 I think I can say that -- well, I can say that practically any log of reasonable quality sold at the ceiling price.

MR. BALDWIN: That is all from me, Mr. Burke.

CROSS-EXAMINATION BY MR. McPHERSON:

Q Mr. Burke, the increase in the price of logs from 1940 until the present time, would you say that that was represented principally by the increase in the cost of producing logs?

A Are we talking about --?

Q 1943 and 1944. The increase you have referred to, starting in 1940, when you gave the basic figures for fir of $13.00, $18.00 and $25.00 --

A Yes, I gave them all through to 1945.

Q Yes, in 1943, the increases and so on; but I am suggesting to you the reason why the increases were necessary was because the cost of the rise

of labour and the cost of producing logs and moving them out of the woods, is that right?

A If you will say the increase was due to the increased cost of producing logs, I will agree.

THE COMMISSIONER: Q: Let me understand that. Is that an increased cost of production, as opposed to increased value of standing timber?

A Mr. Commissioner, the ceilings, in my opinion, were never raised excepting when a producer was able to demonstrate to the Timber Controller that a raise was necessary because of increased production costs.

MR. McPHERSON: Q: Now, I show you a statement, Mr. Burke. Isn't this really what you have been saying, this statement which is headed "British Columbia Loggers' Association, Average Selling price of logs - 1924 to 1947". Do you recognize that as a document produced in your office?

A It would appear to be a copy of a document produced in our office.

Q Now, I point out to you, Mr. Burke, in this document, for example, you have the 1940 prices. You see, you gave the figures for 1940 of $25.00 $18.00 and $13.00, which is going from the high grade to the low grade.

THE COMMISSIONER: Are you now on fir?

MR. McPHERSON: I am now on fir.

Q You gave the figures $25.00, $18.00 and $13.00. I am reversing them, because that is the way they are on the page. I point out in the statement

for 1940 it shows No. 2 logs were sold below the average of $18.00, and No. 3 below the average of $13.00, No. 2 being sold for $17.67 on the average, and No. 3 for $12.44. It also shows further that No. 1 was sold above your average, that is, it was sold at $26.19.

A I see that.

Q And over on the far side, (indicating), these would be the average prices for all species, wouldn't they? A: It is very easy to understand, sir. The reason for No. 1 being above the average is because peelers are included in No. 1 on this statement, which brings it above the average. The reason for the cost being below the average, and you will note this is 1940 and not late 1940, 1941 and 1942 that I was referring to, is some logs were sold at less than the price of some others, because some companies sold on a list that would show at the camp rather than at the mill, and there we see the difference.

Q I am not suggesting the figures you have given are wrong, but I point out if you take these averages and run them across you will have the average cost for all species.

A Yes, you will have the average price. May I say, if this is a true copy of the statement prepared in our office, then this represents the sales which were reported to the British Columbia Loggers' Association, and nothing else.

Q Yes. That, of course, is what your figures given this morning are based on.

A No. The figures I gave you this morning were the ceiling prices of logs for that period.

Q In other words, the figures this morning have nothing to do with the actual selling price, except it was around the ceiling price.

A Except as I stated. At least, any good logs would sell for ceiling during the period I referred to.

MR. McPHERSON: I don't know whether my leaned friend would permit me to put this in. I was going to put it in through Mr. Eustace Smith.

MR. NORRIS: My friend has the right to put it in.

MR. McPHERSON: He has identified it.

THE COMMISSIONER: I think the question is asked, to put it in, without it being identified positively as the B. C. Loggers' Association's document.

MR. NORRIS: I don't think there is any doubt about it, that that is from the B. C. Loggers' Association. If Mr. Burke will just look at it and see if it is.

THE WITNESS: This is a carbon copy, or Ishould say a typewritten copy of a great many figures, and I am not prepared to say whether it is correct or isn't correct.

MR. NORRIS: Then put it in for identification.

THE WITNESS: It is probably what it purports to be.

THE COMMISSIONER: Put it in for identification.

(DOCUMENT MARKED EXHIBIT NO. 1388-12)

MR. McPHERSON: Q: Mr. Burke, would you say that the increased cost of producing logs exceeded the increased sale price allowed by the Timber Controller between 1941 and 1944?

A That is a very difficult question. I would have to say that in my opinion, it did.

Q Yes? A: In my opinion, it did.

Q Now, do you know, does the B. C. Loggers' Association keep any record, or have you any information at all as to the ceiling price on standard timber?

A No. Just a moment. I shouldn't say we had no information, but it is only casual information which might happen to be given us in the course of certain other information.

Q Butyou didn't keep any records?

A We didn't keep any records of anything of that kind.

MR. McPHERSON: Thank you.

THE COMMISSIONER: Q: Mr. Burke, just before you leave the stand, there was evidence led yesterday to the effect that logs,12 inches at the butt, breast high, were marketable and were actually marketed as logs in the period 1940 to 1944.

A I will certainly say that is correct, Mr. Commissioner.

Q That is correct? A: Yes.

Q Is not a 12 inch log at the butt an unusually small log? A: It used to be

so considered, but during the war there was such a scarcity of wood that all species of logs were cut in mills,which they would never have looked at before.

THE COMMISSIONER: I see. Do either counsel wish to pursue the question I have raised?

MR. NORRIS: Q: Simply to perhaps make this clear, Mr. Commissioner, that you referred to logs 12 inches at the butt and then the reference was 12 inches breast high. The evidence of Kagetsu was they would cut below breast high, so it would have a bigger diameter than 12 inches at the cut.

A I think my statement would be correct, that there were many logs that would only be 12 inches breast high at the stump. I might clarify it further by saying in my opinion the industry, having developed better cutting and utilization methods, particularly in hemlock, is prepared to use much smaller stuff than it was ten years ago.

MR. McPHERSON: Q: Well,Mr. Burke, you have told his lordship that logs of 12 inches breast height, which, of course, is what a cruise is based on, breast height, and they cut somewhere below that, but logs of 12 inches,you have stated, were marketable from 1940 to 1944? In that period there was a market for 12 inch logs?

A Might I say I didn't realize I was saying in 1940. There would be some doubt in my mind

about 1940, but getting on into 1942, 1943 and 1944 and further on, the further on you went the more marketable they would be.

Q Mr. Burke, on this sheet that I have put in for identification, I notice that the average price for all species was $15.12 in 1940, $16.04 in 1941, $17.80 in 1942, $19.74 in 1943 and $21.37 in 1944. Now, after 1944 the prices of logs, according to these figures, jumped considerably. That is, in 1944 it was $21.37, 1945 it was $22.05, and then the next year it was $27.41.

A What was the next year?

Q The next year was 1946, and in 1947 it went all the way up to $38.33. Now, I suggest to you, Mr. Burke, that actually it wasn't until, certainly not until after 1943, and probably until after 1945, that the price of logs really started to skyrocket and there came a market when you could almost market the branches off the trees.

A That statement is right, but I don't agree with your reasoning.

Q You have said in the period 1940 to 1942, there was a market for 12 inch logs.

A I think so.

Q Would they sell at a lower price than the other logs? A: The last four years, anything that could be called a log and given a grade would sell.

Q It would be from some time in 1944 on?

A I can't state the definite date, but that has

been the trend in the last few years.

Q The dates are very important to his lordship in this case, because the Government sold this property the Government contends, in the Fall of 1943, and the papers were completed in the Spring of 1944; so, it is very material to know when the price of logs really started to climb and when 12 inches were marketable.

A The prices didn't really start to climb until the Controller took the control off in November, 1945. Thatis really the simply statement.

THE COMMISSIONER: Q: November, 1945.

A Yes, Mr. Commissioner.

MR. McPHERSON: Q: Now, before the Timber Controller took the controls off in November, 1945, did it, in your opinion, pay loggers to cut 12 inch logs when the sale price was fixed? Wouldn't they be more likely to cut big logs?

A That is a difficult question, again, to answer. There was great pressure being brought on all loggers to greater utilize the product of the forest, and since the mills were willing to cut them where they were seldom willing before, there was a tendency on the part of loggers to take timber which they formerly left in the woods, and that included smaller logs.

Q You wouldn't be positive as to what date you think that tendency started?

A No, I wouldn't.

Q You don't think it was before 1942, anyhow?

A I wouldn't say that. I don't think it was before 1942.

Q Have you any information as to the situation within the last few months? Would I be right if I said that the sale of small logs has fallen off within the last few months?

A You would be right if you said the sale of off quality logs was falling off, and small logs of some species.

Q Are those what you call peewee logs?

A I think there is still a good sale for peewee fir logs. I know there is not a good market for peewee cedar logs, but for small hemlock there should be just as good a market as there ever was.

MR. McPHERSON: Thank you.

RE-DIRECT EXAMINATION BY MR. NORRIS:

Q Mr. Burke, would you just look at this document, which has been put in for identification. I think your statement was that the price didn't start to advance, or didn't really jump -- I think those were your words, really jump -- until the Controller took the ceiling off in 1945.

A That is true.

Q But that is, I take it, a comparative statement, isn't it? That is, there was a general progression.

A There was a general progression. The price of logs kept right up with the ceiling price.

Q And that is in contra distinction to the earlier years, when the price was up and down?

A Oh, yes.

Q In other words, from 1940 on there was a general progression up. Prior to that, it had been up and down? A: That is a true statement.

Q Now, I suppose the relation of the cost of production to profit, would, in each case, depend on the economy of operation of the operator?

A Oh, yes.

Q That is a natural thing?

A Yes.

Q You spoke of better utilization, and methods. By that you mean, I take it, that the products which previously had been waste, or were not used, were utilized? A: I mean that in the past six years, to my knowledge, the industry has been more and more interested in trying to utilize, in a better way, the product of the forest.

Q And that is true with all industries, isn't it?

A I can't say for any other industry.

THE COMMISSIONER: Q: You say it is peculiarily true of the timber industry?

A It is peculiarily true of the timber industry.

MR. NORRIS: Q: Now, your evidence today has to do, I take it, with British Columbia.

A Only, and the coast of British Columbia.

Q The coast of British Columbia. Logs that had been or might be considered small might, in other places, be utilized and differently utilized?

A Oh, yes.

THE COMMISSIONER: Q: In regard to the marketing of small logs, to be economically marketed they must be marketed locally, must they not?

A Anywhere, Mr. Commissioner, on the market that you can get a log into water. It makes little difference if you take it to Vancouver or even to Seattle, if it were exportable.

Q The timber we are concerned with here is export timber, which is E. & N. timber.

A Yes.

MR. NORRIS: Q: And the lumber would be produced here and exported, is that it?

A No.

Q Or the logs would be exported.

A If your logs were permitted to be exported, it makes little difference whether they go to the Vancouver market or the Seattle market.

MR. McPHERSON: My lord, I think Mr. Burke might be able to give your lordship some information on the question of the E. & N. timber being exportable. You will recall we had the same question up in the Royston case, and Mr. Burke has been told now that this is Crown grant timber. I think he might be able to give your lordship some information on the question of whether or not there was an export market for Crown grant timber.

THE COMMISSIONER: If counsel desire to pursue that feature, it would be helpful. It would be open to each of you to examine the witness further on that question.

MR. NORRIS: Is there some question as to whether or not the E. & N. timber is exportable?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: It was exportable, I gather from the comment of Government counsel. Whether it was exportable in the period under review, namely, from 1940 to 1944, is the question.

MR. NORRIS: My friend might pursue it.

MR. McPHERSON: Q: Mr. Burke, am I correct that with respect to Government timber during the war --

THE COMMISSIONER: Now, wait a moment. "Government timber"?

MR. McPHERSON: Q: -- with respect to Crown grant timber, there was an embargo on the exportability of Crown grant timber, unless the company had had the timber for export could establish they had a quota, or they were given a quota, or they had been exporting before in the basic period, is that correct?

A The fact, as I recall it, is that some time, and I don't recall the date, about 1944 or 1945, they put a quota on exportable fir and exportable hemlock.

THE COMMISSIONER: Q: Who is "they"?

A The Dominion Government, through the Timber Control. Prior to that, Mr. Commissioner, the timber Control barred entirely the export of fir logs for some considerable period, running as far back, if my memory is correct, as 1942, and I don't recall any deviation from that

until they started the quota system, and the year of that I am not certain about. I don't recall it. But it has been in effect for three, four or five years, I don't know exactly how many.

MR.McPHERSON: Thank you.

THE COMMISSIONER: Mr. Norris, have you any questions?

MR. NORRIS: In view of the fact that this matter has just come up, my lord, I would like to inform myself a little better on the matter. The witness can come back some other time, if I want him.

THE COMMISSIONER: If it would not cause you too much inconvenience, Mr. Burke, we might have to call you back again. We will facilitate you as much as possible.

MR. NORRIS: Q: Might I have the exhibit, the plan -- the blue one? Do you know that timber mark? (Indicating). A: No. I could tell what that timber mark represents -- Crown grant timber.

Q By what? A: By the curve underneath.

MR. NORRIS: That is on Exhibit 2. All right, thank you.

(Witness aside).

EIKICHI KAGETSU, recalled, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, I show you a plan which is entitled "Deep Bay Logging Operation".

THE COMMISSIONER: Now, just a moment, if you please.

There is rather too much conversation going on here for me to follow the examination. All right, proceed.

MR. McPHERSON: Q: I show you a plan, which is stated to be a plan of the Deep Bay Logging operation. Do you recognize that as a plan of your operation? Thatis a plan of the Deep Bay Logging operation? A: Yes.

Q Would this part coloured in green, be where the standing timber was on the different blocks?

A Yes.

Q You can see the different blocks, Mr. Kagetsu.

A Yes.

Q Now, this part marked "Logged", is that where the felled and bucked timber was?

A That is right.

Q And this little piece marked in green over here, (indicating), what is that?

A I don't know.

Q Would that be a small jag of timber left on Block 276? In other words, Block 276, the page isn't long enough, so that green patch has been put in to show there was some timber there, is that right? A: Yes.

MR. McPHERSON: My lord, I will give your lordship a copy of this so you can follow it.

MR. BALDWIN: If I might interrupt my friend for a moment. I wonder if he could phrase his questions so there will be no possible misconception in the witness's mind as to whether he is agreeing

with what the plan purports to represent. If he was asked, for example, if he was back there, I think he would be quite clear in his own mind that the green represents timber.

THE COMMISSIONER: If there is any doubt in your mind, Mr. Baldwin, as to whether the witness understands the question, you are quite free to interject.

MR. McPHERSON: Q: Mr. Kagetsu, before we go on with this, you understand most of what I am saying, don't you, in English?

A Just the difficult questions, he doesn't understand. Generally, he does.

Q You used to talk English in the Custodian's office, didn't you?

A Oh, yes.

Q And you understood English pretty well.

A Not very well.

Q We will go on, Mr. Kagetsu. On this chart, would this line (indicating), in your opinion, be your railway?

THE COMMISSIONER: You might indicate where it is.

MR. McPHERSON: It is marked "present logging railroad", my lord. It is a line in blue ink.

A Pretty well, thatis the way.

Q You think that is the approximate line of your railway? A: Yes, coming through here (indicating).

Q Now, your railway ended at this spar tree in block 274, didn't it, when you left?

A¼ Oh, yes. Two here, and one here, I guess, (indicating).

Q Was there any spur line of your railway into 566?

A 566? Oh yes, we go in here, (indicating).

Q You came in here, but you hadn't your railway in here (indicating)?

A No, we came in this way (indicating).

Q That is the felled and bucked timber here, (indicating)? A: Yes.

Q But there was no railway into 566?

A Well, my branch is here, you know, (indicating).

Q Yes, there were some spur tracks in.

A But the main line was here, (indicating).

Q The main line entered at the spar tree, marked "spar" in 274, is that correct?

THE COMMISSIONER: That is 21.

MR. McPHERSON: Marked 21, yes.

THE WITNESS: 274, yes, in there (indicating).

MR. McPHERSON: Q: And your railway wasn't in to Block 617, was it?

A Pretty nearly reached.

Q But it wasn't in to 617.

A Just about within reach to 617.

MR. McPHERSON: Here it is, Mr. Norris.

MR. NORRIS: It is marked on the plan, isn't it?

MR. McPHERSON: Yes.

MR. NORRIS: He agrees with that, doesn't he?

THE COMMISSIONER: Yes.

MR. NORRIS: Why not mark it "A" or "x"?

THE COMMISSIONER: He has indicated it already, with

the spar tree and 21!00, above it.

MR. McPHERSON: Now,I would like to file that.

THE COMMISSIONER: Is this a copy of Exhibit 2?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: This is something new.

MR. McPHERSON: This is a plan prepared by Eustace Smith, showing the timber.

MR. NORRIS: We could have it proved later. It is going to be proved, I suppose?

THE COMMISSIONER: You propose to prove it by Mr. Smith?

MR. McPHERSON: I will prove it as the standing timber, my lord. Mr. Kagetsu has admitted it is a plan of the operation.

(PLAN MARKED EXHIBIT NO. 1388-13)

Q Mr. Kagetsu, when we adjourned yesterday you had told his lordship, with respect to Block 617, that in your original claim you were claiming $3.00 a thousand, and that in the new claim it works out to $4.00 a thousand.

Would you explain to his lordship why you increased the value of the timber $1.00 a thousand between the time you drafted your original claim and the time you drafted your new claim?

A I just lived in Toronto. I couldn't find the market price. It was just my own rough estimate, that was given to Mr. Brewin.

MR. NORRIS: I would like to know if the reporter got the last answer. Did he say a rough estimate?

THE COMMISSIONER: Mr. Kagetsu, I think it might be safer if you gave your answers in Japanese to the interpreter and then allowed her to translate them. I do not want there to be any misunderstanding as to what you say.

MR. MCPHERSON: Q: Mr. Kagetsu, what was the selling price of standing timber in the E. & N. timber belt in 1941?

MR. NORRIS: You mean from the E. & N.?

MR. McPHERSON: Q: Yes, in the E. & N. timber belt, and E. & N. timber.

MR. NORRIS: You mean purchased from the E. & N.

A It was $1.75 and $2.00.

MR. McPHERSON: Q: In 1941? A: Yes, in 1941.

Q With respect to Block 617, Mr. Kagetsu, am I correct that you bought that block of timber for $8,000.00 in 1941?

A Yes, I did.

THE COMMISSIONER: Mr. McPherson, I missed the price that the witness gave as to the E. & N timber in 1941.

Q $1.35? A: $1.75.

MR. McPHERSON: $1.75 to $2.00, my lord.

MR. NORRIS: And that was purchased, as I understand it, from the E. & N.

THE COMMISSIONER: Yes.

MR. McPHERSON: Q: Mr. Kagetsu, am I correct that when you bought Block 617 you bought it on the basis of a cruise of 7,298,000 feet?

A Yes. It was the E. & N. cruise, and he bought it

on that basis.

Q I suggest to you, Mr. Kagetsu, that if you paid $8,000.00 on the basis of the E. & N. cruise, that it works out that the E. & N. were selling timber at $1.10 a thousand in 1941. Would that be correct? A:At that time when I buy it, I buy it for so much an acre and it doesn't consider the number at all. The timber is there.

Q Are you suggesting, Mr. Kagetsu, that you buy timber on the basis of area that the timber covers -- that is the number of acres?

A When I buy, E. & N., it is always by area. So much an acre in the area, and so much acres.

Q Would I be correct if I said that in Block 617, it had 790 acres?

A Could he refer to the note book?

Q Mr. Kagetsu, to assist you I refer you to your original claim, where you state that Block 617 has 790 acres.

MR. NORRIS: If my friend is trying to establish the acreage, if he says that is the acreage I will agree with it.

THE COMMISSIONER: You say so in the claim.

MR. NORRIS: My position about that claim is it was abandoned, and it was wrong; but if my friend has any information that that is the acreage, all right.

A If it is in the claim, I think it must be so.

MR. McPHERSON: Q: Now, Mr. Kagetsu, if you take 790

acres and divide it into $8,000.00, you get $10.10, approximately. Now, are you suggesting, Mr.Kagetsu, that you, as an experienced timber man, bought block 617 for $10.10 an acre?

A He doesn't think.

Q Isn't it correct, Mr. Kagetsu, that when you buy timber you buy the timber on the basis of a cruise, either your own cruise or someone else's cruise? Isn't that correct?

A Yes, it is, sir.

Q Would you explain to his lordship,Mr. Kagetsu, where you get thefigure of $3.00 a thousand to put in your claim in January of 1948, while you were in Toronto?

A I didn't know the market value in Vancouver, as I was in Toronto, so I roughly estimated it.

Q CanI take it, Mr. Kagetsu, that your first claim wasn't based on inquiries made by you as to market values of timber, or equipment?

A I didn't know what the Commission or the Custodian was going to do, and I was told I had to put in a claim, so I put in a rough calculation.

Q You were in business at Fanny Bay in the Spring of 1942, weren't you, Mr.Kagetsu? That is correct, isn't it?

A Yes.

Q And in the Spring of 1942, didn't you know what the ceiling price of standing timber was in the E. & N. timber belt from the E. & N. Railway Company? A: I bought the

timber in 1941, so I know up to then, but from 1942 I don't know anything about it.

Q I am correct, that the evidence shows that you bought Block 617 in November of 1941?

THE COMMISSIONER: That is what he said.

MR. McPHERSON: Q: And it works out at $1.10 a thousand? A: Do you mean $1.10 an acre?

Q No, $1.10 a thousand, for the timber.

THE COMMISSIONER: That is simply a matter of calculation, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

Q Mr. Kagetsu, I show you this plan again. Your railway in Block 504 passes the point marked 18:00. A: Yes.

Q Why didn't you take out the timber on the right hand side, to the north of the railway?

A I intended to have a road go right through here after I had finished with this side, (indicating).

Q Isn't it a fact, Mr. Kagetsu, that this timber wasn't accessible to this railway?

A I kept that for that purpose.

Q Kept the timber for what purpose?

A For the railway property.

MR. NORRIS: For the purpose he suggests; he was going to build a line right through the centre of that grant after, to the north, and across the V.L. & M. timber, into the timber that he hoped to get from the E. & N.

THE COMMISSIONER: Yes, I see. You might ask the witness

again whether the timber left in Block 504 could be moved economically by the existing railway, which he had.

MR. McPHERSON: Q: Mr. Kagetsu, could the timber left in Block 504 be logged out economically with the existing railroad?

A I could have done it, but there was no necessity for doing such a thing.

Q And isn't it a fact that from the point marked "water tank" up in the corner of Block 274, that you had taken up the rail into Block 504? That is correct? A: Yes.

Q Now, with respect to the timber left in Block 504, am I correct that that was a very steep sided slope? A: There was a very steep slope, but I had surveyed everything and had it all arranged.

THE COMMISSIONER: Q: Speak a little louder, please, Mrs. Smith.

A I had it surveyed, so I had all the arrangements made to lay the railway there.

MR. McPHERSN: Q: Mr.Kagetsu, if you had built the new railway you are talking about, wouldn't you have had to bridge three major ravines or canyons?

A Yes, I would have had to do that.

Q And that is very expensive, isn't it?

A They are here and here, (indicating). It would take $16,000.00.

THE COMMISSIONER: Here to here -- what is that, Mr. McPherson?

MR. McPHERSON: My lord, I don't think it is material. He is talking about the cost of the railway from some point to another point, and of course it depends on the terrain, and what they are building through.

THE INTERPRETER: He did not consider the extension of this railway, because there was enough timber on the other side.

MR. McPHERSON: Q: Mr. Kagetsu, if you didn't have the timber, or if you couldn't get the timber in the back here, that is the timber that you mentioned yesterday, (indicating) --

THE COMMISSIONER: Is that the 200 million tract?

MR. McPHERSON: Q: Yes -- if you couldn't get that 200 million tract of timber, wouldn't it be better to log this timber by truck than build a railway in to get that timber, (indicating)?

A I was certain of getting this timber on the other side.

Q I am asking the witness if he didn't get the timber on this side, (indicating).

THE COMMISSIONER: None of this is going to mean anything when it comes to reading the notes, unless you identify in your question what you are pointing to.

MR. McPHERSON: Q: Mr. Kagetsu, if you didn't get the 200 million feet of timber that you mentioned, that you had an option on 60 million feet from the E. & N. Railway to the northwest of Block 504.

THE COMMISSIONER: Mr. Kagetsu, would you please answer the question counsel puts to you.

MR. McPHERSON: Q Mr. Kagetsu, if you didn't get the timber from the E. & N. Railway lying beyond Block 504, would you have built a railway into the remaining timber on Block 504, or would you have logged it by truck?

A Yes, I would have logged it.

Q By --? A: Yes, I would have done it by truck, if I couldn't have got that timber on the other side.

Q And you would do it by truck, Mr. Kagetsu, because it wasn't practical to build the railway through that timber, if that was all the timber you had, was it?

A No, it wasn't.

Q Now, with respect to Block 617, am I correct that this is their high land, (indicating)?

A Yes, it is, sir.

Q Am I correct that most of it is over 2,000 feet?

A Yes, it is about 2,000 feet. 500 feet higher.

Q Mr. Kagetsu, in coming into Block 617 from the end of steel at the point 21:00 spar, you would have to come into Block 617 and build many bridges as you switch back up the hills, wouldn't you? A: This is a rather small creek and I wouldn't have great difficulty in bringing trucks in.

Q Trucks? A: The railway, yes.

Q Now, Mr. Kagetsu, if you didn't have any other timber and the timber marked green on this map, would you have built a railway into this block 617, or would you have logged it by truck?

A I would prefer having a railway rather than the truck, because it is certain.

Q Because of what? A: He means certain -- certainty of operation.

Q What do you mean, Mr. Kagetsu, when you say the railway is certain of operation?

A Trucks are operated by gas, so very often it goes short of gas and it would stop in the middle of it, whereas with the railway there is no difficulty with that.

Q Mr. Kagetsu, do you know of any other logging operations on the British Columbia coast of this size -- the size of Deep Bay -- that are railway operations, or that were railway operations in 1942? A: I don't know what other companies did.

Q Did you tell us, Mr. Kagetsu, why you left that patch of timber in 276, that patch marked green down in the right hand corner?

A Because it was easier to take it out by trucks.

Q Yes, Mr. Kagetsu, you had intended to truck that timber out, hadn't you?

THE COMMISSIONER: Is this the piece you are referring to, Mr. McPherson, (indicating)?

MR. McPHERSON: Yes, my lord.

A If I leave it, there are many who are anxious to

have small lots, or small holdings.

Q How much timber do you xestimate is in that stand?

A As it was a great distance from there, or from this place, I didn't go in and see it, but my rough estimate is about 2 million.

MR. McPHERSON: My lord, in view of the confusion as to just where this timber of the E. & N. adjoining Deep Bay is, I would like to go back to Exhibit 2. It is my recollection that the witness said yesterday that that river you see on the right side is the Tsable River?

A Yes.

MR. McPHERSON: But I think he was wrong, my lord -- unintentionally wrong . If you look at the big map of Vancouver Island, I don't know what the Exhibit number is, my lord --

THE COMMISSIONER: Exhibit 4.

MR. McPHERSON: -- exhibit 4, if your lordship looks at that mpa, I think that it is apparent that it is the Rumblewater Creek.

MR. NORRIS: Mr. Commissioner, perhaps my friend doesn't know that creeks and rivers in this province may have half a dozen different names. That has been my experience, and it may be the case here.

THE COMMISSIONER: It may be.

MR. McPHERSON: I am not trying to confuse the witness, I am trying to make it clear where this timber was. You will notice on your map that the Tsable River flows almost east and west. This shows

as flowing north, (indicating), and that is what confused me yesterday, how that could be the Tsable River, flowing north.

THE COMMISSIONER: I have not found it on Exhibit 4 yet.

MR. NORRIS: It is marked on the plan my friend produced as the Tsable River. It is marked there as the south fork of the Tsable River.

THE COMMISSIONER: Yes, it is so marked on Exhibit 13.

MR. McPHERSON: My lord, the confusion has arisen because everybody calls it the Tsable River, but it isn't the Tsable River. That is the point I would like to clarify for your lordship.

THE COMMISSIONER: Oh, I see your Tumblewater Creek, running north and south, and apparently flowing into the Tsable River.

MR. McPHERSON: And the Tsable River comes from away over near Comox Lake. You see that, my lord?

THE COMMISSIONER: Yes, it rises in Tsable Lake.

MR. McPHERSON: Both of these charts have assumed it is the Tsable River.

MR. NORRIS: Apparently it is the south fork of the Tsable River.

THE COMMISSIONER: It would be the south fork of the Tsable River. It is certainly not the main stream. You see here, Mr. Norris, (indicating), if you will observe it.

MR. NORRIS: Yes, I see that, Mr. Commissioner, but I would maintain that probably whoever drew this plan is quite correct, it is the south fork of

the Tsable River. Perhaps Mr.Smith knows about it.

THE COMMISSIONER: Your friend is seeking to distinguish between the main stream, which runs roughly east and west, and whatever this fork is, whether it is the Tumblewater Creek, or the south fork, which flows roughly north and south.

MR. NORRIS: Apparently the witness knows it as the Tsable River, and the plan shows it as the south fork of the Tsable River.

THE COMMISSIONER: Where does the timber lie, now, Mr. McPherson?

MR. McPHERSON: That is what I am coming at. That is the only point in raising it.

Q Mr. Kagetsu, you stated yesterday that the timber was across the Tsable River.

MR. NORRIS: He means across there, (indicating).

MR. McPHERSON: He stated yesterday that the timber was across the Tsable River, and if it had been across the Tsable River, then it would be somewhere in the north, as you can see.

THE COMMISSIONER: That is true.

MR. McPHERSON: It was across the Tumblewater Creek in here, (indicating), and that is the reason I asked to clarify this.

Q Am I correct that the V.L. & M. Railway was already into Block 34, and was within a very short distance of the Tumblewater Creek?

A Yes, it is, sir.

Q The Victoria Lumber & Manufacturing Company, Mr.

Kagetsu, were logging Block 34 in 1941 and 1942, weren't they? A: Yes.

Q And you had taken up the rail in Block 504?

A Yes.

Q Now, you have stated this morning that you were going to build the railway into this accessible timber across the Tumblewater Creek, but you were going to build a railway through the remaining timber in 504 into the accessible timber across the Tumblewater Creek, and across Block 274 to the timber on the V. L. & M., and you stated yesterday that this timber was more accessible to you than the V. L. & M. Would you explain to me how that could be true, if you had to build a brand new railway all the way through, and they were already within a few hundred yards of the Tumble water Creek?

A I could have built the railway from here on, (indicating), or this way.

MR. NORRIS: Now, again, we have "from here on".

MR. McPHERSON: I will just clarify that, Mr. Norris.

Q You say you could have built a railway from the water tank in Block 274 on over the Tumble-water Creek, or you could have gone in through the remaining timber on Block 504, is that correct? A: Yes.

Q You stated this morning that your intention was to build a railway through the remaining timber on Block 504, is that correct? Is that what he stated this morning?

A Yes, that was my intention.

Q That is why you took up the railway track, is it not, from the water tank to the end of steel in 504? A: Yes.

Q You agree with me, Mr. Kagetsu, that the timber across the Tumblewater Creek was more accessible to the V. L. & M. Company?

A I don't agree with you there, he says. It would have been nearer or more accessible from my property than from theirs.

MR. NORRIS: My lord, the other interpreter points out to me that apparently there is some error in the translation of the evidence in connection with the V. L. & M. Company.

THE COMMISSIONER: You can cover it in re-examination if you wish. Do you think there is any purpose in arguing with the witness as to whether or not the timber is more accessible to one operation than the other? He has stated his position twice. I do not want to stop you, however, Mr. McPherson.

MR. McPHERSON: I am rather confused now. I understood the witness to say that the V. L. & M. had bought Block 34 and were within a short distance of the creek.

THE COMMISSIONER: He did so.

MR. McPHERSON: And he had taken up his rail in 504 and would have to build the railway through the remaining timber.

THE COMMISSIONER: He said he would have to put his line through 504.

THE INTERPRETER: Excuse me, I think I said there was no railway of the Victoria Manufacturing Company. They were doing it by trucks, were they not?

MR. NORRIS: There is where the error arises.

THE COMMISSIONER: Just pursue that, so as to clear it up.

MR. McPHERSON: Q: We are talking about 1941 and 1942, Mr. Kagetsu. In 1941 and 1942, I understood you to say, in anwer to my question, that there was a railway in Block 34. Is that correct?

A Yes, there was.

Q And it was after 1942, Mr. Kagetsu, was it not, that they changed the railway to a logging road?

MR. NORRIS: I don't want to interrupt my friend, but perhaps, instead of saying the block he might deal with the point in that block where it was, because that is how it came up in the first instance.

THE COMMISSIONER: How far into the block did the railway get?

MR. NORRIS: Yes, into 504 -- 34, in relation to Block 504, and how far it got in there.

MR. McPHERSON: My lord, when I was examining the witness, I understood he said they were logging in Block 34 when he was logging in 504.

THE COMMISSIONER: That is what I understood him to say.

Q Mrs. Smith, would you ask the witness how far the Victoria Lumber Railway had extended into 34 when he ceased his operations in 1942?

A He said he couldn't very well tell by this, but could he have the other one, the blue one, (indicating).

MR. NORRIS: Might the witness be asked this question; I think we might clear it up this way: Was the railway in any part of Block 34 that is shown on that white map?

THE COMMISSIONER: We better leave him alone for a moment.

A This is the Victoria Lumber Company, (indicating) and the railway was coming this way.

Q Would you translate what the witness has said, if you please, Mrs. Smith?

A Well, he has marked this (indicating). This is the sky line, (indicating), as he calls it. That is the Victoria Lumber Company, that is the railway (indicating). The sky line, he means.

MR. NORRIS: He has marked it on there.

THE COMMISSIONER: Q: Now, Mrs. Smith, would you kindly translate what the witness has said?

A He has marked it here. This belongs to the Lumber Company, and the railway came down this way (indicating), and this part had no railway, but it was taken out by skyline (indicating).

THE COMMISSIONER: For the purpose of the record, the witness has indicated by pencil marks showing that the railway extends from the figure 34, shown on Exhibit 4, in a general north westerly direction, and that in that part of Block 34, which lies south of the figure 34 on the map, there

was no railway, and that area had to be logged by skyline.

Q Now, is that a correct interpretation of what he has said? A: Yes.

THE COMMISSIONER: Does that conclude your cross-examination on this feature, Mr. McPherson?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: I think we might recess for a short time.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

EIKICHI KAGETSU, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, referring for a moment to Block 276, and that is the small piece of timber coloured green in the right hand corner of this chart which has been filed for identification --

THE COMMISSIONER: That is Exhibit 13.

MR. McPHERSON: Yes, Exhibit 13 -- you stated that you estimated, though you were not in that timber, that there was still 2 million feet of timber there? A: It was so far away that I didn't go there to examine it, but I roughly estimated about 2 million feet.

Q Would you say I was wrong if I said there was approximately 300,000 feet of timber there?

A I am sure there was more than that.

Q Mr. Kagetsu, in your original claim, that is the claim of the company dated January 6th, 1948, you claim $5,200.00 as the fair market value for

that timber, and at the time that you drafted that claim did you think there was 2 million feet of timber in that block?

A I calculated it was there.

Q I suggest to you, Mr. Kagetsu, that if you divide, or if you valued at $5200.00 that 2 million feet in your original claim, you were claiming $2.00 and approximately 60 cents a thousand. Would that be correct?

A 60 cents?

A A thousand.

THE COMMISSIONER: Now, will you clarify the question, Mr. McPherson.

MR. McPHERSON: Q: Mr. Kagetsu, you have stated that when you prepared your original claim, you based the $5200.00 that you were claiming for the timber in 276 on an estimate of 2 million feet of timber. Am I correct that you arrived at that figure of approximately $2.60 a thousand?

A When I said 2 million feet, it meant that it was roughly estimated and I intended to correct that when I came into Vancouver, when I examined the property.

Q Am I correct that you bought this block of timber, that is 276, in 1932 from the E. & N. Timber?

THE COMMISSIONER: E. & N. Railway Company.

MR. McPHERSON: The E. & N. Railway Company, my lord.

A Yes, I did.

Q And the price was $61,610.00.

A The acreage is 1530, and at the price of $6,506.62

-- no, $65,662.00.

Q And, Mr. Kagetsu, the figure of $65,662.00 includes $4,052.00 for poles, does it not?

A I bought timber land at so much an acre, and I didn't distinguish between the poles and others.

Q With respect to this particular block of timber, 276,didn't you buy it on an estimated cruise -- and E. & N. cruise of 30,805,000 feet?

A 30,580,000?

Q Is that what he says, or what I am supposed to say?

A No, what you say.

Q 30,805,000. A: I didn't buy it at so much per feet, I bought it by so much per acre.

Q Mr. Kagetsu, isn't it correct that when you buy timber from the E. & N., or when the E. & N. timber company sell timber, they insist that you take the land in order that they are relieved of the taxes, but what they are selling you is timber.

A I buy the timber and land included.

Q Can you tell me what the E. & N. cruise was on Block 276 in 1932, when you bought theland?

A It is so long ago, I have forgotten.

Q Would you think that 30,800,000 feet is approximately correct?

A I can't remember.

Q Mr. Kagetsu, in your amended claim, dated November 3, 1948, you are claiming for Block 276 under Item No. 2-A. How much timber are you claiming on that block? A: Could he refer

to the book?

THE COMMISSIONER: Yes, he may.

A My estimate was 27 million, but I wasn't certain, so I sent a man to estimate and I haven't had a reply yet.

MR. McPHERSON:
Q So that, in 1942, when you were still here, you estimated 2 million feet?

THE COMMISSIONER: That is what he says.

MR. McPHERSON: Q: And today you are estimating 27 million -- 2,700,000?

THE COMMISSIONER: No, no. We are talking about two different times. The witness has said in 1932, when he bought it, he estimated 27 million feet on 276. A: No, I didn't.

MR. McPHERSON: My understanding, my lord, is, and I have asked him how much timber he is claiming on 276, and there is only that green patch, and he has already stated in 1942 he estimated 2 million feet, and I understood him to say he is now estimating, depending on a cruise he is to get, 2,700,000 feet.

MR. BREWIN: No. I think what he is saying, if I understand him right, he is estimating all of the items mentioned in Item 2 -- 27,million feet.

THE COMMISSIONER: I cannot reconcile the 27 million figure, because we have been dealing with only Lot 276. Better put the question to him again.

MR. McPHERSON: Q: Mr. Kagetsu, with respect to Block 276, how much timber are you claiming now

as having been on that block in 1942, when you left? A: It was my rough estimate in 1942, 2 million.

Q And how much timber are you claiming today on Block 276? A. I have put in the claim on the whole, so I can't tell separately. That, I am getting an estimate on.

Q Mr. Kagetsu, how do you arrive at the figure of 27 million feet for your total claim on the Deep Bay property? A: I was certain of getting that amount, if I logged the timber, so I put in that claim.

Q How did you arrive at the amount of 27 million feet? A: I have cruised it myself before.

THE COMMISSIONER: Q: What was your cruise when you made it yourself?

A 276 was the one that I didn't cruise. Most of the other places, I had cruised. It was too far away.

MR. McPHERSON: Q: Mr. Kagetsu, why did you wait until November of 1948 to have your timber cruised

THE COMMISSIONER: That is not going to be helpful to me, Mr. McPherson.

MR. McPHERSON: My lord, Government counsel is getting into the hopeless position that your lordship has a claim before you that the claimant does not know how it is arrived at.

THE COMMISSIONER: I appreciate that.

MR. McPHERSON: And Government counsel is also in the

position that he has n't any cruise on which the claimant is claiming, and it is very difficult to cross-examine this man when he doesn't know his own claim.

THE COMMISSIONER: That is his misfortune. He has lumped a great deal of timber under one item in his claim, and he apparently does not know how he arrives at the total figures. Now, it is for him to back it up.

MR. McPHERSON: Q: Mr. Kagetsu, at what rate per thousand feet are you claiming for timber on Block 276? A: I haven't put the claim in by feet at all.

Q Mr. Kagetsu, -- A: I have taken it separately.

Q -- yesterday you told me that with respect to Block 617, you estimated your claim at $4.00 a thousand in 1948, and that you had estimated it in your original claim at $3.00 a thousand. I suggest to you that you did exactly the same thing in the case of Block 276.

A As I wasn't in Vancouver, I didn't know the market value. I was in Toronto, and I didn't know the market value, so I put in the rough estimate, but since I came to Vancouver I have found out the market value and I put in the price higher.

Q What price did you put in for Block 276?

A I have claimed under the whole, 27, million, and I have not taken them separately, but I am getting

the estimate, and if you wish that I shall report it to you as soon as I get it.

Q How much are you claiming a thousand on the 27 million? A: $4.00 a thousand.

THE COMMISSIONER: Q: That is your present claim, is it? A: $4.00 per thousand.

Q And that is his present claim, is it?

A Yes, that is the present amended claim.

THE COMMISSIONER: I would like to put the question to him, Mrs. Smith:

Q Is that figure of $4.00 a thousand the basis of your present claim for timber?

MR. BALDWIN: My lord, on the Deep Bay operation, you mean?

A No, this is the value in 1943, when it was sold. Not the present values.

THE COMMISSIONER: Q: So, put it to him again so there will be no question about it, all of the timber that is covered by Item 2 in your claim you calculated to contain 27 million feet, and for that timber you claim $4.00 per thousand? Now, will you put that to him?

A Yes.

Q Am I correct, Mr. Kagetsu, that when you filed your original claim, you were estimating your claim for timber at $3.00 per thousand?

A Yes, that is right.

Q Now, Mr. Kagetsu, with respect to Block 504,

that was originally claimed by you personally in your claim dated the 25th November, 1947, and you claimed $7,000.00 for that property as timber land. A: It was the 1948 claim?

Q The 1947 claim. The claim in 1947 -- November 25, 1947 -- Mr. Kagetsu claims $7,000.00.

A Is it the one that I sent in from Toronto?

Q Yes. A: Yes, it is so.

Q And that claim was based on $3.00 a thousand?

A Roughly based on that. I couldn't find anything at Toronto, so it was really a rough estimate.

Q Now, at $3.00 a thousand for $7,000.00, that, Mr. Kagetsu, works out to a claim of 2,333,333 feet of timber. So, what you were claiming there was 2,300,000 feet, roughly, of timber remaining on 504 when you made your claim -- 504 -- Item 4, Block 504.

THE COMMISSIONER: 2, 333,333 feet.

A I was called by Mr. Brewin and told to come to him, and I had only about an hour to fit in all these things, and I didn't have the notebooks or anything with me, or anything to refer to, and it was only my rough estimation.

MR. McPHERSON:

Q Mr. Kagetsu, you have told us this morning that you left this timber so you would have timber to log when you built your railway through it. Now, did you know in 1942 how much timber you were leaving? A: Yes, I did. I think I know.

Q All right. How much timber did you think you were leaving in that area to the north of Block 504, coloured green, on Exhibit 13?

A I can't tell you exactly, but about 6 million or 6,500,00. Six and a half or seven million.

Q And when you saw Mr. Brewin in Toronto, you knew that you had an estimate of 6 to 6½ million feet on that timber coloured green on Block 504?

THE COMMISSIONER: The witness says 6½ to 7.

MR. McPHERSON: Q: When you saw Mr. Brewin, you knew that, didn't you?

A I didn't have my notebook with me, so I really didn't know exactly what timber there was until I have seen my notebook.

Q Where was this notebook, Mr. Kagetsu? In Vancouver?

A Yes, they were left in Vancouver in my luggage, and the other day I had them forwarded to me.

Q Now, Mr. Kagetsu, you have said that you were claiming in your original claim at $3.00 a thousand, and if we accept your figure of 7 million, the top figure, as the remaining timber on 504, that is $21,000.00, but you only claim $7,000.00.

Now, are you claiming today in your amended claim -- you have advised his lordship you are claiming at the rate of $4.00 a thousand -- are you claiming today for Block 504, $28,000.00 on your total claim in Item No. 2?

A I haven't separated the claim for 504.

THE COMMISSIONER: Mr. McPherson, I am going to ask

the witness to break down his claim under Item 2, to show the quantity of timber he claims in respect of each of the lots, or each of the blocks, and the price at which he is claiming.

MR. McPHERSON: Thank you, my lord.

THE COMMISSIONER: If we go on in this way, we are going to be here for another two days with this line of cross-examination. So, I will adjourn now to give counsel an opportunity to furnish particulars of Item 2, so that we dan save some time.

MR. BALDWIN: My lord, if I may speak to that; this whole item 2 was sold in one lot, buildings, blocks of timber and foreshore lease. It was the subject matter of a sale to the MacMillan Export Company. That being the case, it is our submission, apart from the fact that the claimant can only guess at the allocation of this timber on these blocks, that the Custodian has sold it all as one. Is there any reason why the claimant should be required, when he has not been in a position of knolwedge that the Custodian has been in, to break his claim down as to blocks?

THE COMMISSIONER: Am I to assume that the figure of $142,781.00 is a guess as to the value; because, if that be so, I agree with you there is no purpose in it. But I had assumed that the claim was the aggregate of prices put on these various blocks of timber.

MR. BALDWIN: It isn't anything more than as close a guess as the claimant can put on it at this time.

We are having the area cruised now, so the positive amount of timber can be brought to the Commission.

THE COMMISSIONER: Then, we are wasting time on the cross-examination.

MR. BALDWIN: I think that has appeared in evidence.

THE COMMISSIONER: The weakness in your position, Mr. Baldwin, is this, that you are presenting a claim here, presumably on the basis of the value of individual items calculated in the aggregate --

MR. BALDWIN: No, my lord.

THE COMMISSIONER: -- and I have assumed there was some basis for the $142,000.00 claim.

MR. BALDWIN: No, my lord. In that connection, may I say this, that this, as I said, was all sold as one.

THE COMMISSIONER: I am not concerned with how it was sold.

MR. BALDWIN: Not the amount, but it was sold as a unit.

THE COMMISSIONER: I am concerned with how the claimant values these items and shows it in his present claim at $142,00.00 odd.

MR. BALDWIN: Yes, my lord. It is all these limits and the buildings and everything sold as one.

THE COMMISSIONER: How does he arrive at his figure of $142,000.00? He cannot seem to tell us. I

thought it might be advantageous to you to have an adjournment so you could go over it with him to ascertain how he does arrive at the figure.

MR. BALDWIN: My lord, broadly speaking, we can put in this, that the standing timber is estimated at 27 million feet by the claimant.

THE COMMISSIONER: Yes, but what I am directing you to do is to break it down between those various blocks, and to declare what price per thousand you are seeking to recover. Now, I understand that the witness has pinned himself to $4.00 per thousand.

MR. BALDWIN: That was agreed, yes.

THE COMMISSIONER: But there is nothing to show what he claims is contained on these different limits. In order to arrive at his claim, I assume he must have had some idea as to what timber was standing there, otherwise the $142,000.00 can only be the wildest guess.

MR. BALDWIN: Well, my lord, that was the estimate he made, as best he could, at the time.

THE COMMISSIONER: Well, I am giving you the opportunity.

MR. BALDWIN: We will have some information, I hope, by tomorrow, and will have more definite information before this case concludes, which we will file.

THE COMMISSIONER: You think nothing can be accomplished by an interview by yourself with your client, in order to ascertain how this figure is arrived at?

MR. BALDWIN: No, my lord, not until we receive this report, which we are waiting for. I am told we should have it by tomorrow morning.

THE COMMISSIONER: That is not very satisfactory from my point of view.

MR. McPHERSON: My lord, might I just speak to this question? Am I to assume, my lord, that when they do get this report, unless the guess was an excellent one and it ties in with the report, that they will be filing an amended claim?

THE COMMISSIONER: That is what I am afraid of.

MR. McPHERSON: And the second point, my lord, is that subject to your lordship stopping me, it is my intention to follow exactly the same type of cross-examination for Items 3, 4 and 5 --

THE COMMISSIONER: That is what I had anticipated.

MR. McPHERSON: -- all the way through. These are the particulars that I requested some time ago, and what I would like to do is go ahead with this case with the witness, but I don't think the witness should be allowed to change his claim if the Crown comes in and shows these figures are ridiculous. I am also very reluctant to agree at this very late date that they can come in with a cruise and expect me to prepare a defence to it.

THE COMMISSIONER: That is something that should have been done long since. I am going to adhere to the suggestion I threw out before. I will adjourn and give counsel such time as he thinks

is necessary to break down the claim.

We wasted the greater part of yesterday, and certainly all of today, on something the witness is not prepared to answer. Either that, or he cannot answer it. I will give you an opportunity to break it down and furnish particulars of these items, showing the quantity of timber that is estimated to be on these blocks, and the price at which he claims. So far as the other items are concerned, it is probably impracti cal to break them down.

Then I think a value should be put on the plant and equipment, which is presumably valued in some part of the $142,000.00. The same thing should be done with these other items.

If counsel will consult with his client this afternoon, you can let me know first thing in the morning whether you are ready to go on and furnish the particulars by that time, and go on with the hearing. We are just wasting time now.

MR. BALDWIN: I quite agree, my lord.

MR. McPHERSON: Does your lordship's ruling apply to the fact we should have particulars of the Shay locomotive and what they are claiming for the other major items there, and how they arrive at those totals?

THE COMMISSIONER: I think it should be done.

MR. McPHERSON: They did give particulars in the original claim, and the Government is defending each one, because we sold them separately.

THE COMMISSIONER: Undoubtedly you propose to call some expert to show the 60 ton locomotive was worth so much in 1943.

MR. BALDWIN: I wouldn't want your lordship to think we haven't given particulars. I have already told my friend we have taken Mr. Skelding's figures.

THE COMMISSIONER: Let us know what the figures are.

MR. McPHERSON: My lord, that is quite correct, that Mr. Baldwin told me they were taking Mr. Skelding's figures. I overlooked that, and I apologize to my friend for it, but what I would like is an official list of the way they break down each item.

THE COMMISSIONER: That does not seem unreasonable, Mr. Baldwin.

MR. BALDWIN: My lord, the same thing applies again. These things were sold in parcels.

THE COMMISSIONER: I pointed out to you that I am not concerned with the matter of sale, I am concerned with how you arrive at your claim. For instance, you claim $37,029.00 for this block under the head of Item 3. Now, presumably you must have put a value on the various items in order to readh that aggregate.

MR. BALDWIN: Yes.

THE COMMISSIONER: That is what I am directing you to furnish, and the same will apply to the various heads of Item 4 to make up the total of $27,095.00. Mind you, I assume there are a

lot of small items included under the compressor and accessories, and what not. I do not want all the details of that, but you have set out certain heads, such as the Empire gas donkey, and so on. Presumably you must have some idea of the value, in order to make up the total.

MR. BREWIN: We have it right here, and can give it to my friend right now.

THE COMMISSONER: Let us have them right now.

On Item 3, the 60 ton locomotive?

MR. BALDWIN: Mr. Skelding's figure on that locomotive was $5,000.00.

THE COMMISSIONER: The 18 railway cars?

MR. BALDWIN: $3675.00.

THE COMMISSIONER: What is that?

MR. BALDWIN: I beg your pardon, my lord, that is for 19 logging cars. That includes the ~~fx~~ flat railway car. The total is $3675.00.

THE COMMISSIONER: The push cars?

MR. BALDWIN: $200.00 for both. Two speeders --

THE COMMISSIONER: The push cars are $200.00?

MR. BALDWIN: $200.00. $100.00 each.

THE COMMISSIONER: And the speeders?

MR. BALDWIN: Two speeders, at $4,650.00.

THE COMMISSIONER: Now, the eight miles of railroad?

MR. BALDWIN: $9,024.10.

THE COMMISSIONER: Is that the item that includes 50 cents a thousand?

MR. BALDWIN: No.

THE COMMISSIONER: Oh, you add that, in addition?

MR. BALDWIN: Yes.

THE COMMISSIONER: 60 tons of coal?

MR. BALDWIN: 60 tons of coal is to be added. That was valued at $8.00, where it was delivered, $480.00. And the other basis for the use of the railroad is 28 million feet at 50 cents a foot -- $14,000.00.

THE COMMISSIONER: 28 million at 14 cents a foot?

MR. BALDWIN: 50 cents a foot.

THE COMMISSIONER: And the total?

MR. BALDWIN: $37,029.10, under "B" of the claim.

THE COMMISSIONER: Wait a moment. $37,029.10 is the total value of those things?

MR. BALDWIN: Yes, $14,000.00 on the use of the rails, 28,000 feet at 50 cents, $14,000.00. That was counted, my lord, because these other values are not the value in use. They are the value of the sale of equipment. Thatis the basis of it. Do you wish Item No. 4?

THE COMMISSIONER: I make that total $37,529.10. Is my addition wrong?

MR. BALDWIN: $37,029.10.

THE COMMISSIONER: I make it 529. Perhaps my addition is wrong. You are right. There are your particulars of Item 3, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Then as to Item 4, have you those figures?

MR. McPHERSON: I have them, my lord. I haven't them here, but I have them in Mr. Skelding's appraisal.

THE COMMISSIONER: You are satisfied?

MR. McPHERSON: Yes. I pointed out I had forgotten that Mr. Baldwin had given me them, and I apologized.

THE COMMISSIONER: Does the same apply to Item 5?

MR. BALDWIN: Yes, my lord. Those are all Skelding's figures.

THE COMMISSIONER: AllSkelding's figures?

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: 6, we are not concerned with presently, nor with 7.

MR. BALDWIN: No.

THE COMMISSIONER: And the boom chains. So that the only item that we are concerned with at the moment for further information on is Item No. 2.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Now,Mr. Baldwin, how long do you think it is likely to take you to furnish that information, or to get it ready?

MR. BALDWIN: Well, the information we will have available by this evening or tomorrow morning, it won't be a cruise, it will be a reconnaisance. There has not been time to do that, but it will enable us to give a better idea, certainly, of whether our claim of 27 million feet is correct. It may not be sufficient to break down the blocks, but what information we get will be made available to my learned friend.

THE COMMISSIONER: Suppose we adjourn until tomorrow morning? Do you think that should give you

sufficient time to put this item 2 in shape? I presume you must have these figures now, in order to arrive at the $142,000.00.

MR. BALDWIN: No, my lord, we haven't, to be quite honest. It is a general impression of the claimant that there was more timber there than was estimated by the Custodian.

THE COMMISSIONER: What are we going to be up against? Are you likely to be coming in with an increase in your claim, under Item 2?

MR. BALDWIN: No, I don't think so. We valued it a little on the generous side, perhaps, in order that our later reduction downward would embarrass my friend less.

THE COMMISSIONER: I think we would save time by taking an adjournment for this afternoon to enable you to get these figures, because it is hopeless dealing with Mr. Kagetsu now on each item -- we are not getting anywhere.

We will adjourn until 10 o'clock tomorrow morning.

MR. McPHERSON: Your lordship appreciates, I presume, that when we do get those figures, I would like to have the right to ask for an adjournment until I have a chance to consider them, because I have prepared my cross-examination on that line.

THE COMMISSIONER: However, there will be enough for you to go on tomorrow, in any case, without dealing with that phase of it?

MR. McPHERSON: Yes, my lord.

(PROCEEDINGS ADJOURNED UNTIL NOVEMBER 10, 1948, AT 10:00 A.M.)

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

J. P. Hanrahan
Deputy Official Stenographer

Vancouver, B.C.,

November 10th, 1948; 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BALDWIN: My lord, before my learned friend proceeds with the cross-examination of Mr. Kagetsu, I have already supplied my friend with these cruises made by C.D. Schultz & Company, and I think it best, for your Lordship's assistance, to file them at this time. They will be proved later when we call Mr. Schultz. There are two there.

THE SECRETARY: Exhibit No. 14.

MR. BALDWIN: They had better go in separately.

THE COMMISSIONER: What are they?

MR. BALDWIN: One is the 4 percent stump examination of Lots 195. That is in the Cowichan Lake area, and the other just completed is an inspection of 504, 566, 617, 274, 263, 234, 267, 276, and Lot 88 in the Newcastle district.

THE COMMISSIONER: How about 198 and 256?

MR. BALDWIN: They are not covered in this report, my lord.

THE COMMISSIONER: I see. The man's name is Schultz?

MR. BALDWIN: C.D. Schultz & Company Limited.

THE COMMISSIONER: S-c-h-u-l-t-z?

MR. BALDWIN: Yes, Schultz, S-c-h-u-l-t-z. The information that we have obtained from this is contained in the letter -- I do not know whether your Lordship has it to hand this morning. We sent you a copy.

THE COMMISSIONER: Yes.

THE SECRETARY: Exhibit 14 and 15.

(CRUISES BY C.D. SCHULTZ & CO. MARKED EXHIBITS NOS. 14 and 15).

MR. BALDWIN: That sets out the information that we can give your Lordship and my learned friend at this time.

THE COMMISSIONER: Have you had an opportunity to examine these reports, Mr. McPherson?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Are they going to be sufficient for your purpose?

MR. McPHERSON: After a very careful consideration of the entire picture, my lord, I would like to move for an indefinite adjournment of this case, and I must say, my lord, I hope you will appreciate that I do not make this suggestion lightly at all. It is after a very careful consideration of the matter and taking into consideration the history of filing the amended claim, and after a very preliminary consideration of this report, which I received at a quarter to nine, although it was delivered to the Custodian's office somewhere about 5 o'clock last night (the office closing at 4) but that is no fault of my learned friend, and I am not suggesting it is, but I would make my motion for an indefinite adjournment on the following grounds, my lord; and I would like to list the following grounds in order that they may appear in the record:

First of all, that the original claims were filed in November of 1947 and January of 1948, respectively.

Secondly, counsel for the Japanese claimants were advised last spring by your Lordship that the corporation cases would be heard in Vancouver in the fall, and that everybody should be ready to proceed without any adjournments at that time, and your Lordship would not countenance any delay.

The third point is that the Government's case, insofar as it was known on the basis of the information the Government had about the claim, was given to my learned friend in July of 1948 and at that time they were asked for any amendments to the claim and certain particulars were to be supplied not later than the 1st of September in order to give Government counsel an opportunity to prepare the defence.

And No. 4: Mr. Kagetsu is a man of means, and my learned friend would not deny he had sufficient money to proceed to Vancouver last summer to prepare his case and consult with his local counsel on his defence.

The fifth point: Subsequent to the letter of July 15th, 1948, to my learned friend, there was correspondence and some interviews, both with Mr. Norris and Mr. Baldwin, all to the effect that the Government required additional

particulars of the claim -- that is the original claim, we not having received the amended claim at that time, and they were advised if Government counsel had not those particulars the Government would proceed with the cross-examination.

The reply the Government counsel received from my learned friend as to these particulars was that the Government was not entitled to those particulars: First, the Government had sold the property en bbck, and, secondly, it was part of their case.

And the seventh point is the information now supplied does not cover the points made by your Lordship yesterday completely. It is only with respect to the timber limits and does not cover the values placed on item 2 of the claim.

It does not give the value of the timber and does not give a breakdown of the $142,000.00 roughly.

And in addition to that the covering letter of November 9th from Mr. Norris -- in one paragraph there clearly indicates the claim is a guess because Mr. Schultz did not estimate the timber on 276 and 504; and the claimant's solicitors now say the estimated value of the timber now examined by Schultz is 50,096 feet. I suggest that in itself indicates a guess, because that exact figure has been taken in order that the total may add up to thirty million.

THE COMMISSIONER: That is a very small item.

MR. McPHERSON: It is a very small item.

And in addition to that, my lord, this report of Mr. Schultz's is an inspection report of various blocks of timber. I have the following comments to make on the report now that it has been filed, and these are preliminary comments only.

THE COMMISSIONER: Which report are you referring to now?

MR. McPHERSON: This is the small report.

THE COMMISSIONER: Let us see what exhibit numbers they have. Exhibit 14 you are referring to now?

MR. McPHERSON: Yes, I am referring to Exhibit 14, my lord.

With respect to Exhibit 14, I could arrive at the values by multiplying by $4.00 a thousand.

As Mr. Kagetsu stated yesterday -- on the other hand the report itself indicates in the last paragraph, "In order to satisfactorily appraise the timber values remaining, logging plans and inventories of the Tsable River Logging Company should be made available. Alternatively an air and ground forest survey would be the most efficient manner covering information." Indicating that the gentleman who made this inspection, while he said on the opening he inspected 504 and the following blocks including 504 and 276, the body of the report at

page 1 says, "Block 504 -- standing timber appears to exist in the northern portion of Block 504", which would indicate that he did not inspect it; and 276, "timber appears to exist along the south boundary of Block 276. An examination was not made of this area so no estimate is submitted."

THE COMMISSIONER: Now this report, I take it, is being filed. It will be relied on as proof of some claim. Now if the report is incomplete, does that affect the situation as far as you are concerned, Mr. McPherson? It is simply a weakness in the proof, is it not?

MR. McPHERSON: Yes, except for this very important point. In the case of Block 217 -- particular reference to 617 referred to on page 1, you will note that this report says there is still 10,125,000 timber standing on that block, and that is so fantastic, in view of the fact that this property has been logged, and has been under logging operations since 1943, and that figure is so fantastic the Government counsel is considering whether we should have a new cruise made by Mr. Eustace Smith to find out what timber is there and cross-examine the man who made the report.

THE COMMISSIONER: In other words, you are seeking time now to have your own cruise made so that you can proceed with cross-examination?

MR. McPHERSON: Yes, that is the second string to

my argument this morning.

The first point I am making, and I do this with all deference to my learned friend -- they have come here before your Lordship and taken up your Lordship's time and that of other counsel in presenting a claim when they are not ready to proceed, and they are now putting the Government counsel in a position of proceeding on information not supplied.

And the second point is Government counsel wishes to consider and discuss with the liquidator and his experts (that is the liquidator's experts) the desirability of making a new cruise and find out what timber is there and what timber has been taken off this property.

And in addition to that you have a claim for the agricultural land, which has not been spoken to yet because I could not make up my mind what to say on that point.

You have the new claim for agricultural land and I would like to consider whether it is suitable for agriculture.

THE COMMISSIONER: That does not amount to very much. The total claim is only $1700.00 odd dollars, and is part of a claim which in the aggregate runs to $500,000.00.

MR. McPHERSON: That is a matter which my learned friend should have taken into account and been prepared to withdraw the claim, and as they are not prepared to do that I feel the

Government should have the right to reply. True, it is only $1700.00, but I feel Government counsel has been ready to go ahead with this case right from the start and I am obviously of the opinion that this case will continue. This report is not satisfactory and if it does continue as in the past, we will be another week or a week and a half on this case.

THE COMMISSIONER: Getting down to practical things, Mr. McPherson, supposing you do decide you must have a further cruise of these blocks enumerated in item 2, how long would it take to have the cruise made?

MR. McPHERSON: In the first place, I understand it depends considerably on the weather, and I understand it was snowing there the first day Mr. Schultz was making the cruise, but I am given to understand once a man gets on there it would takeanywhere up to ten days. This cruise was made in two days.

THE COMMISSIONER: Can you get information from Mr. Smith as to how long it would take?

MR. McPHERSON: He tells me it would take ten days. Taking all these things into consideration, and I am very anxious to handle these corporate cases, but I have to proceed with the argument on all the other cases immediately after this case, and it is essential that I should be finished with these cases by the 1st of December at the very least, and if this case was being continued I could have worked out

my plans accordingly,we would have been through.

But if your Lordship can see fit to adjourn this case until the New Year, then I could consult with Mr. Hunter, and he would be able to handle the case in the New Year and there would be no necessity for any further adjournment then.

Anx adjournment of ten days at this time will leave me in a most embarrassing situation, and I do not consider my embarrassing situation is due to my own negligence, and I would suggest there should be an indefinite adjournment.

THE COMMISSIONER: And you pin your application for adjournment, as I gather, on two grounds: One, the necessity of the claim as reported in Exhibit 14 -- that you must have a cruise made of these blocks; secondly, that you must have an examination made of the agricultural land in terms of the claim that is made in respect of it.

MR. McPHERSON: Yes, my lord, and the third point, I consider most important, and that is I am placed in this position due to the fact I could not get the information as your Lordship directed some little time ago.

THE COMMISSIONER: What have you to say about that, Mr. Baldwin?

MR. BALDWIN: First of all, Mr. Commissioner, I would like to ask for a short adjournmatt here now, in order that my learned friend and I may discuss the matter and also with Mr. Norris,

who is the claimant's senior counsel on this matter.

If I might interject now before going on with that, I believe my learned friend is aware, in any event, that we are having a fuller examination made of the Deep Bay Logging limits.

THE COMMISSIONER: It is unfortunate from my point of view that this was not done long, long ago. However, we are faced with the fact now. Yes, I will be glad to give you an adjournment, Mr. Baldwin, to give you an opportunity to consult with your associates. Supposing we adjourn until 11 o'clock. Would that give you sufficient time?

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Very good.

MR. McPHERSON: May I speak to another matter at this time, Mr. Commissioner. Mr. Hogg is here now and if this case is adjourned for a few moments I think Mr. Hogg would like to discuss the three cases that he is interested in. You will recall Mr. Wismer spoke to you about it.

THE COMMISSIONER: Just a moment, Mr. Hogg. I will excuse you gentlemen.

MR. HOGG: I am not in a position, Mr. Commissioner, to either indicate that I am withdrawing these claims or going ahead with them.

THE COMMISSIONER: When do you expect to be?

MR. HOGG: Within the course of a week.

Those are the Canadian Saltery Limited, Howe Sound Fisheries Limited, and Burrard Fish Company cases.

THE COMMISSIONER: Well, supposing I put it down for Monday morning. There is a holiday intervening and you can speak to them then.

MR. HOGG: Yes, I shall be ready then.

THE COMMISSIONER: Will you speak to it then on Monday morning?

MR. HOGG: Yes.

THE COMMISSIONER: Now, Mr. McPherson, there is another matter I wish to see you about relative to Mr. Russell. I wonder if I could see you in my chambers now.

MR. McPHERSON: Yes, I may say I have arranged with Mr. Russell to see you today.

THE COMMISSIONER: We will adjourn then until 11 o'clock.

(PROCEEDINGS ADJOURNED UNTIL 11:00 A.M.)

(PROCEEDINGS RESUMED AT 11:00 A.M. PURSUANT TO ADJOURNMENT).

THE COMMISSIONER: Yes, Mr. Baldwin?

MR. BALDWIN: Mr. Brewin will speak to this.

MR. BREWIN: My lord, we feel that we cannot oppose the application for an adjournment, but we feel that this is different from a lawsuit. It is a public inquiry, and I do not want to follow my friend in all these arguments and comments, or get into any controversy with him, but we do feel if there is any question of either side being taken by surprise, the way this

thing has developed -- we should not oppose any adjournment. Of course it is expensive to us, but we have contributed to the situation that has developed, and we do not oppose the application that my friend has made.

THE COMMISSIONER: Well, thank you, Mr. Brewin. I am most reluctant to allow any adjournment if it should not have been necessary, and I thought every possible step had been taken earlier on to avoid such a thing happening.

I have now been engaged in this inquiry for a year, and there is every indication that the remaining personal claims alone cannot be finished until the end of June, so you will appreciate I am very unhappy at the thought of an adjournment, and I am wondering whether this might be a solution to it: If I direct the claimant to go on and put in his claim or the evidence that he is proposing to adduce -- is that going to cause embarrassment to Government counsel, when it is understood at the conclusion of the claimant's case my disposition would be to allow some little time, if any additional time is needed, in order to make the cruise as indicated the Government counsel desires to have made, in face of the difficulty that we have encountered yesterday and today.

MR. McPHERSON: My lord, the only problem there that would involve counsel would be this: In going

ahead with the claimant's case at this time, Government counsel might feel at a disadvantage in cross-examination of the claimant's witnesses by not having information he might get subsequently. I think that is a minor point.

Another point, I would like to have an opportunity to discuss with Mr. Hunter is this: If an adjournment was considered necessary at the end of the claimant's case, Mr. Hunter would then be shouldered with the responsibility of putting in the Government's defence, and I would like to have an opportunity to discuss with him whether he feels he should either be present or take part in the claimant's case, in the cross-examination of the claimant's witnesses, as he will have to take the case subsequently because I do not feel now it would be possible to finish this case before the end of November knowing there is another cruise being made by them which will take ten days. That is November 20th before they will have their present case completed through their own witnesses. Now, in that case it would be Monday --

THE COMMISSIONER: Now that is something new. That is something I have not appreciated. Is it true you are not going to be ready to complete your case until you get this further cruise?

MR. BREWIN: I think in a sense that is correct, my lord. We do not know that it will take all

of the ten days that is mentioned. The whole trouble with this is the more it is developed, we get some thing more.

I entirely appreciate what your Lordship has said about the unsatisfactory nature of having delays but I feel if we are going to have an adjournment at all, I believe it might even save time to have it adjourned at this stage.

THE COMMISSIONER: It is the case, is it, that the claimant is not ready to complete his case?

MR. BREWIN: Well, of course, we have evidence to go on with, and my learned friend could commence with the cross-examination, and so on, which would occupy the intervening time and we would then be able to put in all our case. We would have to face that, if subsequently we found other material that it was not necessary at this stage we would have to use it in cross-examination, and we could go on if we had to, but we feel if there is to be an adjournment it might be better to adjourn it as it stands now, because Mr. Kagetsu will have to come back again later at any rate.

And there is another thing in regard to the delay. The time might not be entirely wasted in that there are other cases and other matters in connection with this inquiry that can be prepared and go on, which would have to go on at some time.

THE COMMISSIONER: Of course the difficulty with that

is this: A program has been laid down, and the necessity for a lengthy adjournment virtually throws that program out the window. It is most unsatisfactory from my point of view, and yet the necessity for it is the direct result of the failure of the claimant to frame his claim in the way it should be framed.

MR. BREWIN: Well I don't want in open Court to go into the whole background of it, and I think your Lordship will appreciate there were special circumstances which I do not want to discuss now.

THE COMMISSIONER: Well perhaps it would be just as well not to go into the details of it. The net result of it is that both counsel would prefer to have the whole thing thrown over, is that the situation?

MR. McPHERSON: Well, my lord, I guess I would have to prefer that, although I reluctantly raised it from a personal point of view, and I would like to say in regard to the new cruise that is being made, your Lordship will appreciate the fact if that cruise were to be available in ten days from now, Mr. Kagetsu and all the other witnesses would be finished -- but if I had that cruise it would certainly assist me but I feel,and very reluctantly, that I cannot go on at the present.

THE COMMISSIONER: I am afraid there is not any alternative. I am going to adjourn this claim now until Monday morning, and, in the interval, I will direct the solicitors for the claimant

to amend their claim as I directed yesterday so as to set out the quantities of timber which they allege are to be found on the different blocks enumerated in item 2; the values which they claim for that timber, and also the values which they claim in respect of the other items enumerated: that is, items other than timber enumerated in item 2.

There should be no difficulty in filing that by Monday so that we shall all know what the claimant is proposing to establish, and what the Government has to meet, and I hope that no further application will be made for an amendment, and I can tell you quite frankly a very strong case would have to be made before I will accede to any further amendment. Now, is that quite clear as to what is required?

Item 2; detailed quantities alleged to be contained in the various blocks; the values of that timber; the values assigned to the other items, such as foreshore rights, booming grounds, and so on.

And in view of the fact that counsel has been furnished with the figures in relation to the items contained in 3, 4, and 5 -- those detailed sums which make up the aggregate claim, should also be set out in the claim.

And on Monday once the amended claim has been filed, you may take it that there will be an adjournment for such time -- can

counsel agree now on the time, or would you prefer to make it indefinitely? I think it would be desirable to fix the time, because Mr. Kagetsu is here from Toronto, I understand, and rather than have it in the air it would be much better to have a definite time fixed. What do you say, Mr. Baldwin?

MR. BALDWIN: My lord, with respect to spplying the quantities on the various blocks, that would be nothing more than a guess. In the letter I gave my learned friend yesterday evening, we complied as best we could with your Lordship's direction of yesterday.

THE COMMISSIONER: Mr. Baldwin, are you not confusing claim with proof? You have presented a claim of $142,000.00, and it is inconceivable to me that you have not something on which to base that claim. That was not plucked out of the air.

MR. BALDWIN: It was, as I said yesterday, it is an estimate by the claimant of the total amount on these areas.

THE COMMISSIONER: Very well. Let us know finally what the estimate is in respect of each item, and if you fail to prove it, that is that. Surely after this first claim was filed in November, 1947, by this time you would have some information as to how these total items are made up.

MR. BALDWIN: The best information we have, my lord,

is what we have now -- the scale under that timbermark and the amount remaining as shown by the inspection in C.D. Schultz & Company's report. That is far better than any guess the claimant may make.

THE COMMISSIONER: That is evidence. The amended claim is in the nature of a pleading, and any solicitor who has ever drawn a pleading knows that his total claim is made up of certain items, and he has presumably evidence to support the various items, because he knows what he is aiming to prove. And I want to know what you are aiming to prove, and I want it in black and white, because there has been so much vaccilation in the claimant's claim, it is important from my point of view it should be pinned down to something.

MR. BALDWIN: With the greatest respect, item 2 was all sold by the Custodian as one block.

THE COMMISSIONER: That is immaterial.

MR. BALDWIN: Shortly it is the value of that one block.

THE COMMISSIONER: Not in my opinion. You are asserting a claim of $142,000.00 and presumably you know how it is made up.

MR. BALDWIN: Yes, we say the timber was worth $4.00 a thousand and the amount of timber on those limits --

THE COMMISSIONER: Well let us have it clearly in

your claim so that it is clearly expressed once and for all in the claim, and when it comes to proof you have these documents which were put in this morning which I take it you rely on in part, and the same thing I direct should be set out -- the details of items found in 3, 4, and 5, so that I know what you are seeking to prove and the defence knows what it has to meet.

MR. BREWIN: My lord, we will furnish this information but I take it your Lordship appreciates fully that we may be in a position to argue that a separate block, for example, might be only worth so much, but taking the whole thing together it has an appreciated value.

THE COMMISSIONER: Yes, that is beside the point. That is a matter of evidence. You might say on these ten blocks there being that much timber, they are worth more by virtue of them being contiguous, or something to that effect, but that is not a matter of pleading. I am directing you to furnish the particulars.

MR. BREWIN: Well, we willfurnish the particulars, my lord.

THE COMMISSIONER: And they can be brought in in the form of an amended claim.

MR. BREWIN: We will furnish an amended claim and I suppose we shall have to amend if it is satisfactory.

THE COMMISSIONER: Well I hope it is more satisfactory

than those two that have been filed.

We will extend this until Monday, and the amended claim is to be filed at that time. You see there is no sense in Government counsel going out to prepare his defence in respect of the claim that is now framed and then be told two weeks or a month hence that the claim is something radically different.

MR. BREWIN: Yes, I appreciate that, my Lord. We will give him the basis on which we are making the claim.

THE COMMISSIONER: All right. We shall have that filed between now and Monday and the amendment shall be spoken to on Monday morning.

Can we get anything to go on with now -- say, for instance, a personal claim?

MR. McPHERSON: Well may I deal first with the second point: Your Lordship asked Mr.Baldwin for how long we should have an adjournment. I will take that up with Mr. Hunter, and we can speak to that on Monday morning.

THE COMMISSIONER: Yes, it is possibly desirable that both of you should have a little time to think over what length of time you need. That can be spoken to on Monday morning.

MR. McPHERSON: And the other matter of Mr. Kagetsu's personal claim as far as I know, I would assume it could go on on Friday or Saturday, but I would like to check it with Mr. Hunter first. That is the house and car.

THE COMMISSIONER: Well subject to what Mr.Hunter has to say, do you think he would be ready say on Friday with the personal claim?

MR. BALDWIN: Oh yes, my lord, there are only two items as my learned friend says.

THE COMMISSIONER: Subject to what Mr. Hunter has to say, we will plan to proceed with the personal claim on Friday, and I will ask you to communicate with the Secretary if anything stands in the way of it, Mr. McPherson. You had better let him know anyway.

MR. BREWIN: I don't know whether Mr. McPherson will be in this situation -- and I don't know whether we should do it now at this stage. Can I discuss with your Lordship what will be going on next week? I mention that because Mr. Hunter made a suggestion to me there was some legal matter he wished to argue and I have not seen him since.

THE COMMISSIONER: I am in counsel's hands and anything that you agree on to proceed with is satisfactory to me, and perhaps if you consult Mr. Hunter -- I guess it is only Mr. Hunter who is concerned in that.

MR. McPHERSON: Yes.

THE COMMISSIONER: It will not be yourself, Mr. McPherson. Of course there is the argument.

MR. McPHERSON: Of course if this case is adjourned until Monday, it will give me a few days to work on the corporate claims.

THE COMMISSIONER: If counsel will consult with one another, and let me know what case we can proceed with on Monday, and we shall now adjourn until Friday morning.

MR. McPHERSON: I telephoned Mr. Russell and it is impossible for him to be here until four today and if that does not suit your Lordship, it is possible he may come on Monday if your Lordship could state a definite time.

THE COMMISSIONER: I think we had better set four o'clock on Monday. It is going to take a little time.

MR. McPHERSON: Yes, I think it will take a couple of hours, anyway.

THE COMMISSIONER: Very well, we will adjourn now until Friday at 10:00 a.m.

(PROCEEDINGS ADJOURNED UNTIL FRIDAY, NOV. 12/48 AT 10:00 A.M.)

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

E. Bligh

Deputy Official Stenographer

CASE NO: 1388

IN THE MATTER OF THE JAPANESE PROPERTY CLAIMS

B E F O R E

(THE HONOURABLE MR. JUSTICE H. I. BIRD - COMMISSIONER)

Kageisu cross. 174-238.
Re-exam 238-248.

Vancouver, B. C.,

November 17th, 1948.

IN THE MATTER OF THE CLAIM OF THE

DEEP BAY LOGGING COMPANY, LTD.

The Commissioner.

Vancouver, B.C.,

November 17th, 1948, 10:00 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Mr. McPherson, you have the amendment to Item 2 in the claim?

MR. McPHERSON: Yes, my lord.

MR. BREWIN: My lord, might I speak to that amendment before we go on?

THE COMMISSIONER: Yes.

MR. BREWIN: As your lordship knows, this was something in the nature of an estimate, and it still appears, unfortunately, that there is some misunderstanding in regard to the footage of timber distributed amongst these different blocks. While we are not going to amend this further now, your lordship will understand it is something of an estimate and after putting this in we discussed this with Mr. Kagetsu again, and it seems there are one or two things wrong in this letter.

The third item is Block 617.

THE COMMISSIONER: Yes.

MR. BREWIN: And that should be 12 million feet instead of 10 million.

THE COMMISSIONER: Yes.

MR. BREWIN: Then the next item was Block 274, which should be 2 million instead of 2,500,000. Then coming over again on the next page, Block 256 there should be a blank, and the same with Block 189. So, it still comes to the same amount of 27 million, but it is differently distributed.

THE COMMISSIONER: I see.

MR. BREWIN: Your lordship will appreciate that we have distributed those as best we can on the information we have at the moment.

THE COMMISSIONER: Any objection, Mr. McPherson?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: Very well, then. The claim will be amended by substituting Item 2 as set out in Mr. Norris's letter of November 15th for Item 2 as shown in the amended claim, dated November 3rd, 1948. Who is your next witness?

MR. BREWIN: Mr. Kagetsu is still under cross-examination.

MR. McPHERSON: We are still cross-examining Mr. Kagetsu, my lord. Now, my lord, in saying I had no objection to the amendments, I was referring, of course, to the 12 million and the 2 million which Mr. Brewin has just referred to.

Of course, I still reserve my right to break down this claim to find out what Mr. Kagetsu is claiming as the value of his buildings, etc, which isn't set out here, except at $4.00 a thousand.

THE COMMISSIONER: After all, this is only a statement.

MR. McPHERSON: Yes, my lord. I wonder, my lord, if the proceedings could be shortened a bit by Mr. Kagetsu not requiring an interpreter when questions are asked, unless he indicates he does not understand the question; because my information is that Mr. Kagetsu can understand English, but he

may not be able to express himself so well in English. We can cut down the time, if he can listen to the question in English and then reply to the interpreter, unless he feels he doesn't understand.

THE COMMISSIONER: Will you explain Mr. McPherson's request to Kagetsu, Mr. Brewin? It has been my observation that he does understand most questions that are put, but he perhaps has some difficulty in replying to them.

MR. BREWIN: I had better put it to the interpreter. Mr. McPherson proposes to ask the questions in English and have Mr. Kagetsu reply through you in Japanese, if he understands the question. If he does not understand the question, then he can have it interpreted to him. Yes, that is satisfactory, my lord.

THE COMMISSIONER: Very good.

EIKICHI KAGETSU, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, I show you a copy of Exhibit 13, that is a plan of the Deep Bay Logging operations. Could you tell his lordship whether or not this is a plan which was made by you, or someone in your office, for the use of the Deep Bay Logging Company?

A I don't know this plan at all. I don't know this plan at all. I haven't instructed anybody to

make this plan.

Q And you have never seen this plan before you came to Court here?

A I saw the plan at Mr. Norris's office. That was the first time I saw it.

Q Mr. Kagetsu, with respect to Block 504, am I correct that you bought that block of timber from the E. & N. Railway in 1939, on an estimated cruise of 9,363,000 feet, and 1435 cedar poles for a sum of $14,000.00?

THE COMMISSIONER: What was the cruise again?

MR. McPHERSON: 9,363,000 feet, my lord, and 1435 poles.

THE COMMISSIONER: And the price, $14,000.00.

MR. McPHERSON: $14,000.00, my lord, is what I am suggesting.

A Will you please repeat it?

THE COMMISSIONER: Q: In round figures, 9,000,000 feet. A: I don't buy timber by so much a foot, but I buy it by the acre and I bought it for $19,000.00.

Q You are a most unusual timber operator, Mr. Kagetsu, if that is the case.

A Generally I buy it from the E. & N. Railway by the acre, although their caluclation is by feet.

Q Do you know what cruise the E. & N. Railway Company had of Block 504, at the time you bought it? A: I know it by feet only. Then the record, which was kept on the file, was taken away by the Custodian, so

I can't definitely tell the feet.

MR. McPHERSON: Q: Now, Mr. Kagetsu, if you bought the E. & N. timber on the basis of acreage, why did you tell his lordship the other day that the E. & N. cruises were always 100% below your own cruise? Wouldn't you have to know the E. & N. cruise in order to be able to make that statement?

A I generally go by feet. I know it by feet, but the only thing is I couldn't tell you exactly, unless I have some documents that I went by before.

THE COMMISSIONER: Q: Now, Mr. Kagetsu, were you proposing to buy timber, or were you buying land?

A I buy timber, including the land.

Q I took it from the answer that you first gave that you were concerned in buying acreage, and were not concerned in the amount of timber on it, is that correct?

A That is not quite right, he says. He says I know the E. & N. Railway Company by feet, so I know exactly what they have, but when I buy I generally buy by acreage, knowing how many feet it had.

MR. McPHERSON: Q: When you bought 504, how many feet of timber were on it?

A I couldn't make any statement, because I haven't got it down in my notebook.

MR. BALDWIN: My lord, if it is of any assistance, we are prepared to admit the E. & N. cruise, which was made, and Mr. Kagetsu just hasn't got

the figures. The figures as my learned friend has given them, are correct.

THE COMMISSIONER: The impression that Mr. Kagetsu is creating with me is that he is seeking to convey the idea he was buying land, and not timber. I have tried to get an explanation from him, but I have not had it yet.

MR. McPHERSON: Q: Mr. Kagetsu, I am interested in that black book you produce every now and then. The other day when I was cross-examining you on Block 617 and Block 276, you produced that black book and you told me for 617 you estimated in 1942 there was 11 to 12 million feet, and that you were claiming $3.00 a thousand at the time you made your first claim, and you are now claiming $4.00 a thousand. Now, that is my recollection of what happened the other day. Now, you produce the black book again today. Are you suggesting in that black book you have only certain selected blocks on which you have information? A: I told you last time that there was 12 million feet of timber in Block 617, and that was in 1942, and I made the estimate in Toronto and I didn't know really the value of the Vancouver market. However, when I came here, I found it was about $4.00, so I have claimed on that basis.

Q Do you agree, then, Mr. Kagetsu, that there was 12 million feet of timber on Block 617?

A I am quite certain of that, as I have seen it

myself.

Q And you got that information from your black book, is that correct?

A I haven't got that in the black book. I know it, as I have seen it myself.

Q And how much timber did you think there was on 504 when you left it in 1942?

A Could I refer to Mr. Baldwin?

Q No. I would object to that, my lord. The witness should know his own claim.

THE COMMISSIONER: Let the witness answer that himself.

A I am sorry, unless I could have the reference, I couldn't tell you.

THE COMMISSIONER: You might endeavour to ascertain if he knows what amount of timber he cut from 504, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

Q How much timber do you estimate you had cut from 504? A: It is 1942, isn't it, that you wish?

Q 1942, yes.

THE COMMISSIONER: No, the information that I desire is how much timber he cut from 504 during the course of the Deep Bay Logging operations.

MR. McPHERSON: Up until he left in 1942.

THE COMMISSIONER: He has never operated since, has he?

MR. McPHERSON: No.

A From 1931, September to December, 3,390,000. In 1932, 11,314,421, in 1934, 10,225,000.

THE COMMISSIONER: It is obvious he has not understood

the question.

Q What quantity of timber did you cut from Block 504 alone during the period of Deep Bay Logging operations? A: I couldn't tell you separately, because they were all cut together.

MR. McPHERSON: Mr. Kagetsu, in your original claim which you swore under oath in Toronto, you claim $7,000.00 for Block 504, and you stated to me the other day that your overall price per thousand was $3.00, and if you take $7,000.00 at $3.00 a thousand, it works out at approximately 2,333,000 feet of timber that you were originally claiming for in 504.

THE COMMISSIONER: Now, just a moment. This question is becoming so long it is going to be impossible to translate.

MR. McPHERSON: Yes, my lord.

Q Mr. Kagetsu, in your original claim, as I work it out, you claim 2,300,000 feet of timber on Block 504. Now you are claiming 7 million feet.

THE COMMISSIONER: Suppose you break it up. Is that the fact? Was he, under his original claim, claiming for 2,300,000 feet?

MR. McPHERSON: My lord, the evidence has already been given. He said he was claiming at a rate of $3.00 a thousand, and I have simply done the arithmetic on his claim for $7,000.00.

THE COMMISSIONER: Just put it to him, was he claiming that much timber in his original claim.

MR. McPHERSON: Q: In your original claim, Mr. Kagetsu, were you claiming 2,333,000 feet on Block 504?

A I didn't make any calculations by feet, as I don't know very much about it in Toronto. I just declared at the solicitor's office, $7,000.00 for the claim.

Q Mr. Kagetsu, I refer you to Exhibit 10, which is the inventory that you delivered to Mr. WRay. You prepared that inventory?

A Yes, I did.

Q Now, are you suggesting, Mr. Kagetsu, that having gone to the trouble of preparing that detailed inventory on your calculation, you didn't know how much timber you had?

A I know that I had 27 million feet of timber when I made that inventory.

Q In 1942, you had 27 million feet of timber, is that correct?

A In 1947?

Q In 1942. In 1942, when he prepared that inventory, how much timber did he think he had?

A I calculated it at 27 million.

Q That is 17 million?

THE COMMISSIONER: He said 27 million.

THE INTERPRETER: 27 million feet.

MR. McPHERSON: Q: In 1942.

A In 1942, yes. I didn't mean to sell the timber, so I made really a rough calculation, but I think there was more than that.

Q So that, Mr. Kagetsu, when you drew your claim

in Toronto, you knew that you had 27 million feet of timber, did you?

A I knew I had 27 million feet, but as I had no reference, or no document to refer to, I gave the rough calculation.

Q In your original claim, Mr. Kagetsu, you claim $53,200.00 for the standing timber, and you have stated that is at the rate of $3.00 per thousand. Now, do you understand my statement?

A Yes. I gave that estimate, but I really didn't know the market value of the timber until I came to Vancouver.

THE COMMISSIONER: Q: Did you realize you were taking an oath at the time that you gave that estimate, that the contents of the statement were true?

THE COMMISSIONER: Pursue that with this man, Mr. McPherson. I am getting a little impatient with him.

MR. McPHERSON: Did you say not to pursue it, my lord?

THE COMMISSIONER: Point out to him that he has taken an oath as to these figures, and ask him if he realized he was doing so at the time he signed the document.

MR. McPHERSON: Q: Mr. Kagetsu, in Toronto when you signed this document -- you admitted you signed those documents to his lordship the other day in cross-examination -- when you signed this claim for the company and the claim for your own timber, did you realize that you were taking

an oath and that what was in these claims you were swearing to and certifying was correct?

A This statement is quite true, but there are no particulars about the feet of timber in this statement.

Q Mr.Kagetsu, it is true, then, that you were claiming for the Deep Bay timber and your own timber in the Deep Bay area $53,200.00 in your original claim? That is true, is it?

A Originally?

Q Yes. That is the claim.

A Yes, it is.

Q And it is also true you told his lordship the other day that your estimates in Toronto were on the basis of $3.00 a thousand, is that correct?

A Yes,that was in Toronto I did it.

Q That is correct? A: Yes.

Q Now, Mr. Kagetsu, if your claim is $53,200.00 at $3.00 a thousand, it works out to 17,735,000 feet of timber you were claiming in Toronto. Would that be approximately correct?

A I didn't calculate it by feet at all.

Q Mr.Kagetsu, I have done the calculating for you. Would you admit to me that when you were in Toronto you did think you had approximately 17 million feet of timber?

A It may be right. That may be right. That is while I was in Toronto, but as I didn't have any reference, I couldn't say that is correct.

Q Mr. Kagetsu, I show you Exhibit 13 again. Would

you look at this Exhibit 13, and I show you a note here written on the exhibit, "17 million feet; 60% fir, 30% hemlock, 10% cedar."

A Yes.

Q Now, do you say to his lordship that this is not a map which was in the Deep Bay company records?

A As I didn't make the map, I don't know who wrote that.

THE COMMISSIONER: Now, the witness is not answering the question. I am in doubt about whether he is being deliberately evasive, or whether he is extremely dull.

I wonder if counsel for the claimant would like to discuss the matter in which the witness is giving his evidence with him and see if we cannot get somewhere? It is inconceivable to me that he knows so little about his own claim as he professes to know.

MR. McPHERSON: My lord, it is the Government's intention to attempt to prove this map did come from the Deep Bay records, and while Mr. Kagetsu says he doesn't know the map, I haven't been able to find whether he knows itwas in the records.

THE COMMISSIONER: Just put that question to him. I propose to give counsel an opportunity to talk to him after you finish with this.

MR. McPHERSON: Q: Mr. Kagetsu, do you know who prepared this map?

A I don't know.

Q You don't know. Do you know whether your son prepared it? A:No. My son made them, but different to this one.

Q Did your son do drafting for the company and make maps for the company?

A Yes, but not this one.

Q You don't know whether he made this one?

A No.

MR. McPHERSON: If my learned friend wants an adjournment, my lord, all right.

THE COMMISSIONER: I do not feel inclined to take any more time with this witness, unless we can get something out of him, and it is obvious that either he knows nothing, and therefore we are wasting time examining him, or he is being deliberately evasive, and I would like to give his counsel an opportunity to explain the situation to him in the hope, perhaps, that we can get somewhere with him.

MR. BREWIN: We will be glad to do that, my lord. I didn't want to intervene in the cross-examination, and appear to be trying to help the witness about this claim that was prepared in Toronto, but your lordship will see that he swears this to be the information to the best of his knowledge. These items on which he is cross-examined in the amount of his claim -- he did prepare the claim when I was there, and I can bear out what he says, that he had very little actual information, and there was some rush about it. There was

only a limited time in which to file some of the claims, and I can bear that part of it out.

THE COMMISSIONER: I can fully appreciate the difficulty under which you were labouring at that time, but, Mr. Brewin, here is a situation, where an apparently successful logging operator who had been in business in the province for years asserts he knows nothing as to the content of his timber holdings. Now, that is inconceivable. Either he does not understand the question that is being put to him, or he is afraid of being pinned to some figure and is therefore being deliberately evasive.

MR. BREWIN: My lord, we willhave a discussion with Mr. Kagetsu.

THE COMMISSIONER: I think it is only perhaps fair to him to permt him to have it done through his own counsel.

MR. BREWIN: Your lordship, of course, is not overlooking the fact that since 1942 all of his records have been in someone else's hands.

THE COMMISSIONER: I fully appreciate that. Mr. Brewin, if either you or I had a timber holding of the apparent value of this timber, we would know something more about it than this man pretends to know about it. That is what I am trying to convey to him, from my point of view up to the present time he has been a highly unsatisfactory witness, and I cannot give credit in respect of anything he says. For that reason,

I would rather have him stand down and have someone who knows what he is talking about.

MR. BREWIN: We can discuss it in a way that it would be possible to get useful information from him. Quite generally, that can be done.

THE COMMISSIONER: It is quite possible.

MR. BREWIN: But, however, we will discuss the situation.

THE COMMISSIONER: I would like to give you the opportunity to tell him what I feel, if he does not understand it now, befause he has made a very bad impression, as far as I am concerned.

MR. McPHERSON: Now, my lord, I wonder if my learned friend is talking to his client, and I am not trying to trick him, I want to bring the facts before your lordship, but I think I should explain to my friend so he won't waste any more time, what I am really getting at is Mr. Kagetsu made a claim in Toronto for which he had no written records. He then comes out here and makes another claim and increases the timber, I suggest, about 10 million feet. If he didn't have the knowledge in Toronto, and they haven't the cruise yet, then what I am going after is how does he establish that he had 27 million feet today, when he still hasn't his cruise, and where did he get the information about the 27 million. He didn't get it out of his black book, because he says it isn't in the black book.

MR. BREWIN: My lord, I say in response to what my

learned friend says, and I don't want to protect this witness beyond what is at all reasonable, but so much of this matter of how the 27 million is made up, either we shall have to prove it in the course of the evidence that is given, and if this witness says he doesn't know, then we obviously haven't proved it and we will have to prove it somewhere else, and I am wondering how much value there is in trying to get him in a sense, to analyze it. If he knows, of course, it will be helpful.

THE COMMISSIONER: Well, he should know. I am assuming that the man has been a competent logging operator, andyet he comes in here and knows nothing about his holdings.

MR. BREWIN: You see, my lord, it is based on his personal knowledge and his evidence, but I think he should be ready to be fully cross-examined about it, and your lordship may come to the conclusion that his evidence is not very valuable, but insofar as it is based, as it must necessarily be, on information acquired by my friend, and has been confirmed since Mr. Kagetsu has been here. As far as seeking information is concerned, I don't think cross-examination will help.

THE COMMISSIONER: Do not overlook the fact that this witness, earlier on in his examination in chief, made the statement that he always personally checked cruises himself, and he is a competent

cruiser and has been engaged in the business since 1906. So that, I conclude from his own evidence that he was not relying on what other people told him. He had checked the cruises himself, and it was he who did the buying of the timber, yet he comes in here this morning and asserts he was buying acreage, not timber.

However, I will give you an opportunity to talk with him. We will recess for ten minutes.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

THE COMMISSIONER: Just before we re-open, I would like to call counsels' attention to the evidence given by Mr. Kagetsu in chief as to his personal knowledge of the contents of various of those blocks.

At page 26 of the transcript on November 28, Mr. Kagetsu was being examined in chief by Mr. Norris and he is asked this question:

"Q: Now, Blocks 504, 566, 276 and 617 . . . . . if you wish me to explain, I am willing to do so."

Then he goes on to make an explanation.

Now, when the witness comes here this morning, and under cross-examination suggests he was buying this land by the acre, and that he knows nothing of the timber content, it is perfectly apparent he is telling an entirely different story from what he told in chief.

MR. BALDWIN: I may say something in explanation, my lord. We have discussed it with the witness and

he didn't intend to convey that at all. It is a deed ofland, and the footage wasn't mentioned in that at all, but we are quite prepared to admit all the way through, as his evidence in chief shows, that prior to the purchase of these blocks the E. & N. would have them surveyed, first of all the land and their blocks and then send their cruiser in, and in some cases Mr. Kagetsu accompanied their cruisers and made his own cruise.

THE COMMISSIONER: He says he cruised 504 himself, and found it contained twice what the E. & N. timber cruiser said it contained.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Having explained the situation to him, is it your desire that the cross-examination should continue, or are we going to get anywhere with this witness at all? Have you some other witness who knows the situation and can be called, because to me it is just a waste of time getting the answers that have been given by this witness to the questions that have been put to him.

MR. BALDWIN: In that connection, I would agree with your lordship that this witness's evidence is certainly not the only basis upon which the claim will be decided, and the evidence of what timber has been cut from these limits is far more accurate than his recollection at that time.

Now, the estimate of 27 million, my lord, if I may clarify it and how it was arrived at; when Mr. Kagetsu came here just past, we had pre-

pared or began to prepare this estimate by getting the cut from the S.& R. account, and that 27 million is arrived at -- well, it is a sort of a mix-up of the claimant's recollection, and we have aort of taken all the factors we had available to arrive at that. The witness's recollection at the time he came from Toronto wasn't the 27 million, as I recall it. The 27 million was arrived at by compilation of various factors.

THE COMMISSIONER: Yes, I can appreciate that.

MR. BALDWIN: I think perhaps the issue is a little confused now as betweenwhat the witness knew as a fact and what he is claiming.

THE COMMISSIONER: I see. Now, in view of one of your earlier statements, Mr.Baldwin, is it possible that the witness's answers are not being accurately translated?

MR. BALDWIN: I think in some instances that may be true, my lord.

THE COMMISSIONER: You have a gentleman sitting here on your right who, I gather, is Mr.Kagetsu's son. He apparently speaks English as well as Japanese. I would be very happy if he would interject if any answer given is not in accordance with his view of what the correct translation is.

But it does appear to me in view of what has transpired previously under cross-examination, and again this morning, that we are just going

through motions with Mr. Kagetsu. We are not getting things that will be dependable at all, and the subject of Mr. McPherson's views I do not propose to stop him on his cross-examination, but if it goes on as it has been going, it appears to me it is entirely waste effort, we are not getting anywhere. So that perhaps, if the discussion you have had with Mr. Kagetsu, we might get on better from now on. Let us try it and see how it works.

MR. BALDWIN: All right, my lord.

THE COMMISSIONER: I prefer, Mrs. Smith, that you should continue as interpreter, but if there is any question in regard to your interpretation, if this young man who is assisting Mr. Brewin and Mr. Baldwin would interject, then if there is something wrong with the translation we can have it pursued.

MR. McPHERSN: My lord, if my learned friends would be prepared to admit the figures that have been supplied to Government counsel by the E. & N. Railway as to the dates of purchases, with the quantities and prices on the various blocks, that would save a lot of cross-examination. I have the figures here.

THE COMMISSIONER: Were you proposing to call an E. & N. representative?

MR. McPHERSON: I wasn't proposing to do that, because I thought I would get the figure out of Mr. Kagetsu x fairly easily, but my learned friend has already agreed this morning that one block

had been cruised at 9,300,000.

THE COMMISSIONER: You might discuss it with Mr. Baldwin, Mr. Brewin, and see if you can agree on this E. & N. information.

MR. McPHERSON: I can show my learned friends the letters that set out the figures. I don't think there can be any question about it. In a Commission of this kind, I thought it would be a waste of time to call an official of the E. & N.

MR. BREWIN: Are you putting in the letter?

MR. McPHERSON: I will put both letters in. There has been a correction made in the second letter.

THE COMMISSIONER: Make sure that counsel for the claimants have gone over that letter carefully.

MR. McPHERSON: That, of course, doesn't include Block 195, Mr. Brewin. I have supplied my learned friends with these letters, my lord, before the case opened.

MR. BALDWIN: My lord, we are willing to have Government counsel put that in for the worth of the recorded footage, just as though the E. & N. representative were called instead.

THE COMMISSIONER: Suppose you read the figures into the record instead of putting the letter in, because there might be some thing else in it that is objectionable to the claimant.

MR. BALDWIN: No, there is nothing else in it objectionable, as far as I know. We are quite prepared to put all the letters in.

THE COMMISSIONER: Very well. Read the figures , then,

so I may note them here.

MR. McPHERSON: Taking the claim, Block 504, my lord, 1372 acres, estimated cruise 9,363,000 feet, 1,435 cedar poles, sold for a lump sum of $14,000.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: Block 566 --

THE COMMISSIONER: When was the sale?

MR. McPHERSON: The first payment was made July 8, 1939, and the final payment on April 1st, 1941.

THE COMMISSIONER: The sale date is as at July, 1939, I take it?

MR. McPHERSON: Yes. Block 566, 487 acres, the first payment on September 10, 1940, the estimated cruise 5,646,000 feet.

THE COMMISSIONER: 5,646,000.

MR. McPHERSON: Yes, my lord. It states "no recoverable cedar poles", for a lump sum of $8,000.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: Block 617, 790 acres, and the exact date isn't given, but it says "purchased in 1941". The cruise was 7,298,000 feet, no recoverable cedar poles, and the price was $8,000.00.

276, 1530 acres. The first payment was made February 16, 1932, the cruise was 30,805,000 feet, at $2.00 a thousand, $61,610.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: And 5063 cedar poles, at $4,052.00. I would file the two letters as an exhibit, my lord.

(LETTER MARKED EXHIBIT NO. 1388-16)

MR. BALDWIN: My lord, we would also ask that the following paragraph be read into the record from the letter of September 28th to P. s. Ross & Sons from the E. & N.

"You, of course, understand that the cruise figures given in this letter are merely estimates, which are in no way guaranteed by the company."

MR. McPHERSON: Q: Mr. Kagetsu, do you agree with me that the amount of timber on any particular acre of land varies?

THE COMMISSIONER: Do you think you need an answer to that?

MR. McPHERSON: All right, my lord.

MR. BREWIN: I think we all agree to that.

MR. McPHERSON: My learned friend agrees.

Q Can you tell his lordship, Mr. Kagetsu, what the going selling price for standing timber in the E. & N. belt in the district of Deep Bay was in 1941? What were they selling timber for?

A Between $1.75 and $2.00 per thousand.

THE COMMISSIONER: In what year was that?

MR. McPHERSON: 1941 my lord.

Q What about 1942, Mr. Kagetsu.

A As I wasn't dealing in 1942, I couldn't tell you.

Q In your claim for timber of $108,000.00, are you including any amount for the fact that the timber had been opened up?

A What do you mean by opened up?

Q That there was a railway in there, and the timber had been opened when they were in there?

A Would you repeat that question?

Q In your claim of $108,000.00, which you arrived at at $4.00 a thousand, are you including in the $4.00 a thousand any amount because the timber had been opened, and the railway was in there?

A It adds a certain value to the railway. I put a certain value to the railway. Of course, the price of timber had gone up since, that is why.

(Question interpreted by Kagetsu, Jr.)

THE INTERPRETER: A: No, it isn't that at all.

MR. McPHERSON: Q: How much are you claiming for the $4.00 a thousand for the foreshore right, the booming grounds, the dump, the landing, the coal dock and road bed? How much are you claiming of the $4.00 a thousand for those items?

(Question interpreted by Kagetsu, Jr.)

THE INTERPRETER: A: I am figuring at $3.00 for all those things -- $3.00.

MR. KAGETSU, JR.: If you don't mind, sir, it figures at $3.00 a thousand.

THE INTERPRETER: For the road, I put about 50 cents.

MR. KAGETSU, JR.: That is not for this item, though.

THE COMMISSIONER: He has added 50 cents per thousand to the value of the road?

MR. KAGETSU, JR.: Yes, that is right, your lordship, but Mr. McPherson refers to $108,000.00, I believe.

THE COMMISSIONER: Yes, but he referred to $4.00 a

thousand.

MR. McPHERSON: My lord, the claim is for 50 cents a thousand on the railway, and as an increased value of the railway.

THE COMMISSIONER: That is right.

MR. McPHERSON: Here, in this amended claim, we have $4.00 a thousand, including the railroad bed and the foreshore and so on, in the $4.00 a thousand. Perhaps I could bring the point out clearer by asking Mr. Kagetsu this:

Q Mr. Kagetsu, in your claim you are claiming $4.00 a thousand, which includes the foreshore and other properties, but what are you actually claiming for the timber? How much a thousand for the timber?

THE COMMISSIONER: Would you have Mrs. Smith read that to him and ask him the question again.

MR. McPHERSON: Q: The question is, how much of the $4.00 a thousand is for the timber?

A I don't quite remember claiming $4.00 for these things, but for the timber I have claimed $4.00 a thousand.

THE COMMISSIONER: Is it not apparent that the claim for $4.00 a thousand for the timber is based on the fact that these improvements have been made available to the timber.

MR. BALDWIN: This amended claim, my lord, pursuant to your direction, Item 2 was drafted by me. Mr. Kagetsu didn't see it before it went in. I think that is where the confusion arises, and I

do not see that anyone but an accountant with about a week tospare on his hands could possibly allocate to the bridges and construction an amount in that $4.00 a thousand.

THE COMMISSIONER: I do not think you will get anywhere with that, Mr. McPherson. I take it from the claim, as drafted, and counsel will correct me if I am wrong, that the figure of $4.00 per thousand for the timber is arrived at because of the fact that these foreshore rights, booming ground and so on, with the road beds, are there and available for use in the removal of that particular timber.

MR. BALDWIN: That is correct, my lord.

THE COMMISSIONER: I do not think you will get very far with this witness in trying to ascertain how he breaks it down, because apparentlyhhe does not even know it is there.

MR. McPHERSON: My lord, in view of the fact this is a claim, and my learned friend prepared it, and while my learned friend may not be an accountant he must have arrived at $4.00 a thousand in some way. What did he start with for the timber? That will be a very important question in this Commission. What is the timber worth, as timber?

THE COMMISSIONER: He can claim what he will, Mr. McPherson. The amount he may recover will depend on what he proves the value to be, and in the absence of proof, the claim does not mean very much.

MR. MCPHERSON: Thank you, my lord.

Q Mr. Kagetsu, would you agree with me that at the time you left the Deep Bay operations, you had removed the most accessible timber?

(Question interpreted by Mr.Kagetsu, Jr.)

THE INTERPRETER: A: I took thetimber out by stages, not because it was the easiest way, or not because it was accessible timber.

THE COMMISSIONER:Q:Now, Mrs. Smith, will you pursue that further with the witness? Counsel makes the suggestion that in 1942 when this witness was evaucated, he had already removed most of the readily accessible timber on thes limits. What does he say?

MR. BALDWIN: With great deference, my lord, I think the questi n was he had removed the most accessible, not the most easily accessible.

THE COMMISSIONER: Q: All right, he had removed the most accessible timber.

A Yes, I have done so.

THE COMMISSIONER: Do not overlook the fact, Mr. McPherson, that "accessible" largely depends on price.

MR. MCPHERSON: Yes, my lord, I realize that.

Q Mr. Kagetsu, do you know what a Swedish gang saw is? A: Yes, I do.

Q How many Swedish gang saws would you estimate there were on the coast of British Columbia in 1941, when you were here?

A I can't tell you.

Q Mr. Kagetsu, was it economical in 1941, and in the spring of 1942, before you left, to cut lumber out of logs that were 12 inches high, breast high, when they were cut in the woods?

A Most of the good timber I had cut down of the 12 inch breast high, and that was the most economical.

Q Did you bundle the logs when you took them out? The 12 inch logs, did you bundle them?

A No, I didn't do it.

Q How many cars of logs a day did you average taking out down your railway when you were logging, just before you left in 1942? In March, of 1942, how many cars a day would you take out of the woods?

A On a good day, he says about 18 cars, and poor days were, as he calls it, six. The average was about 12.

Q Andhow many feet of timber on each car, on an average? A: On the average, you can load about 6,000 feet, but I have done about 5500.

THE COMMISSIONER: Q: That is 5 to 6 thousand per car?

A Yes.

MR. McPHERSON: Q: Mr. Kagetsu, with respect to your railway and bringing these cars out, am I correct that you frequently had spills, and you dumped logs off the cars on the way out?

A It was very seldom, but there were some that rolled out, but it was only a very few incomparison.

Q Would you say that at the time you left that there wasn't a lot of timber lying along the right-of-way that had been dumped off the cars?

A There might have been a few, but I didn't see very many.

Q Now, Mr. Kagetsu, would I be correct if I said that your timber operation had reached the point where it was more economical to log by truck than by rail? A: I always prefer the railway to the truck.

Q Yes, but do you agree it would be more economical to log the remaining timber by truck?

A Some places are difficult for the railway to get at, then I use the truck beyond that.

MR. KAGETSU, JR.: He had considered using the truck in different places.

THE INTERPRETER: As far as the railway went, I had considered to use trucks.

MR. KAGETSU, JR.: Not that way -- excuse me -- it would be just bringing it to the end of the railway, not out to the dump.

MR. McPHERSON: Q: And you would use the trucks, I suppose, because the remaining timber was at a high altitude and you would have had very steep grades for your railway, is that correct?

A Yes, it is.

Q Now, Mr. Kagetsu, when you use a truck to haul to the railway, it costs quite a bit of money, doesn't it, to transfer the logs from the truck to the railway? Is that correct?

A Yes.

Q Now, with respect to B lock 195 at Cowichan, you were a director of the Ocean Timber Company?

A Yes, I was.

Q Did x the Ocean Timber Company own block 403 in the Cowichan district?

A Yes.

Q And did the Ocean Timber Company sell Block 403 to a Mr. Hunter? A: Yes.

Q That was the Lake Logging Company, wasn't it?

A Yes, the Lake Logging Company.

Q In your original claim, you claimed $187,500.00 for Block 195. How much timber didyou estimate was on that block?

A I didn't go in, so it was just left as I bought it.

Q To arrive at your original claim of $187,500.00, am I correct that you took $3.00 a thousand on the estimate of what you ghought was there?

A No, I never calculated it at $3.00 a thousand, but at $5.00 a thousand, as it hasn't beentouched at all.

THE COMMISSIONER: What is this about $5.00?

MR. McPHERSON: $5.00 a thousand is what he xx says he arrived at the figure of $187,500.00.

MR. BALDWIN: My lord, I think the witness is confused with his amended claim and the one my learned friend is referring to.

MR. McPHERSON: Q: In the original claim, Mr. Kagetsu, how did you arrive at the figure of $187,500.00

A I had heard the price had risen that high, so

I put in that claim, but I don't know if it was at the rate of $3.00 a thousand.

Q So, the $187,500.00 was a guess, was it?

A Yes, it was a guess, sir.

THE COMMISSIONER: Just let me understand that. Did the witness say he had put a value of $3.00 a thousand on Block 195?

MR. McPHERSON: No, my lord, he has changed that. He was confused. He says his original claim of $187,500.00 for Block 195 was a guess.

THE COMMISSIONER: You might pursue that a little further and see what he says about the contents of Block 195.

MR. McPHERSON: Q: When did you buy block 195?

A 1937, I think.

Q Did you have a cruise of the timber made before you bought it?

A I cruised it myself.

Q And how much timber did you estimate was there?

A It was cruised by Mr. Sheehan, and I checked on that cruise. I estimated it, that it was more than 50 million feet.

compare p 25.

Q And in your new claim, you are claiming for $5.00 a thousand. That is correct, isn't it?

A Yes.

Q Now, the calculation of your original claim, $187,500.00 for 50 million feet of timber, is $3.75 a thousand. Now, how do you explain $5.00 a thousand that you are claiming today for the timber? How do you explain the difference?

A Since I came to Vancouver, I made many inquiries and I find timber had risen and that was the market value, $5.00 per thousand.

Q Well, $5.00 per thousand, is that today's market vvalue for standing timber?

A No, that was the time when it was sold by the Custodian in 1943.

Q Now, you are claiming $5.00 a thousand for block 195, which had never been opened up, and yet you are only claiming $4.00 a thousand for timber that has been opened up, and there is a good railway there, and camp buildings are there, and there is a foreshore lease. Why are you claiming less for timber that was opened up than for timber that was never opened up?

A Block 195 contained much better quality of timber than the one I had opened up in the other block.

Q With respect to Block 195, am I correct that in order to open that timber up you would have to build a bridge across the Cowichan River?

A The railway company has a bridge across the river, so I have nothing to do, and no expenses attached to it.

Q Do you know the Cowichan district very well? Do you knww the district?

A I know a little of it.

Q You cruised block 195. Am I correct that the river is between the block of timber and the railway? A: There is no river between the timber and the railway.

Q Well, Mr.Kagetsu, in logging block 195, you would ship over the C.N.R. track, would you? Is that how you would take the logs out?

A I would take it out by C.P.R.

Q How much a thousand would they charge you to bring the logs out in 1942?

A I don't know what the charge would be in 1942, but I know what it was in 1939, and 1940.

Q You told my learned friend that you purchased this timber for $75,000.00 in 1937, and that in 1942 it had cost you $121,515.00. Is that correct?

THE COMMISSIONER: He has sworn to it.

MR. McPHERSON: Q: Then, Mr. Kagetsu, the difference between the $75,000 and the $121,000.00, I understood you to say, was taken up by taxes, forest protection fees or dues and interest. Is that correct?

A Yes, it is, sir.

Q Now,Mr.Kagetsu, I suggest to you that the timber dues on that timber were $875.00 a year, is that correct -- the taxes?

A It was about that.

Q And from 1937 to 1942 is five years, and that is $4375.00. A: From 1935?

Q From 1937 to 1942 is five years. That would be $4375.00. Now, do you accept my figure?

A That is the taxes only -- the dues only?

Q That is the taxes and forest protection dues.

A Yes, I think it must be.

Q Now, if you will accept, for the purpose of this

question that that is the correct figure, and the interest that you paid was 6%, is that correct?

THE COMMISSIONER: He has sworn to that.

MR. McPHERSON: Q: Well, at 6% for five years on $75,000.00, I work it out at $18,750.00. Now, I realize you can't work that out now, but if you will accept these figures your counsel can check me if they are wrong.

THE COMMISSIONER: Is it not $22,500.00, if it is $4500.00 a year?

MR. McPHERSON: I find myself in the position, my lord, of having to abandon this line of cross-examination for the moment, because I think the figures are wrong, my lord.

Q Mr. Kagetsu, with respect to the Ocean Timber and Block 403, the Ocean Timber Company hadn't logged any of Block 403?

A Yes.

Q With respect to the felled and bucked timber, Mr. Kagetsu --

THE COMMISSIONER: Where?

MR. McPHERSON: The felled and bucked timber at Deep Bay.

THE COMMISSIONER: You are leaving 403 now?

MR. McPHERSON: I am leaving 403, yes, my lord.

Q With respect to the felled and bucked timber at Deep Bay, in your original claim you didn't claim any timber on Block 274.

A Could he see the map?

Q Yes. In your original claim, you didn't claim any timber on 274, and that is where the felled and bucked timber was, wasn't it?

A There was some standing timber.

Q But you didn't claim any standing timber on that block of timber in your original claim, did you?

A There shouldn't be this line at all, (indicating) he says. The bucked timber was here and there was some green timber left here, (indicating).

Q Now, you are claiming 2 million feet of 276 and 2,500,000 of felled and bucked timber.

MR. BREWIN: Just a moment. Is my friend quite right in saying that the original claim didn't claim any standing timber? My recollection is that the original claim didn't attempt to specify what timber there was, it just valued the property as a whole.

MR. McPHERSON: No, it was a better claim than the amended one, because it set a figure for the 504 timber land and 566 timber land. That is in Mr. Kagetsu's claim.

THE COMMISSIONER: How do you arrive at any timber content as having been claimed?

MR. McPHERSON: My lord, I am not arriving at timber content. I am pointing out to the witness that in neither claim could I find Block 274. So, I could find no claim for timber.

MR. BREWIN: Oh, that is all right.

MR. McPHERSON: I said he didn't make any claim at all for 274.

MR. BREWIN: Made no claim at all?

MR. McPHERSON: That is quite correct.

THE COMMISSIONER: Put the question to him that he had not made any claim in respect of 274.

MR. McPHERSON: Q: In your original claim, am I correct that you made no claim at all for Block 274? A: I don't quite remember, but I received a letter from the Custodian as to what they had sold, and I went by that, and it might not have been under this.

Q Well, do you mean by that, Mr. Kagetsu, that your claim is based on a letter from the Custodian as to the blocks that were sold to MacMillan?

A I based it on the blocks that the Custodian had sold.

Q But did the Custodian's letter tell you there was timber on 274?

A I don't remember seeing it.

Q Am I correct, that in September of 1943 the felled and bucked timber had been lying in the woods for two years?

A I hadn't seen it, but it must have been there.

Q Would you agree that hemlock and balsam lying on the ground for approximately two years will deteriorate considerably?

THE COMMISSIONER: Is this confined to 274?

MR. McPHERSON: No, it is the felled and bucked timber on two blocks. It is on 274 and 566, my lord.

A Some would deteriorate and some don't.

Q Could I have Exhibit 11, Mr. Secretary? Now,

my lord, Exhibit 11 is the letter written by Mr. Kagetsu to Major Austin C. Taylor, on March 31, 1942. I draw this paragraph to your attention, Mr. Kagetsu, paragraph 2, "Unfortunately in this district I own a logging operation . . . . . almost valueless." That statement was made by you to Austin Taylor?

A Yes.

Q That is true, isn't it?

A I wrote that letter, because I am a business man and I wanted to remove the timber quickly, so I wrote that letter.

Q Are you saying the statement made in that letter about the felled and bucked timber deteriorating is not true? A: As I have said before, some deteriorates and some don't.

THE COMMISSIONER: Now, Mr. McPherson, is it your contention that deteriorating assets such as felled and bucked timber are solely for the account of the claimant when he has been compulsorily evacuated, as this man was?

MR. MCPHERSON: My lord, we will argue that the condition of the assets at the date of sale governs the fair market value, rather than the condition of the assets at the date the Custodian took them over; that the fair market value under the Terms of Reference is the fair market value as at the date of sale, and the Custodian could not prevent these logs from deteriorating, or operate the railway to bring them out, and we

will contend that Mr.Kagetsu and his solicitor were negotiating about selling this property for approximately a year, during which time the Custodian stood aside and allowed them to negotiate, and it was in 1943 the Custodian sold. That is what the Government will contend.

THE COMMISSIONER: You will say if deterioration took place, it was a loss which cannot be passed on to the Custodian.

MR. McPHERSON: Yes, my lord. Otherwise, if that principle isn't accepted, then of course that would apply all the way through on chattels, cars and buildings and everything, and the Custodian might be held liable for the condition of the house in 1942, which he didn't sell until 1944, and our submission is the Custodian is only required to obtain a fair market value under the Terms of Reference, as at the date of sale.

MR. BREWIN: Your lordship may remember that this matter was discussed in connection with the general claims, and I think your lordship said something to the effect that in certain circumstances, while it might not strictly be within the Terms of Reference, you might bring certain facts to the attention of the Government. Before we get to any argument on that point, I would refer your lordship back to what you said then.

THE COMMISSIONER: I remember it in a very general way. We will just leave it there. I wanted to

be sure what the position of the Government was in regard to it.

MR. McPHERSON: Q: Mr. Kagetsu, you were originally claiming $9.00 a thousand for your felled and bucked timber, is that correct?

A Yes.

Q Mr. Kagetsu, you are claiming now $10.75 a thousand for felled and bucked timber, and $12.75 per thousand for cold deck timber. How much do you estimate that it would cost in 1941 or 1942 to take felled and bucked logs and cold deck them?

A You mean the expenses of logging?

Q The expense of yarding the lags and cold decking them after they have been felled and bucked?

THE COMMISSIONER: Do you not think it would be better to break it down and get the falling and bucking costs, first of all, and cold decking independently?

MR. McPHERSON: Q: Yes. How much do you estimate it costs to fall and buck timber, or did cost in 1941 up to the time of your departure?

A $1.25.

Q $1.25 a thousand? A: Yes.

Q And how much do you estimate it cost to yard and cold deck these logs?

A About $2.75 -- $2.50.

THE COMMISSIONER: Now, just one moment. I think you better follow that up. You will notice the difference between felled and bucked and cold decked in the claim. It is only $2.00.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Now, would you pursue that with the witness.

MR. McPHERSON: Q: Now, Mr. Kagetsu, you are claiming that the felled and bucked timber is only worth $2.00 more if it is cold decked than if it isn't cold decked.

A He says cold decked is only once a trip, or something.

THE COMMISSIONER: Would you please speak up, Mrs. Smith?

A I think you can explain it.

MR. KAGETSU, JR.: As a matter of fact, I didn't grasp it.

THE INTERPRETER: He says cold decked is only once, so it is only about $1.50 -- $1.00. Between $1.00 and $1.50, and the yarding would cost extra to that.

MR. McPHERSON: Q: Mr. Kagetsu, after you fall and buck the trees, you yard them to cold deck them, don't you? A: He says that the pole is here and here, and to get the timber to here to the cold deck, he says it would cost a dollar more, as it would have to be brought here and then on to this pole, because the pole here is pretty high, so this is $1.00 less.

Q So, it isn't $2.50 to cold deck, it is $1.00, is that right? A: The cold deck and yarding costs $2.00. For both it costs $2.00.

THE COMMISSIONER: Q: Both yarding and cold decking

costs $2.00. A: Yes, $2.00.

MR. McPHERSON: Q: That now explains, my lord, how the difference is arrived at. Mr. Kagetsu, how much did it cost you a thousand in 1941, up until your departure in 1942, to put the logs in the water after you had yarded them and cold decked them? A: He says, "Could I write it, as it is rather complicated".

Q Perhaps , Mr. Kagetsu, you can tell me, how much did it cost to load the logs on the flat cars?

THE COMMISSIONER: I think you better stay with it now.

A To cut the timber, $1.25, and to yard and cold deck it, it is $2.50.

THE COMMISSIONER: Q: $2.50.

A $2.50, yes, and to build a railway road is $3.00, and then loading on to the railway is 75 cents.

MR. McPHERSON: Q: What is the $3.00?

A $3.00 for the road -- making the road for the railway-- $3.00.

THE COMMISSIONER: Q: Loading is 75 cents?

A Loading is 75 cents, and then the freight, $1.50.

MR. McPHERSON: Q: Freight to what?

A Freight to the train.

Q That is to the log dump?

A Yes, that is right, transportation. Booming is 30 cents. Altogether it is $8.30.

THE COMMISSIONER: Transportation to the log dump was--?

MR. McPHERSON: That is $1.50, my lord.

THE COMMISSIONER: And 30 cents for booming.

MR. McPHERSON: I assume, my lord, taking the $3.00 off, it works out at $6.30.

Q Now,Mr.Kagetsu, what were you selling logs in the water, boomed up in Deep bay,for in 1941?

A The fir was about $15.00 to $16.00. Hemlock was about $11.00. I mean approximately, not exactly.

Q Mr. Kagetsu, the evidence is that it only cost $1.25 to fall and buck timber,and your claim for standing timber is $4.00 a thousand. Why is felled and bucked timber worth $10.75 a thousand?

THE COMMISSIONER: Do you think you will get anywhere with that? Isn't that rather argumentative.

MR.McPHERSON: Yes, my lord.

THE COMMISSIONER: If counsel for the claimant wants to pursue it later,they are free to do it. I am afraid we are not going to get very far with this witness through an interpreter on cross-examination of that type.

MR. McPHERSON: Q: Mr. Kagetsu, if you are claiming $12.75 a thousand for felled and bucked timber cold decked, and it cost you $6.30 a thousand to get it boomed up at Deep Bay, it is $19.05 a thousand you would have to sell it for -- you would have to sell it for more than $19.05 to make a profit, wouldn't you?

THE COMMISSIONER: Well, that is self-evident.

MR. McPHERSON: Do you recognize this, Mr. Kagetsu, as a book of the company? You just look at this and tell me if that is a book belonging to the company.

E. Kagetsu,
Cross-Exam.

THE COMMISSIONER: Now, Mr. Kagetsu, can have an opportunity to look at it at lunch time and satisfy himself that it is.

We will recess now until 2 o'clock.

(PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.)

I hereby certify the foregoing
be a true and accurate repo
the said proceedings.
J. P. Hanahan
Deputy Official Stenograph

Vancouver, B. C.,

November 17th, 1948. 2:00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. McPHERSON: Mr. Kagetsu, I will take up this matter of Block 195 now.

EIKICHI KAGETSU, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, this morning we were discussing Block 195 -- on Exhibit 4, my lord. That is the map of Vancouver Island.

THE COMMISSIONER: Yes.

MR. McPHERSON: Q: You will notice on that property that the C.N.R. Railway track crosses the Cowichan River further down than Block 195 -- right there.

A I see -- 195 -- yes.

Q Now you stated that you were going to ship out by the C.P.R. Railway, is that correct?

A Yes.

Q And the C.P.R. Railway track is on the other side of the river all the way around?

A No, no, the C.P.R. Station is in this spot. My railway connection is here.

Q Mr. Kagetsu says, my lord, pointing to the map, that it was his intention to log Block 195 by the railway going up to the station at Lake Cowichan.

THE COMMISSIONER: I see it.

MR. McPHERSON: Q: Are you going to log it by truck or

by railway?

A There was a railway in 403 before.

Q But that railway had been taken up, had it not?

A That was sold to the Deep Bay Logging Company -- I don't know.

THE COMMISSIONER: What is the answer?

MR. McPHERSON: He says it was sold to the Deep Bay Logging Company and he does not know.

THE COMMISSIONER: He proposed to operate by transporting his logs across Block 403 into Lake Cowichan station.

MR. McPHERSON: Yes, that would be instead of going by 195 to the C.N.R. which would mean approaching the Cowichan Station as I suggested to the witness this morning.

The COMMISSIONER: Have you fixed the date as to when the sale of Block 403 took place?

MR. McPHERSON: I am going to call evidence on 403. It has nothing to do with this claim at all.

THE COMMISSIONER: I appreciate that.

MR. McPHERSON: I am going to call another witness on that. I have no evidence on it yet, but I intend to get it in cross-examination now.

Q Mr. Kagetsu, I show you the company ledger. This is the company ledger, is it not?

A Yes, yes.

Q And I show you a page under the index letter, "R", my lord, and unfortunately the pages are not numbered. It is page 16 under "R".

A 16.

Q Page 16. You will notice written in here the date 1941. A: Yes.

Q Fir stumpage, July to December; hemlock, fir, cedar, July to December; fir stumpage $1.50 January 1st to June 30; hemlock and balsam and cedar, $1.00, from January to June 30th. Now would that be the stumpage shown there that was paid for the timber?

A I don't know.

Q Would you agree with me that those figures would be correct that are in the company's ledger?

A No.

Q You do not agree the figures are correct?

THE INTERPRETER: These figures should not be here, he says. He does not know.

THE COMMISSIONER: I would like to have what the answer was through the Interpreter. I did not hear it.

(Answer read by the Reporter).

MR. McPHERSON: Q: Mr. Kagetsu, you owned some of the timber that the Deep Bay Logging Company was logging, didn't you?

A Yes.

Q Did the Deep Bay Logging Company credit you with that stumpage? Did they credit you with stumpage on timber cut on your blocks of timber?

A Would you please refer it to the bookkeeper. I don't know anything about this.

Q You cannot tell me whether the figures are correct or not?

A No.

THE COMMISSIONER: Will you verify it through the witness that that is the company's ledger?

MR. McPHERSON: Q: Mr. Kagetsu, this is the company's ledger, is it?

A I think it is. Would you mind, please, asking the bookkeeper who is here?

THE COMMISSIONER: Let the witness ascertain from the bookkeeper himself whether this is the company's book.

A Yes (referring to the bookkeeper).

THE COMMISSIONER: Now what does the witness say? Let us have his answer.

MR. McPHERSON: He says yes.

THE COMMISSIONER: We have not had it from him -- just from the bookkeeper.

MR. McPHERSON: Q: Is that the company's ledger?

A Yes.

Q Can you tell his Lordship anything more now about the books now that you have talked to the bookkeeper?

A This is the timber that I had, and they cut it so they put it into this book.

THE COMMISSIONER: I am sorry I did not hear that, Mrs. Smith.

A This is the timber I had and the company had cut it and so they credited me with this.

MR. McPHERSON: Q: And the entries are correct, are

they? A: Yes, it is correct.

THE COMMISSIONER: Now what page is that again?

MR. McPHERSON: Page 16, under the letter "R". If my learned friend agrees, I will have that copied and will file a copy as an exhibit, rather than file the whole book.

MR. BREWIN: That is all right.

MR. McPHERSON: Q: Now I show you a page headed "Trading and Operating Account".

A Yes.

Q And you will notice there are three sheets here -- three loose sheets that have been pasted in, my lord. I will point out the liquidator pasted the sheets in rather than lose them.

A Yes.

Q Now these figures, Mr. Kagetsu, on these loose pages, you will notice correspond to the figures on the ledger page itself. I show you an entry here: inventory, December 31, 1941, $31,058.00; and you will notice on the first of the loose sheets, $31,058.00. Now that is under date of December 31st, 1941. Now, Mr. Kagetsu, I draw to your attention in that inventory sheet you have felled and bucked and cold-decked -- does that mean felled and bucked and cold-decked?

A Yes.

Q You agree with that?

A I think so.

Q And you will notice in your company's inventory sheet, $5.00. Is that the price that you were putting on felled and bucked timber in 1941? A: That is the company's estimate, yes.

Q That would be $5.00 a thousand. Now, my lord, I would like thepermission of your Lordship and my learned friend to make copies of this page of the ledger, and the slips, and file them as exhibits.

THE COMMISSIONER: Well, let us get the numbers. The ledger sheet on page R-16 will be Exhibit 17. You will make a note of that, Mr. Secretary -- there will be filed with you a copy of page "R" -- that will be Exhibit 17.

(COPY OF PAGE "R" MARKED EXHIBIT NO. 1388-/17).

THE COMMISSIONER: And the inventory sheet to which counsel is now referring showing felled and bucked and cold-decked timber will be Exhibit 18.

(COPY OF INVENTORY SHEET MARKED EXHIBIT 1388-/18).

MR. McPHERSON: It is the twentieth page from the end of the book, my lord.

THE COMMISSIONER: Has the witness verified those figures both as to quantity and price as being correct?

MR. McPHERSON: Yes, I think he did, my lord. The quantity, my lord, will not be correct at the time the Custodian took over -- it is 3,050,000 as at 1941.

Q Would you agree with me the figures given on those pages and in the inventory are correct?

A This was the calculations made at the end of the year and it was put down.

THE COMMISSIONER: Are those entries made by Mr. Kagetsu personally?

MR. McPHERSON: This is the trading and operating account of the company itself.

Q Mr. Kagetsu, did you ever give an option to anyone offering to sell them the Deep Bay Logging Company, and all of its assets?

A I did not give any option, but I said -- yes, I had given an option.

Q Did you give an option to Mr. Simpson of $75,000.00 for the Deep Bay Logging Company including your own timber in that area?

A It depends on the date, he says. Will you please tell me what date?

Q Well, what date did you give an option to Mr. Simpson?

A I don't know if it was to Mr. Simpson or not, but it was at the office of Mr. Simpson I gave the option of $125,000.00.

Q Now, Mr. Kagetsu, am I correct that Mr. Stewart, af barrister in this city, was negotiating for you and with you, with Mr. Simpson for the sale of the Deep Bay Timber Company in March, 1942?

A Did you say the year was 1941?

Q 1942. A: He says he

does not remember 1942, but when he talked over with Mr. Simpson it was 1941. I don't remember if I signed any papers or anything -- I would like to see it.

Q Well, Mr. Kagetsu, it was in 1942 that you were evacuated. Am I correct that Mr. Stewart carried on negotiations in your behalf in an attempt to sell the Deep Bay Logging Company in 1942?

A It was after I was evacuated that Mr. Stewart came and asked me if I would sell it. If I did not, he said, the Government would confiscate it, and so I told him if there was a chance of doing so, to do so.

Q But before Mr. Stewart went to see you, wasn't he in touch with you by letter and telegram about the sale of Block 195 and of Deep Bay both? A: I had never negotiated by letter or telegram until I went to Minto, but I spoke of it before I evacuated with Mr. Stewart.

Q Mr. Kagetsu, did you ever have an offer put forward by Mr. Stewart of $2.75 a thousand for the Deep Bay timber with the right to use the railway equipment to take it out?

A Yes, there was one.

Q Am I correct that you refused that offer, and suggested you should receive $5.00 a thousand, giving the purchaser the right to use the equipment?

A I don't remember exactly, but I think there was

a talk about that.

THE COMMISSIONER: I am sorry, I do not hear you.

A I don't remember exactly, but there was a talk about that -- about this $5.00.

Q Well did he make such an offer?

A Yes, the offer was given. He refused the offer and he said he would take it if it was $5.00.

Q He received an offer of $2.75 which he rejected?

A Yes.

Q And he said he would accept it at an offer of $5.00, is that correct?

A Yes.

MR. McPHERSON: And that offer included the use of the equipment?

A Yes, but then he said if I wanted it back, it was to be returned in the same condition.

Q That is, the equip ment was to be returned in the same condition?

A Yes.

Q Am I correct, Mr. Kagetsu, at the time you made that offer you estimated there were 17 to 18 million feet of timber in the Deep Bay company?

A Seven to eight million?

Q Seventeen to eighteen million.

A If the sale was decided I would have put a cruiser in and I would have given the definite number of timber or number of feet, but that was my rough calculation.

Q What was your rough calculation -- 17 to 18 million feet?

A When was that?

Q In 1942 and 1943 when the negotiations were going on about selling the timber. I am suggesting to you that you offered to sell the timber at $5.00 a thousand including the use of the equipment, on the basis there was 17 to 18 million feet of timber there. Now, was that the amount of timber that you estimated?

A He says I don't quite understand about the measurement of the feet, but he says when I decided to sell the Government would cruise -- no, the Govemment would measure it and they would know without my telling them.

Q But when you were negotiating through Carl Stewart to sell this timber at $5.00 a thousand, how much timber did you estimate was there at that time?

A I don't think he quite understands. He is trying to emphasize the fact that these deals are made on the scale and not on the standing timber. In other words, he would get the $5.00. (Statement made by Kagetsu, Junior).

THE COMMISSIONER: He was selling on a stumpage basis?

A Yes.

Q Will you put the question to him? Was his estimate at the time he made the offer -- 17 to 18 million?

A On the basis of existing cruises he said there

would be around that figure. However, if he was going to log it himself, he figured he would get 27 or 30 million feet.

THE COMMISSIONER: All right. He says the 17 to 18 million feet was based on the existing cruise. Now, Mr. McPherson, I think we had better know what timber was involved. Was it the Deep Bay holding?

MR. McPHERSON: Yes.

Q And the timber you were negotiating about with Carl Stewart was the Deep Bay timber and your own timber in the Deep Bay area, was it not? A; Yes.

Q Am I correct that you were also negotiating, or Mr. Stewart was negotiating, and reporting to you, with a Mr. P.H. Barnett, for the sale of this Deep Bay property, including your own timber?

A I don't remember hearing that name, Mr. Barnett.

Q Did you ever make an offer to a Mr. Fred Brown, or did your lawyer ever make an offer to sell him the Deep Bay operation for $75,000.00?

A I don't remember the name.

THE COMMISSIONER: Do you remember the amount?

A I don't remember. I don't know who the person was, but Mr. Stewart was trying to sell it to someone at that price.

Q At $75,000.00? A: Yes.

MR. McPHERSON: Q: Well, Mr. Stewart was acting for

you, wasn't he? A: He was not acting for me exactly but he said that I had better sell it. He was advising me to sell it or the Government would confiscate it.

Q Am I correct that Mr. Carl Stewart was a director of Kagetsu Limited, and was a director of Deep Bay Logging Company and of Ocean Bay Timber Company Limited, and you were a director of all those companies also?

A He was the acting lawyer for us, and he only held one share, but he was supposed to be a shareholder of our company.

Q He was a director, wasn't he?

A Yes.

Q Do you recall, Mr. Kagetsu, in October of 1943, when the Custodian was attempting to sell t the Deep Bay operation that Mr. Shears of the Custodian's office wired you putting forward an offer?

A Yes.

Q You remember that? Would you say that was the wire you received? That is a copy of it.

A Yes, I remember.

Q And is this the reply that you sent to the Custodian?

A Yes, it is the reply.

Q I would like to file the two wires as one exhibit, my lord. One is the wire to Kagetsu on October 28th, 1943, from F.G. Shears and the other is a reply from Mr. Kagetsu, dated November 1st, 1943, addressed to Mr. Shears.

THE COMMISSIONER: What is the exhibit number?

MR. McPHERSON: No. 19.

(TELEGRAMS MARKED EXHIBITS NOS. 1388-19).

THE COMMISSIONER: You might read them, but they need not be put in the record.

MR. McPHERSON: Q: It is obvious in the reply there was some confusion about the $75,000.00. Mr. Kagetsu assumed he should add the $40,000.00 to the $75,000.00, I think. Now, Mr. Kagetsu, in your reply you were willing to accept $40,000.00 for the timber including the buildings and the roadway, is that correct?

MR. BREWIN: Is that a correct way of putting it? He was willing to accept the whole thing together. It is not fair to say that he would accept one part without the other: that is, that he would take one part of the thing without the other half of the other.

MR. McPHERSON: Q: Well, at that time you were prepared to accept $135,000.00 for the Deep Bay Logging Company and your own timber in that area, weren't you?

THE COMMISSIONER: That is clear from his wire that he would accept $135,000.00 -- that is the total of the 95 and the 40.

MR. McPHERSON: Mr. Kagetsu, your acceptanee of the $135,000.00 -- am I correct that it was based on a valuation of the timber of $40,000.00?

A That does not include my timber -- yes, it includes the company's timber, but not my timber.

Q When you say it does not include your timber, do you mean Block 195 or the timber at Deep Bay?

A No, he says my timber and the company's timber were separate, so it is only the company's timber that is included in there and not my timber at all.

Q Well, Mr. Kagetsu, did you state earlier you were negotiating to sell the company's timber and your own timber at a figure of $75,000.00?

A I don't quite remember about $75,000.00 quite well, but I know I said $125,000.00 quite well.

THE COMMISSIONER: That is what he said previously. Well you have clarified what timber at Deep Bay was the company's and what was Kagetsu's.

MR. McPHERSON: Yes, I do not think there is any dispute by my learned friend, my lord, from the first claim that Mr. Kagetsu filed under his own name he claimed Block 195, 504, and he claimed 516, but I think that was a typographical error. It was 566.

THE COMMISSIONER: 566?

MR. McPHERSON: 566, yes, so 504 and 566 are the two timber limits at Deep Bay that he was claiming in his first claim. Now I am unable to say in his new claim there are other lots in there that were not in his original claim, and I don't know them.

Q Now with respect to Block 195, Mr. Kagetsu, am I correct before you left Vancouver you listed that block for sale with a Mr. Whitall?

A He spoke of it in 1941 -- Mr. Whitall and I

about selling.

Q Didn't you list that block of timber with Mr. Whitall in 1942?

A I gave him it one or two months before in 1941, but I don't quite remember in 1942.

Q How much was the option in 1941?

A Eleven thousand -- no, a hundred and ten thousand.

Q $110,000.00? A: Yes.

Q Now, Mr. Whitall was acting, was he not, for the Tisdale estate, from whom you were buying 195?

A I am not quite sure to whom he wanted to sell.

Q Well, did Mr. Stewart refer two offers to you that he had received for Block 195 and you turned them both down, is that correct?

A Mr. Stewart said it would be confiscated, and I felt I wanted to make something --

Q Will you ask him the question? Did he receive two offers for 195 through Mr. Stewart?

A It was not before I left -- before I evacuated, but it was after I went to Minto he had the offer.

Q Was one of those offers $100,000.00 less commission?

A I was paying salary to Mr. Stewart so I did not think there were any charges on the offer he made.

THE COMMISSIONER: Mrs. Smith, please ask him to answer the question? Was the offer $100,000.00?

A Yes, I think it was.

MR. McPHERSON: Q: And you were to pay the balance owing on the timber and pay the commission, is that correct?

A Ihave never promised any commission except to Mr. Whitall.

Q Mr. Kagetsu, would you agree with me that from some time in 1941 when you stated you gave an option to Mr. Whitall, until October, 1943, when Mr. Shears sent you that wire, that your timber limits at Deep Bay, Block 195, had been on the market for almost two years?

A I did not wish to sell it. Every time Mr. Stewart gave me an offer, I told him I did not wish to sell it.

Q Mr. Kagetsu , from some time in 1941 to October, 1943, do you agree that there were many inquiries from people about the possibility of buying the Deep Bay timber and Block 195?

A Yes, there were many inquiries.

Q Mr. Kagetsu, would you agree with me if you sell timber for cash you would take less for the timber than if you sold it on tterms, with a down payment, and you sold it on a stumpage basis--you would sell less for cash?

A I never intended to sell it on terms, except by cash.

Q Mr. Kagetsu, not respecting your own timber at all --

THE COMMISSIONER: I think your friends would not quarrel with that proposal very much.

MR. McPHERSON: If they don't I would be happy.

MR. BREWIN: The only thing is there should be no difference unless for the fact that standing timber is uninsurable.

THE COMMISSIONER: I think it is the general practice if timber is sold on a stumpage basis there is always the doubt of getting the balance of your purchase price and there is also the fact that you have referred to, and timber is usually sold for a less lump sum in cash than it would be over a priod of years. I thought you would admit that. However, we shall pursue it.

MR. BALDWIN: Well I am not capable of doing so - my knowledge is not so great.

THE COMMISSIONER: All right.

MR. McPHERSON: Q: Mr. Kagetsu, you were in the timber business for thirty years in this province. Will you tell his Lordship your opinion if you buy timber for cash you should be able to buy it cheaper than if you buy it on a stumpage basis?

A If timber land was owned by private people the cash payment would have been cheaper, but he says here it would not make any difference whatever.

THE COMMISSIONER; I do not think you are liable to get much further with that.

MR. McPHERSON: If your Lordship would like to adjourn, I think this would be a convenient time.

THE COMMISSIONER: Yes. Now, so far as finishing

with Mr. Kagetsu today, if we sat through to half-past four, could you do that?

MR. McPHERSON: Yes, I think so, my lord.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. BREWIN: My lord, I just want to make one observation about the line of my friend's cross-examination on these various offers and counter offers to say that we are not objecting to this line of cross-examination, but we do not wish by not objecting to abandon the argument we have as to its relevancy when it comes to argument.

THE COMMISSIONER: Oh, I think it is quite proper cross-examination, Mr. Brewin, but the matter of weight to be attached to it is a matter of argument later.

MR. BREWIN: I just thought if we sat quiet and acquiescent it would be considered that we had no objection as to its relevancy.

MR. McPHERSON: If the claimant agrees there were negotiations going on and there was an attempt made to sell this property, and my learned friend does not get the claimant to change his position, surely he is bound by the fact there were negotiations.

THE COMMISSIONER: We will deal with that when it comes to argument.

MR. BREWIN: Well if they deny what Mr. Kagetsu has said as being correct, then I would ask your Lordship to call Mr. Carl Stewart as a

Commission witness.

THE COMMISSIONER: I understand you do not object to the facts as you bring them out, but he says he will take exception to the relevancy of such evidence. He says,"Because we offered to sell at $75,000.00 or $100,000.00 it does not tie us to that price".

MR. BREWIN: That is quite right. It may have some relevancy on credibility or something, but we will take the position that all these offers are entitled to no weight as to their actual value, and we will argue that when we come to it and give authority.

THE COMMISSIONER: Yes, that is what I understand your position is.

MR. McPHERSON: I have no objection to that.

Q Now, Mr. Kagetsu, with respect to the buildings that you are now claiming $4000.00 for in your amended claim for forty buildings, how did you value the buildings themselves? How did you arrive at the value of the buildings?

A You mean the buildings in the Deep Bay Logging Company?

Q Yes, the buildings at Deep Bay.

A There are forty buildings there and he asked estimated about $100.00 in each -- that is the average.

Q And that includes the contents then?

THE COMMISSIONER: That is the way it is set up.

MR. McPHERSON: Q: Now did any of these buildings

have basements?

A No.

Q Did any of them have running water -- toilets?

A There were some that did not have the running water, but some had.

Q Did any of them have toilets?

A No, it was the camp's. There was one separate.

Q Were any of them finished with plaster inside?

A Yes, it was decorated with paper.

Q But not plastered?

A No, no plaster.

Q How many employees did you have on an average at Deep Bay?

A About seventy to seventy-five people.

Q How many of those employees would be people of the Japanese race?

A Japanese were about sixty to sixty-two -- the working people.

Q And with respect to the 15 Occidental people, did they live at the camp or did they live in town?

A There were three living in the camp.

Q And the rest lived in town?

A Yes.

Q Now with respect to the Occidentals who lived at the camp, did they have their own houses or did they live in the camp buildings?

A They all had families so they lived separately in the camp in the separate houses.

Q Now, Mr. Kagetsu, would you agree with me that

these buildings only had a value to a logger, if he was going to use your camp? That is, the buildings were only valuable as they sat there and they could not be moved away?

A Some of the houses were moveable and could be loaded on to a train -- to a carriage.

Q Now, with respect to the foreshore rights, which you are including in your claim for the timber, did you have a lease for the foreshore?

A Yes.

Q Have you a copy of that lease?

A I have nothing. They were all taken away by the Custodian.

THE COMMISSIONER: Well a copy would be available in the Department at Ottawa, would itnot?

MR. McPHERSON: The liquidator or the Custodian have never been able to find a copy of the lease, and I wondered if Mr. Kagetsu had one with him.

Q Do you know how many years the lease had to run? A: It was taken in 1923. You will be able to find the exact date from the E. & N. because it was the land belonging to the E. & N.

Q That is, the foreshore belonged to the E. & N.?

A All that part belongs to the E. & N.--all this side of Union Bay belongs to Union Bay.

Q I am talking of the foreshore lease that is in front of the land?

A Yes.

Q Well did you have the sub-lease from the E. & N. then?

A I don't know if it was sub-leased but anyway they did it direct to me, and I used to pay directly to E. & N.

Q Now with respect to the railroad bed which you ware including in your claim for the timber, $4000.00, am I correct that a great deal of this railroad bed was built by putting logs on ties, running fore and aft, and then filling in with gravel? Do you understand?

A Some of them were that way.

Q Am I correct that the railway bridges were not suitable for a truck road?

A The truck was very much lighter than the railway so it was easier for the trucks to go over.

Q Well in building this railway and railway bridges, you had taken a reasonable grade, had you?

A A reasonable --?

Q I will change the question. What was the average grade of your railway?

A It would average about four and a half but some places were about six.

THE COMMISSIONER: Are we not likely to get farther with a white witness who knows about logging roads than we will with this witness on that?

MR. McPHERSON: Yes, I shall have to take a chance

that my learned friend will call somebody on that. He is claiming for the road bed, and unless I can find out from the claimant what he thinks about the road bed, I am taking a chance on my learned friend calling someone to explain the claim and if he doesn't I shall have to call evidence to show it was not --

THE COMMISSIONER: As far as I am concerned, I don't think we are going to get much help from Mr. Kagetsu.

MR. McPHERSON: Q: Now with respect to your claim for agricultural land, Mr. Kagetsu, just where is the agricultural land that you are claiming?

A Lot 88.

Q And all of the agricultural land that you are claiming is on Lot 88, is it?

A That was the only place -- there were many otherm places but that was the only place that I thought of which was suitable--most suitable.

THE COMMISSIONER: Well the claim is made then in respect of Lot 88.

MR. BALDWIN: I am not sure. My friend was supplied with a copy the first day -- with the Clement report. It will include the Clement report as to what we consider is the arable land.

MR. McPHERSON: I don't know what help Mr. Clement's report would be in my cross-examination when Mr. Clement does not say where the land is.

I want to examine Mr. Kagetsu as to where this land is.

THE COMMISSIONER: He has said it is Lot 88.

MR. McPHERSON: My learned friend does not necessarily agree with that.

THE COMMISSIONER: Let us put the question then to Mr. Kagetsu.

Q Mr. Kagetsu, is there any other land you are claiming as agricultural land except Lot 88?

A No, I am only claiming for Lot 88.

Q Well that should clear it up.

MR. McPHERSON: When did you finish logging Lot 88?

A I don't quite remember, but I think it was 1941 -- no, 1931.

Q After you fimished logging Lot 88, did you pull all the stumps of the big trees?

A I did not take all of them but a great deal of them I removed.

Q Am I correct that you only pulled stumps around the camp site?

A At side of the camp and also I had cleared the place for vegetables around the camp and baseball grounds, and all that.

Q For the baseball grounds around the camp?

A Yes.

THE COMMISSIONER: He cleared the baseball ground and a place to grow vegetables.

MR. McPHERSON: Q: Now is the camp site on Lot 88?

A Yes.

Q And are you claiming the agricultural land as being land adjacent to the camp site?

A The camp is situated right in the middle of Lot 88.

Q Mr. Kagetsu, I show you Exhibit 13. This is Lot 88, isn't it?

A It is 400 acres from here to here about. This belongs to the Fruitland.

Q And where is your land, Lot 88?

A I don't know exactly but I make that mark here -- maybe here and here, too,-- just about here. My line is just about the middle.

Q My lord, that clarifies one point. The Lot 88 that the claimant is talking about is not the whole of 88, but just a small portion of 88.

THE COMMISSIONER: On the east side of 88 between the railway, and I suppose by the line drawn through the north junction of Cougar Creek.

MR. McPHERSON: This is where the witness drew the line, my lord (indicating on plan).

Q Mr. Kagetsu, did you have a road into your camp site -- a road in addition to the railway?

A Yes, a great deal of the road had been laid for the trucks to pass.

Q Now what trucks are these that you are talking about? This is a railway location. Did you have logging trucks?

A It was a small truck that I had,--about half a ton or a ton in weight.

Q Was that road open in the wintertime?

A It was open but I very seldom used it. I used

the railway mostly.

MR. McPHERSON: That is all, my lord.

THE COMMISSIONER: Any re-examination?

MR. BALDWIN: Yes, my lord, it won't be long.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q Mr. Kagetsu, my friend asked you how you arrived at the valuation of your buildings. How much were those buildings insured for without their contents?

A It was insured for $10,000.00.

Q That is without the contents?

A Yes.

Q How much were the contents insured for?

A I did not insure the contents at all.

MR. BALDWIN: My lord, I have a letter from the Equimalt and Nanaimo Railway signed by a Mr. Barry,-- the same kind of a letter that was produced by my friend today, and I have given him a copy of it. I would like to put in a copy of it as an exhibit. It sets out--

THE COMMISSIONER: That will be Exhibit 20.

(COPY OF LETTER MARKED EXHIBIT NO. 1388-20).

MR. BALDWIN: This letter is to our firm in reply to a request for footage of these various blocks that were sold by the E. & N. to Mr. Kagetsu. You will see on the claim under item 2, this letter --and the one introduced this morning by my learned friend, between them they cover the estimate and cruises of the footage on all the blocks

comprised in the claim.

Q Mr. Kagetsu, in 1931, you shifted your railway, didn't you?

A I moved the whole lot from one side to the other.

Q And do you have, or did you have records of the annual cut over all the blocks that you were working on from the date that you shifted that operation?

A I have a rough copy in here, that is all -- 1931 -- September, 1931, I moved it -- and to March, 1942, I have cut one hundred and twelve million, four hundred and thirty-one.

THE COMMISSIONER: Between 1931 and March, 1942, was it?

MR. BALDWIN: Yes, my lord.

THE WITNESS: March, 1942.

Q And what blocks was that on, or on what blocks was that cut?

A 267.

Q Yes. A: 276.

Q Yes. A: 274.

Q Yes. A: 504.

Q 504, yes. A: 566 and 198.

THE COMMISSIONER: What is the last one?

MR. BALDWIN: 198.

THE WITNESS: And 256.

Q And did you say 566? A: Yes, 566. He says in your record it says 516, but that is a mistake.

Q Yes, that is a typographical error. And your total cut on those blocks was 112,000,431 feet.

A Yes.

Q My lord, I have here a comparison of the E. & N. Cruises and the estimate of timber on the Deep Bay blocks in comparison withwhat was cut. The E. & N. cruises are taken from these letters from the E. & N. and a record of the estimate of the cut is taken from Mr. Kagetsu.

MR. McPHERSON: I would like to know whether this is a paper that Mr. Kagetsu pulled out of his pocket before. I have never seen this before. We were supposed to exchange Exhibits of this kind to give counsel an opportunity to look at the figures.

THE COMMISSIONER: If there is anything that takes you by surprise, Mr. McPherson -- you need not declare yourself at the moment, Mr. Kagetsu can be recalled for further cross-examination.

MR. McPHERSON: There is a reference on here of a Mr. Stotsky. They are not Mr. Kagetsu's figures, and I would have to object to it going in unless they called Mr. Stotsky.

MR. BALDWIN: This exhibit only arises out of my friend's cross-examination this morning. This was prepared at noon and it is prepared to show the obvious difference between the E. & N. cruises and the actual cut. I think Mr. Kagetsu can explain it.

THE COMMISSIONER: Well, go ahead and get the explanation, and see what he says.

MR. BALDWIN: Q: Did you log Block 256 and irely by yourself, Mr. Kagetsu?

A I cut the upper part of it but the lower part was cut by Mr. Stotsky.

Q How much did you take off?

A I took off about five million.

Q And how much did Mr. Stotsky take off?

A He took it together with 195 with 198.

Q How much did Stotsky take off 256?

MR. McPHERSON: Isn't this hearsay, my lord? How does Mr. Kagetsu know what Mr. Stotsky took off?

THE COMMISSIONER: Well no doubt he had to pay for it.

THE WITNESS: He took eleven million from both -- from the two together.

MR. BALDWIN: Q: How do you know those figures are correct? Mr. Kagetsu?

A The scale bill and also the stumpage. He says I got the bill.

Q Stotsky was paying you on the basis of the scale, was he?

A Yes.

Q I will file that.

MR. McPHERSON: My lord, I wonder if my learned friend is going to call Mr. Stotsky about this.

MR. BALDWIN: No, I do not propose to call Stotsky.

THE COMMISSIONER: It would certainly strengthen your position. Kagetsu, as I understand it,

is not verifying the fact that these quantities were taken by Stotsky. Hasn't he said that Stotsky paid him stumpage on that much timber? Is that right?

MR. BALDWIN: That is correct.

THE COMMISSIONER: Is that not the effect of this evidence?

MR. BALDWIN: Yes.

THE COMMISSIONER: It is unlikely that Stotsky would pay for something he did not take off. I make no direction. If you are content to rest on the evidence as it is, and Mr. McPherson will have a further opportunity to cross-examine the claimant, -- and he need not do so until he has examined this document.

MR. BALDWIN: Q: Mr. Kagetsu, what was the percentage of the shares that you yourself held in the Deep Bay Logging Company?

MR. McPHERSON: I am not questioning Mr. Kagetsu's right to make a claim.

THE COMMISSIONER: I thought that was clear.

MR. BALDWIN: I was just producing that to show he was the majority shareholder.

THE COMMISSIONER: That is conceded.

MR. BALDWIN: Then it is unnecessary for him to answer that.

Q Mr. Kagetsu, would you have sold your felled and bucked timber, or your stumpage, which you owned personally, to someone other than the Deep Bay Logging Company Limited for $5.00?

A You mean standing timber?

Q No. A: You mean felled timber?

Q I will clarify this. You told my learned friend that the Deep Bay Logging Company bought from you felled and bucked timber at $5.00 a thousand. Now tell him that.

A The last estimate on the new sheet was only an estimate of the stock that I held at the end of the year--the inventory that was taken of the stock.

Q I will put it this way. Would you sell the stumpage or the felled and bucked timber to anyone other than the Deep Bay Logging Company Limited for the price that you did sell to the Deep Bay Company?

A No, I don't wish to sell it to any other company than Deep Bay.

MR. McPHERSON: May I ask my learned friend if there is any evidence that Mr. Kagetsu did own Block 274 where the felled and bucked timber was. I thought the evidence was it was on 274, but I don't know that they have established that he owned 274 personally.

THE COMMISSIONER: The evidence we have is that credit was given in the company's books to Kagetsu personally for certain felled and bucked timber. Is that not correct?

MR. McPHERSON: My learned friend is talking of the falling and bucking of timber generally,

but not the felled and bucked timber in the claim, is that correct?

MR. BALDWIN: Yes, what I am attempting to show is that this is not a true estimate.

Q Do you know, Mr. Kagetsu, whether gang saws were in very general use in 1942?

A No.

THE COMMISSIONER: What does he mean? He does not know, or they were not in general use?

THE WITNESS: He never used it. He only brought it to Vancouver, and then a man, Simpson, bought it.

Q Ask him this: Do you know whether gang saws were in use in the mills which you sold in 1942?

MR. McPHERSON: I heard the interpreter say 1943, my lord.

THE COMMISSIONER: Mrs. Smith, let us be sure of those dates. The last timber that the witness sold was in 1941. Am I right in that?

MR. BALDWIN: Yes.

THE COMMISSIONER: Did the Deep Bay sell any timber in 1941?

MR. McPHERSON: Up to 1942.

THE COMMISSIONER: We are close to the dividing line, according to the information I have had up to date.

MR. BALDWIN: Q: Do you know whether or not, Mr. Kagetsu, gang saws were in use in the Province of British Columbia, in the Vancouver district in March, 1942?

A I think so, yes. It was used.

MR. McPHERSON: My lord, it is my recollection in answer to my question this morning the witness said he did not know.

MR. BALDWIN: He did not know how many.

THE COMMISSIONER: I think the way the question was put this morning was were they in general use and he said he did not know.

MR. BREWIN: My friend was even more specific. He asked how many would be used, and then he asked the question I would have been very surprised if he had been able to answer that question.

THE COMMISSIONER: Well, I don't know that we have had very much help from Mr. Kagetsu in either instance. Have you any more questions, Mr. Baldwin?

(MR. BALDWIN: Just one more question, my lord.

Q Did you know whether or not your solicitor, Mr. Stewart, was in contact with the Custodian?

A I think yes, I do.

Q How do you know?

THE COMMISSIONER: Mr. McPherson, is there any question about it?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: In fact, Stewart was with the Custodian frequently. Is that not a fair statement?

MR. McPHERSON: Yes, but I think the point of my learned friend's question is whether Kagetsu knew it or not-- that Stewart was in touch

with the Custodian.

MR. BALDWIN: No --

MR. McPHERSON: The Custodian does not deny it at all. The Custodian was in touch with Mr. Stewart up to the time that Mr. Kagetsu left.

THE COMMISSIONER: Does that furnish the information you want?

MR. BALDWIN: Partly.

Q What was his answer?

A He says Mr. Stewart came to Minto and advised him to sell, and that he, the Custodian, was pressing him -- putting a great pressure on the sale of it.

THE COMMISSIONER: That is hardly responsive to your question, but, still, that is his answer.

THE WITNESS: I should say the Custodian telephoned to him while they were talking and he went out to telephone. It was outside at the store, and I don't know what the telephone message was, but when he came back he said it was certain that he had to sell it.

MR. BALDWIN: That is all, thank you.

(Witness aside)

MR. McPHERSON: My lord, before your Lordship adjourns, I wonder if I am going to have an opportunity of cross-examining on this statement. I think it is only fair that I should be given a breakdown of how the 96 million feet is arrived at because that is the total. My learned friend has indicated that this is going to show an over-run, and

I am just bringing it to your Lordship's attention that where they do show an overrun it is only eight thousand over the cruise and in the next one, 198, where they give a breakdown it is less than a million over the cruisse and is stated to be an estimate only, so the over-run must be in the neighbourhood of one million, and if Mr. Kagetsu can give us that from his little book, he should be able to tell us in which block it is and that is the only basis on which I can find out where the over-run occurs.

MR. BALDWIN: We are quite prepared to do that. We can give the information on all blocks.

THE COMMISSIONER: You can speak to it again, and I take it that Mr. Kagetsu will be remaining here for the balance of the hearing and he will be available for further cross-examination, if required.

MR. BALDWIN: On this point, yes.

THE COMMISSIONER: Yes, just on this point. Anything further?

MR. McPHERSON: Well when you say just on this point, I assume I have the right to recall Mr. Kagetsu, and ask him what did Mr. Stotsky pay him for the timber that he cut at that rate of stumpage.

THE COMMISSIONER: Well if you are going to cross-examine on that statement, why not hold the entire cross-examination over until later?

We are getting along pretty well now into the afternoon. It is a quarter to five, and we will adjourn now until 10 in the morning.

(PROCEEDINGS ADJOURNED TO 10:00 A.M., NOV. 18/48).

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

E. Blyth
Deputy Official Stenographer