J.G. Shearz

REPORT

UPON THE INVESTIGATION INTO

CLAIMS OF PERSONS OF THE JAPANESE RACE

PURSUANT TO TERMS OF

ORDER-IN-COUNCIL P.C. 1810

July 18, 1947, as amended

BY

THE HONOURABLE MR. JUSTICE HENRY IRVINE BIRD

April 3 1950

Appendix III

Fair Market Value

Attached.

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

I have the honour to report upon the investigation into claims of persons of the Japanese race made by me pursuant to the terms of Order in Council P.C. 1810 of July 18th 1947, as subsequently amended.

The investigation was opened at Vancouver, British Columbia, on December 3rd 1947, and was carried on thereafter until March 3rd, 1950, when evidence and argument on the last of the claims was heard. 1434 claims were filed, all of which have been examined during this period.

Appended to this report is a memorandum marked as Appendix I, in which is recorded the names of all claimants, particulars of each claim, the disposition made of each of them, and the amount which I consider would fairly and reasonably compensate each claimant whose claim in my opinion is well founded.

Reasons for the conclusions reached by me in respect of all claims classified in the seven categories later mentioned are expressed in this report. Any claim or branch of a claim which, after the hearing of argument from Counsel for the claimant and the Government, I considered could not equitably be disposed of on the basis applied to claims included in a category classification, hereafter referred to as a "special case", has been considered independently and reasons have been given for the conclusions reached, all of which are appended hereto as Appendix II.

I therefore recommend payment to the several claimants of the sum set opposite the name of each claimant in Appendix I.

Terms of Reference

The purpose and scope of the Inquiry is set forth in the terms of the Commission directed by Order-in-Council P.C.1810 of July 18th 1947, as amended by Orders-in-Council P.C. 3737 of September 17th 1947, and P.C. 242 of January 22nd 1948, and as amended is as follows:

> The Committee of the Privy Council have had before them a report dated 14th July, 1947, from the Secretary of State representing:
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> That during the war persons of the Japanese race were evacuated from the protected areas of British Columbia and by Order in Council P.C. 1665 of March 4, 1942, as amended by Order in Council P.C. 2483 of March 27, 1942, it was provided that all property situated in any protected area of British Columbia belonging to any person of the Japanese race (except fishing vessels subject to Order in Council P.C. 288 of January 13, 1942, hereinafter referred to, and deposits of money, shares of stock, debentures, bonds or other securities) delivered up to any person by the owner pursuant to an Order of the Minister of Justice or which was turned over to the Custodian by or on behalf of the owner, or which the owner on being evacuated from the protected area was unable to take with him, should be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy;
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> That by Order in Council P.C.469 of January 19, 1943, it was provided that whenever the Custodian had been vested with the power and responsibility of controllling and managing any property of persons of the Japanese race evacuated from the said protected areas such power and responsibility should be deemed to include and to have included from the date of the vesting of such property in the Custodian, the power to liquidate, sell or otherwise dispose of such property;
>
> That by Order in Council P.C.6247 of July 20, 1942, it was provided that all vessels and equipment not disposed of by the committee established by the said Order in Council of January 13, 1942, should on and after the first day of August 1942, be vested in and be subject to the control of the Custodian;
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> That pursuant to the above mentioned Orders real and personal property of persons of the Japanese race was disposed of and claims have been made by persons of the Japanese race that in respect of such disposition of their property they have suffered pecuniary loss; and
>
> That it is deemed advisable to appoint a Commissioner under Part I of the Inquiries Act to investigate the said claims and to make recommendations with respect thereto;

7. That the terms of reference should be expressed in terms in line with the Fourth Report of the Standing Committee of the House of Commons on Public Accounts, which Report dealt with the general administration and liquidation of property owned by Japanese evacuees and was concurred in by the House of Commons.

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

1. That the Honourable Mr. Justice Henry Irvine Bird be appointed a Commissioner, pursuant to the "Inquiries Act", Chapter 99 of the Revised Statutes of Canada 1927, to inquire into the following claims of persons of the Japanese race who are resident in Canada at the date of this Order, and of corporations of which the majority of the shares were formerly owned by such persons, namely:

(a) That real and personal property vested in the Custodian pursuant to the above mentioned Orders was disposed of by the Custodian for less than the fair market value thereof at the time of sale resulting in loss to the claimants equal to the difference between the amounts received from the sale and the fair market value aforesaid; and

(b) That personal property vested in the Custodian pursuant to the above mentioned Orders was lost, destroyed or stolen while in the possession or under the control of the Custodian or some person appointed by him, with the result that the claimant suffered a loss equal to the fair market value of the property at the time when the same was lost, destroyed or stolen; provided that no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person other than the Custodian, appointed by the owner of the property.

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

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

Advertisement for claims.

Prospective claimants were given notice of the Inquiry by publication on various dates between September 26th and October 3rd 1947 of an advertisement in twelve of the leading daily newspapers published and circulated in the several Provinces wherein persons of the Japanese race then resided. This advertisement was also published at the same time in three successive issues of a weekly newspaper known as "The New Canadian" which is printed in both the English and Japanese languages, and was then widely circulated among persons of the Japanese race throughout Canada.

Prospective claimants were thereby required to file their claims, in a form indicated by the terms of the advertisement, with the office of the Director of The Custodian, Royal Bank Building, Vancouver, B.C., on or before November 30th 1947. Subsequently, in consequence of representations made to me on behalf of various prospective claimants, the time limit was extended to December 31st 1947 in the case of persons then resident in British Columbia, and to January 15th 1948 in the case of persons then resident elsewhere in Canada.

Leave has since been granted to file claims subsequent to the date so fixed, whenever the applicant has reasonably explained the failure to file within the time limit.

1434 persons filed claims, the majority of which were multiple claims made in respect of various types of real and personal property such as,-

Real property used for residential, farm or business purposes;
Household effects;
Agricultural tools and equipment;
Stocks in trade and trade fixtures;
Fishing vessels, gear and nets;
Motor cars and trucks;

all of which were sold or otherwise disposed of by the Custodian pursuant to the liquidation policy laid down

by Order in Council P.C. 1665 of March 4th 1942, as later amended. In the result, the investigation of each claim involved consideration of several parcels of real and personal property.

A tabulation of all sales made by the Custodian, and of the claims filed for hearing before the Commission, prepared by the Director of the Custodian's office, discloses that 7,086 parcels of real and personal property were sold by the Custodian, for the aggregate sum of $2,591,456.00. Claims were filed for hearing at the Inquiry in relation to 2420 such sales, wherein aggregate losses in excess of $7,000,000.00 are alleged to have been sustained. Amendments to the claim forms filed subsequently, made at the request of various claimants, resulted in a substantial reduction of the total sum claimed.

102 claims were subsequently withdrawn by the claimant or his representative, or were rejected by order of the Commissioner, as not authorized under the terms of reference.

The claims may conveniently be dealt with in this report under the following categories:

1. Real property situate in the Greater Vancouver area.
2. Real property situate in urban and rural areas of British Columbia, other than those included in classifications numbered 1 and 3
3. Farm and other properties sold to the Director, Veterans' Land Act.
4. Motor cars and trucks.
5. Fishing nets and fishing gear.
6. Fishing vessels and boat gear.
7. Miscellaneous personal property other than that included in categories numbered 4,5 and 6.

Sessions of the Commission.

The opening Session of the Commission was held at Vancouver, B.C., on December 3rd, 1947, when Counsel for various claimants, Counsel for the Co-Operative Committee of Japanese Canadians, Counsel for the Southern Alberta Central Committee of Japanese Canadians, and Counsel for the Government appeared.

An Official Reporter attended this and all subsequent Sessions of the Commission, and transcript of the proceedings has been made available, at Government expense, to Counsel for the claimants, as well as the Government. The record of these proceedings extends to 25,046 pages of transcript, in addition to 8996 exhibits filed on the hearing of the various claims. These records have been despatched to the Clerk of the Privy Council.

Various questions were raised by Counsel during the early Sessions of the Commission, relative to interpretation of the terms of reference. After hearing argument from all Counsel concerned, I made the following rulings:

1. The fair market value of personal property is to be determined as at the time of the sale, loss, destruction or theft thereof.
2. The fair market value of real property is to be determined as at the date of consummation of the sale thereof.
3. Claims in respect of personal property, arising from loss, destruction or theft occurring at any time subsequent to the vesting of such property in the Custodian pursuant to Order in Council P.C.1665 of March 4th 1942, are held to fall within the terms of reference, notwithstanding that physical possession of such property had not been taken by the Custodian prior to the

loss, destruction or theft thereof.

4. That any diminution in market value caused by deterioration in property occurring between the date of vesting thereof in the Custodian, pursuant to Order in Council P.C.1665, and the date of sale or the loss, destruction or theft, shall not be taken into account, but the fair market value of such property as at the date of sale, or loss, destruction or theft shall govern.

5. Claims relating to losses in respect of the sale of fishing vessels sold or disposed of by authority of the Japanese Fishing Vessels Disposal Committee prior to the month of August 1942 do not fall within the terms of reference, since such sales were not made by or under the authority of the Custodian.

6. Claims arising from loss alleged to have been sustained through failure of the Custodian to collect accounts receivable payable to a claimant do not fall within the terms of reference.

7. No claim shall be entertained in respect of the alleged value of good-will of a business or business premises, ~~unless it be established that the Custodian sold the business or business or business premises,~~ unless it be established that the Custodian sold the business or business premises as a going concern.

8. That the term "fair market value" found in the terms of reference is there used in the sense that the same term has been interpreted in authoritative decisions of the Courts in Canada and England in expropriation

cases; that for present purposes the same meaning will be assigned to the term; and the tests applied in such cases for determination of "fair market value" will be applied to property, the subject of claims now under consideration.

My reasons for the conclusions expressed paragraph 8, which were pronounced soon after the opening of the Inquiry, to all Counsel who had presented argument on the subject, are appended as Appendix III.

In claims which have been heard since the delivery of the judgment of the Supreme Court of Canada in Diggon-Hibben v. Regem (1949) S.C.R. 712, Counsel has urged that the principles there laid down should be applied in the determination of fair market value of property sold by the Custodian.

Since in my opinion the principles extracted from earlier judgments upon which my conclusions in Appendix III were founded are approved and adopted in the Diggon-Hibben case, I adhere to the opinions expressed in Appendix III.
The circumstances surrounding the sale of properties by the Custodian do not, in my opinion, justify the addition of an allowance of 10 per cent. of the sum estimated to be the fair market value of the property sold.

Sessions of Inquiry

Since the claimants were widely distributed at various points across Canada at the time when the Inquiry opened, it was necessary to hold Sessions of the Commission for the purpose of taking the evidence of claimants at numerous centres across the country which could conveniently be reached by them.

Reception of testimony by claimants.

The Commissioner personally presided at Sessions of the Commission held at Lytton, Kamloops, Vernon, Grand Forks and Nelson, British Columbia; Lethbridge, Alberta; Moose Jaw, Saskatchewan; Winnipeg, Manitoba; Fort William and Toronto, Ontario; and Montreal, Quebec; and was engaged thereon continuously from early in the month of January 1948 until the end of June 1948, during which time the evidence of 472 claimants was heard.

Claims by corporations, the shares of which were held by persons of the Japanese race, and Government defence thereto, were heard at Sessions presided over by the Commissioner, held at Vancouver during the months of October and November, 1948.

Sessions of the Commission for the purpose of hearing further evidence of claimants and evidence adduced by Counsel for the Government, for the purpose of showing the procedure adopted by the Custodian's office in carrying out the administration and sale of evacuee property, were held at Vancouver, B.C., continuously from September 20th 1948 until the month of February 1949, and thereafter intermittently until March 8th 1950.

Sessions held by Sub-Commissioners.

In order to avoid the long delay which must have ensued if the Commissioner personally presided at all Sessions held for the reception of claimants' evidence, the Minister of Justice, on recommendation by the Commissioner, appointed eight County and District Court

Judges to act as Sub-Commissioners at the places later enumerated. Consequently, the evidence of all remaining claimants has been presented before Sub-Commissioners at Sessions held successively in Kamloops, Vernon, Grand Forks, Nelson and New Denver, Lethbridge, Winnipeg and Toronto. The transcript of all Sub-Commission hearings, duly verified by the Sub-Commissioner presiding, has since been filed with the Secretary of the Commission at Vancouver, and has been considered by the Commissioner.

Custodian's records made available to claimants.

Pursuant to my direction, the Director of the Custodian's office at Vancouver, prior to the date fixed for the hearing of each claim, has permitted Counsel for claimants to examine the records and files of his office, the contents of which relate to the administration and sale by the Custodian of real and personal property of any claimant. Claimants have thus been given all material available to the Custodian, to assist them in the presentation of their claims.

The testimony introduced by the Government in general defence to all claims by individuals included:

Testimony of Government witnesses.

1. A complete outline by the Director of the Custodian at Vancouver of the procedure adopted by his organization in the administration of real and personal property of all persons evacuated from the protected area of British Columbia, i.e., the coastal areas, from the time when such property was vested in the Custodian, pursuant to Order in Council P.C.1665 of March 4th 1942, until such property was sold or otherwise disposed of under the powers conferred by Order in Council P.C.469 of January 19th 1943.

2. The evidence of various persons formerly employed by the Custodian in the management, appraizal or sale of real and personal property of evacuated persons, which witnesses severally have described the methods adopted in the performance of the duties assigned to each of them.

Custodian organization.

It is perhaps appropriate at this stage of my Report to comment in general terms upon the Custodian's performance of the very great responsibilities imposed upon the organization developed by him in respect to the administration, and later the sale, of all real and personal property, including lands, residences, businesses and business premises, stocks of merchandise, household goods, motor cars, trucks, fishing vessels, nets and gear, farm equipment and other chattel property left in the protected areas by some 22,000 evacuated persons, which property when vested in the Custodian was distributed throughout the coastal areas of the Province of British Columbia.

It is to be recalled that by Order in Council P.C.1665 of March 4th 1942 all property within the protected areas of British Columbia, of persons of the Japanese race, was vested in the Custodian, from the date of the owners' evacuation. The evacuation of these persons began early in March 1942 and was carried on progressively until October 1942. The organization of the Director of the Custodian at Vancouver B.C. - non-existent at December 7th 1941 - was undertaken soon after, and by April 1942 had been expanded and developed to a point where it was reasonably capable of administering the property of persons of the Japanese race evacuated from their former homes.

Custodian's administration of evacuee property.

However, the evidence adduced before me establishes that in the first six months operation, the recently organized office of the Director was so swamped by the numerous responsibilities constantly thrown upon it that it was found impossible efficiently and promptly to perform the work entailed. In many instances it was found impracticable for the Director's organization to take physical possession of the property so vested in the Custodian within a reasonable period following the evacuation of the owners. In the result, regrettable losses were occasioned to the persons evacuated, in relation particularly to their chattel property. These losses arose through pilferage of chattels left in unoccupied premises, as well as from warehouses taken over by the Director, to which property had been moved for greater protection,- this notwithstanding that the Director appears to have adopted all presently available means for protection of such property.

On March 10th 1942, the Custodian enlisted the assistance of a group of Authorized Trustees in Bankruptcy and of licensed Real Estate Agents, to administer evacuee property, comprising virtually all such trustees and agents carrying on business in the protected areas of British Columbia.

Investigations were immediately undertaken by the Custodian, with the assistance of the persons so appointed, and reports subsequently were made by these persons to the office of the Director. Thereafter, real property holdings were severally allocated to a specific agent for administration, businesses were wound up by the various trustees, and stocks of goods and merchandise were disposed of by them or on their advice. Chattel property, when not considered to be safely stored in the former home of the evacuee, was removed to sundry warehouses for protection.

It is worthy of comment that in the period of the Custodian's administration rentals were recovered from real property in an aggregate sum of about $600,000.00, which was duly credited to the accounts of the evacuee owners and ultimately distributed to them.

It has been established before me that, within a matter of months following the vesting of evacuee property in the Custodian, an organization had been set up by the Director which thereafter gave adequate protection to the interests of the Japanese owners, save in respect of the pilfered personal property, to which reference has been made before. The losses so sustained will be dealt with under the heading of "Miscellaneous Personal Property".

Subsequently a policy of liquidation of the property of these evacuated persons was laid down by Order-in-Council P.C.469 of January 19th 1943. This policy was put into operation soon after, and on March 8th 1943 two Advisory Committees were set up by the Custodian to advise the Director upon the disposition or effective use of real and personal property of evacuated persons of the Japanese race then vested in the Custodian.

Advisory Committees

The first of these Committees was appointed for the Greater Vancouver area, the personnel of which comprised The Honourable Mr.Justice Sidney Smith, Justice of Appeal, British Columbia, as Chairman; Charles Jones, Esquire (then Alderman of the City of Vancouver and later Mayor); and K. Kimura, Esquire.

The other Advisory Committee, known as the Rural Property Committee, had jurisdiction over all vested property situate outside the Greater Vancouver area, including Prince Rupert and the vicinity, Victoria and elsewhere on Vancouver Island, as well as the Fraser Valley. This Committee was composed of His Honour the

late Judge David Whiteside, deceased, as Chairman; D.E.McKenzie, Esquire, New Westminster; Hal Menzies, Esquire, Haney B.C., and J.J.McLellan, Esquire. Mr.McLellan resigned soon after his appointment and was replaced by William Mott, Esquire, Mayor of New Westminster.

The personnel of these Advisory Committees was such as to provide complete assurance that the administration and liquidation of the property of evacuated persons under their auspices would be performed with competence and just consideration for the interests of the owners.

I am satisfied on the evidence adduced before me that the very onerous task imposed upon the Director of the Custodian's office at Vancouver, under the guidance and with the assistance of the Advisory Committees, was competently performed, with due regard to the interest of the owners of such property, notwithstanding that the task had to be performed in an atmosphere of public hysteria induced by war. The fact that I have found that in certain respects fair market value was not realized on sales made by the Custodian in no sense reflects upon the work of the Custodian's organization. On the contrary, the evidence brought out on this Inquiry strongly supports the conclusion that this organization, in spite of the magnitude of the responsibilities imposed upon it, has substantially succeeded in administering and subsequently selling property of evacuated persons with due regard to the owners' interest.

These Committees advised the Director in respect to all matters arising in connection with the administration and sale of real and personal property under their jurisdiction, including the disposal of all

property vested in the Custodian under the Order in Council before mentioned, the methods to be adopted in appraisal of such property, the offering of the same for sale, the prices which should be realized, and the terms of contracts for sale, as well as the leasing of lands the immediate sale of which was considered inadvisable by the Committees.

Commissioner's conference with Counsel on proposals to curtail Inquiry

In November 1948, when evidence had been introduced by all claimants who had filed personal claims, as well as by the Government, designed to explain in general terms the methods adopted by the Custodian's office for the liquidation of property vested in him, I held conferences with Counsel for all parties concerned, for the purpose of examining the possibility of disposing of some, if not all, of the claims on the basis of recommendations founded upon the evidence adduced up to that time.

It had then become obvious that if each claim and the defence thereto was to be investigated individually, the Inquiry, which had continued for a period of fifteen months, was likely to be prolonged for an indefinite time.

A mutually acceptable solution was found in the following proposals:

1. That each Counsel for the claimants and for the Government should select for consideration by the Commissioner a designated number of claims included in each of the categories enumerated on page 4 of this Report, which were regarded by Counsel as representative of all claims in that category.

2. That argument should then be presented as to those claims, founded on the evidence adduced to date.

3. That in the course of such argument, proposals should be made by each Counsel for a final disposition of the claims included in each category.

4. That the Commissioner should consider the proposals so made and indicate to Counsel his recommendations covering each classification.

5. That such over-all recommendations, if mutually acceptable to Counsel, should then be applied by Counsel to individual claims included in each category, each Counsel being free to exclude from such over-all recommendations claims considered by him to have unusual characteristics and therefore could not equitably be disposed of on the over-all basis.

6. That subsequently these special cases so selected should be tried individually before the Commissioner.

7. That if any recommendations so made by the Commissioner were not found mutually satisfactory, then all claims included in that category should be tried individually.

Counsel considered, and the Commissioner was of the same opinion that substantial justice could thus be done to all parties concerned, and so avoid the presentation of much additional testimony relating to individual claims without thereby furnishing for the Commissioner's consideration information likely to be more reliable than had been introduced in the Inquiry. It was recognized that the hearing of each claim separately must entail continuation of the Inquiry for a further lengthy period. Therefore, with consent of Counsel, I directed that argument should be presented, based upon the evidence adduced to date and the proposals and counter-proposals made by Counsel for disposition on an over-all basis of claims failling within the several categories. It was agreed that my conclusions on claims falling within any category should be taken as tentative only pending mutual acceptance.

My tentative conclusions announced after argument were subsequently accepted by Counsel, who meantime had consulted their respective principals on the subject.

It is worthy of comment that Counsel substantially agreed on the proposals to be made, to the end that in two categories they agreed upon the percentage for over-all recommendation, both of which were approved by me as equitable in terms of the evidence. In one category the proposal approved by Counsel was considered by me to be excessive, and the percentage agreed upon was therefore reduced. The difference between Counsel on other categories did not exceed 30% of selling prices.

The procedure so adopted was thereafter applied to all personal claims in the following manner, that is to say: Counsel for each claimant and for the Government jointly examined the evidence and other material which had been introduced in respect of each claim. Having mutually agreed that a claim or branch of a claim should be classified under one of the enumerated categories, they applied the percentage adopted by me to all property the subject of claims falling within that category. Matters in dispute between Counsel were disposed of by reference to me. All proposals for monetary recommendation of other than nominal sums were examined and passed upon by me.

The over-all recommendations in respect of property included in each category discussed below are founded upon the conclusions reached by me in relation to each category, as well as the application of the procedure adopted for investigation of claims classified under that category.

Claims reserved by Counsel for special consideration were subsequently heard by me, and disposed of on the basis of the evidence adduced in respect of each claim. Reasons for the recommendation made in each of

the special cases are appended to this Report in Appendix II.

I proceed to outline,-

(1) the methods which are shewn to have been adopted by the Custodian for orderly liquidation of the various types of property so vested in him;

(2) the reasons which I have assigned for the over-all recommendations made in respect of each category:

LIQUIDATION OF REAL PROPERTY

Procedure adopted for sales of real property.

The evidence discloses that the following procedure was adopted by the Custodian in respect to the sale of all real property vested in him which is included in classifications later referred to as Greater Vancouver Real Property, and, Real Property other than Greater Vancouver; this procedure having first been approved by the Advisory Committee concerned:

Catalogues were prepared in which were listed each parcel of real property, with a brief description sufficient for identification.

The several catalogues were then distributed to all licensed real estate agents who carried on business in the vicinity in which the property was situate, comprising some 275 agents.

Qualified appraisers, approved by the respective Advisory Committees, were selected by the Director from well qualified persons of long experience who had carried on business for many years in the areas for which each was appointed.

Appraisal of real property.

Each parcel of real property was inspected and appraised by one or more of the Appraisers so appointed.

The Urban Advisory Committee (i.e. Greater Vancouver) on many occasions declined to approve the appraised price of one Appraiser, and called for one or

more additional appraisals. In respect of some properties, this Advisory Committee fixed a minimum price at a figure in excess of the appraisal. Some members of this Advisory Committee made numerous personal inspections of various parcels.

On the other hand, the Rural Property Committee (i.e., other than Greater Vancouver) invariably adopted the Appraiser's valuation as the minimum price for acceptance, the difference in procedure between the two Committees being accounted for by the fact that the Rural Committee dealt with properties distributed from one end of the Province to the other, and consequently in numerous instances Committee members had no special knowledge of property values.

Advertising.

Display advertisements were inserted in the leading newspapers published in the several areas in which properties then offered for sale were situate. These advertisements, samples of which were exhibited on the Inquiry, were published on one day only in each of the selected newspapers. Prospective purchasers were thereby invited to submit a written tender for any parcel within a minimum period of 30 days from the date of first publication of the advertisement. Each advertisement contained a reference to a specific catalogue, and prospective purchasers were thereby informed that catalogues were available at the office of the Director or in the office of any real estate agent operating in the area.

Sales by tender.

Tenders were opened in the presence of the Advisory Committee concerned, or its Secretary, and of a representative of the Director's office. The Advisory Committee concerned passed upon every tender. No tender was accepted unless the sum tendered was equal to or

exceeded the price fixed by the Appraisal. If no tender of sufficient amount was received in respect of any parcel, each person tendering was specifically informed that the price offered by him was insufficient, and was either invited to increase the offer made or was informed of the minimum sum acceptable (i.e., the appraised price). In numerous instances persons, whose tenders had been rejected, subsequently made a sufficient tender, which then was accepted. In some instances, when no sufficient tender was received the Advisory Committee concerned instructed the Director to have further appraisals made, which procedure on occasions resulted in a re-appraisal at a lesser price. Such re-appraised parcels were then re-advertised and the same procedure adopted as is outlined above.

Protection against flooding of market.

Public offerings of real property were distributed over a period of approximately two years, only a limited number of parcels in a given area being offered for sale on the occasion of the publication of each advertisement.

Cash Sales prescribed.

The Urban Advisory Committee adopted a policy of fully paid cash sales. This policy was likewise adopted by the Rural Advisory Committee in most instances, although this latter Committee approved some sales on terms, so long as substantial cash payments were made.

Lack of public interest in real property offered for sale.

I conclude from the evidence adduced that, at least in the early stages of the operation of the sales policy, there was not great public interest in the parcels so offered.

Peculiar significance is to be attached, in my judgment, to the following information furnished by the Director of the Custodian's office at Vancouver, B.C., i.e.,

Greater Vancouver Real Property sales.

Between July 19th 1943 and October 4th 1943 471 parcels of real property in the Greater Vancouver area were offered for sale by the Custodian. 5 years elapsed before all of these properties could be sold at appraised prices.

In 1943 acceptable tenders were received for only 173 parcels, or 36.7 per cent.

In 1944 acceptable tenders were received for only 210 parcels, or 44.6 per cent.

Of the remaining parcels, 52 were disposed of in 1945, 34 in 1946, and 2 in 1947.

Sales of Real Property situate in rural areas.

378 rural properties (category 2) were offered for sale in the period May 1944 to June 1944, for which in 1944 acceptable tenders were received for 232 parcels, or 61.4 per cent., in 1945 acceptable tenders were received for 92 parcels or 24.3 per cent.,in 1946 acceptable tenders were received for 52 parcels or 13.8 per cent. and the remaining 2 parcels were disposed of in 1947.

The figures quoted above must be considered in light of the fact established on the evidence before me that the period 1943 to 1946 was a period in which there was an abnormal demand for developed real property at substantially increasing prices.

In my opinion, the lack of public interest indicated was not attributable to the method adopted in offering real property for sale, nor to insufficiency of the sales effort. I believe that in the circumstances it would have been impracticable to adopt any method other than sale by tender. The advertising, in my opinion, was adequate, more particularly since the advertisements made reference to the catalogues and the catalogues showed

opposite each parcel the name of the real estate agent responsible for it. Rather does it appear from the evidence that real property of the class generally held by owners of Japanese origin was not in great demand during the year 1943. Had it not been for the very great influx of new population to centres in British Columbia in 1944, brought on by war conditions, and the consequent substantially increased demand for developed real property of every description, I think it is problematical whether sales at the appraised prices could have been made of the parcels on which no tenders were received in response to the offerings made in the first year.

Deduction of commissions from selling prices.

The evidence discloses that the Director paid commissions of 5 per cent. on the sale price of substantially all of the real property sold in the Greater Vancouver area, and a like commission on approximately 50 per cent. of the parcels included in category 2. In addition to such commissions, an expense of $12.50 per parcel was incurred by the Custodian on all the foregoing sales. Such commissions and other expenses were subsequently charged to the account of the Japanese owner. On 23 parcels included in categories 1 and 2, greater expense was incurred in consequence of the necessity to revalue and readvertise such parcels.

All other expense incurred by the Director in connection with the sale of the foregoing property was absorbed by the Custodian's office.

Commissioner's conclusions on claims relating to real property in Greater Vancouver area.

I am of opinion that the sales procedure adopted by the Director was sound and businesslike, and was calculated to realize the fair market value of the lands and buildings sold, That this procedure was scrupulously followed in respect to every parcel sold is clearly established.

I have had before me certain of the Appraisers employed by the Custodian, and have knowledge of most if not all others engaged on this work. I have examined a very large number of the Appraisal Reports which provided the foundation for sale prices finally approved by the Advisory Committee. The qualifications, experience and integrity of the Appraisers employed by the Custodian, in my opinion, are beyond question.

Upon a careful review of the evidence, and with due regard to the submissions made by Counsel, an analysis of which I think is unnecessary, I have reached the conclusion that every reasonable effort was made by the Director to effect sales of all real property in the Greater Vancouver area at the best prices obtainable, and that the prices realized were substantially equivalent to the market value of such parcels at the date of sale. However, as noted above, certain expenses incurred on these sales were charged to the respective owners. In the result, therefore, the owner has received, in my opinion, less than the fair market value to the extent of the deductions so made.

Early in the proceedings of this Commission I expressed the opinion that real estate agents' commissions, auctioneers' and appraisers' fees, care-taking charges and other expenditures necessarily incurred in the custody and sale of Japanese property were outside the terms of reference of this Inquiry. Since that time, and after many months of hearing evidence, I have concluded that my previous opinion was premature and has not been supported by the evidence since introduced. On further consideration of the recital found in Order in Council P.C.3737 of September 17th 1947, which I have numbered at the

opening of this Report as Recital 7, I am of opinion that it was the intention of the Privy Council, following out the recommendation of the Joint Public Accounts Committee, that evacuated persons should receive the fair market value of their property sold by the Custodian. Therefore, notwithstanding my conclusion that fair market value of Vancouver property was realized on the sale thereof by the Custodian, I consider that fair market value was not received by the owners of such property in consequence of the deductions before mentioned.

Recommendations in respect to lands situate in Greater Vancouver area.

I therefore recommend payment to claimants, in respect of claims included in category No.1, of a sum of money equal to the aggregate deductions made by the Custodian.

The sums recommended for payment to each claimant, as set out in Appendix I to this Report, have therefore been calculated upon the basis of the recommendations made in respect of property included in each category.

Real property situate in Rural Areas.

Dealing now with Group 2 above, being real property situate in rural areas other than those included in numbers 1 and 3: The parcels included in this group, as before noted, were widely distributed throughout the Province of British Columbia. Consequently, the Director of the Custodian's office in many instances was unable to obtain the assistance of appraisers with such outstanding qualifications as those who were retained to act in the urban area of Greater Vancouver, nor does it appear that the appraisers employed had the intimate knowledge of the properties appraised which was enjoyed by those retained in the urban area. Moreover, the Rural Advisory Committee, drawn largely

from residents of the Fraser Valley, could not bring to their deliberations the same intimate knowledge of properties dealt with by them as was possible in the case of the Urban Committee. I have directed attention earlier to the fact that the Rural Advisory Committee found it necessary to adopt in all circumstances the price fixed by the appraisers. Furthermore, the market for real properties passed upon by the Rural Advisory Committee was a much more limited market than that available in the Greater Vancouver area.

The evidence satisfies me that all reasonable efforts were made by the Director of the Custodian's office, as well as the Rural Advisory Committee, to realize the fair market value on the sale of these properties. However, it is my conclusion that the circumstances before outlined did not permit of that realization to the same degree as in the case of properties in the Greater Vancouver area.

A reflection of this conclusion is found in the proposals made by Counsel. Here Government Counsel proposes an over-all award of 15 per cent. of the sale price, whereas Counsel for the claimants would accept 20 per cent. There has been excluded from these proposals certain properties having special characteristics which have been considered and dealt with in the schedule of recommendations independently of other properties in this group.

Taking into account the factors set out above, it is my conclusion that justice will be done to the owners of properties in this group by a recommendation of 10 per cent. of the selling price in the case of all properties, to which there should be added the amount of the commission charged by the Custodian to the account of any owners of properties in respect of the sales on which commissions were paid.

Claims arising out of sale of Fraser Valley lands by the Custodian to the Director, Veterans Land Act.

507 claims for a total sum of $1,838,162.00, in respect of the sale by the Custodian to the Director Veterans Land Act of 572 parcels of real property situate in the Fraser Valley, were presented to the Commission. These claimants constitute 89.51 per cent. of the former owners entitled to file claims under the terms of reference in respect of lands included in this category.

The Veterans Land Act transaction, unlike the sale of other real and personal property of persons of the Japanese race, was a bulk sale of 741 parcels of farm and residential land, concluded after lengthy negotiations carried on between representatives of the D.V.L.A. and the Rural Advisory Committee during May and June 1943.

The sales policy adopted by the Custodian for the sale of urban and other rural real property, which has been outlined earier in this Report, was not applied to the sale of the real property dealt with in this phase of the Report. The several offers made by the D.V.L.A. in the course of these negotiations, including the offer finally accepted, were founded upon separate appraisals made of each parcel by one of nine Soldier Settlement Board valuators during the period of six months following May 1st 1942.

These appraisers were men of long experience in the service of the Soldiers Settlement Board, each of whom had special qualifications for such work.

Appraisals of 17 parcels made by Rural Advisory Committee.

None of the appraisal reports prepared by these valuators were made available to the Advisory Committee until the closing stages of the negotiations with the Advisory Committee, when the D.V.L.A. produced S.S.B. Reports on 17 parcels for comparison with

valuations recently made of the same parcels by three members of the Advisory Committee. These parcels had been selected by the Committee as providing a fair cross section of all properties included in the proposed sale. The Committee's aggregate valuation on these parcels was then shewn to exceed the valuations of the Soldiers Settlement Board valuators by 53 per cent. i.e., Committee aggregate valuation $43,100.00, Soldiers Settlement Board valuation $28,232.00.

Apparently, as a result of this unfavorable comparison, the Committee rejected the current offer of $825,000.00 for 769 parcels; the initial D.V.L.A. offer of $750,000.00 meantime having been increased to the larger figure. Subsequently, the Director Veterans Land Act, by letter to the Custodian of May 29th 1943, increased his offer to $850,000.00 and declared his position as follows:

(Exhibit 31) "Advice from Mr. Barnett at Vancouver indicates that your Vancouver Committee considers these particular lands are worth approximately one and one-quarter million dollars, and I may advise you frankly that the D.V.L.A. is not interested in these lands at that figure.

.....

This ($850.000.00) is the final offer I am prepared to make for these particular properties in bulk."

Rural Advisory Committee recommends acceptance of D.V.L.A. offer of $850,000.

On June 14th 1943, the Advisory Committee unanimously recommended acceptance by the Custodian of the offer of $850,000.00.

Difficulties relating to title caused the withdrawal by the Custodian of certain parcels, and 741 parcels ultimately were conveyed for a total consideration of $792,265.22.

This recommendation of the Committee is said by the Chairman in his letter to the Custodian to have been

influenced by the following factors, namely,-

(Exhibit 32)

"(b) That the purpose for which such lands are required is for the rehabilitation of returned soldiers.

"(c) That the offer is not for selected individual parcels, but for a block of 769 parcels which include a large proportion of uncultivated land and a considerable amount of bush land.

"(d) That while the appraisals of 17 farms made by this Committee were in excess of the appraisals of the Soldiers Settlement Board of Canada, it was realized that present valuations are enhanced due to war conditions and do not represent ordinary land values as in normal times.

"(e) That the present offer is for cash and can therefore be reasonably expected to be less than the appraised value, in view of the interest which may accrue by investment of the purchase funds.

"(f) That the Custodian will be relieved of the cost of administration, taxes, fire insurance, depreciation."

Before the transaction was finally concluded, alterations in the terms of sale were made, first,- by advancing the effective date of the transaction by approximately six months, i. e, from June 14th 1943 to January 1st 1943, with adjustments (rentals, taxes etc.) as of the latter date; secondly, - by crediting to the D.V.L.A. 2 per cent. of the agreed price as a consideration for cash settlement, These changes effected a reduction in the aggregate sum payable to Japanese owners of approximately $41,000.00.

I conclude from the foregoing, as well as from the evidence adduced upon the Inquiry (particularly that of Hal Menzies, the sole surviving member of the Rural Advisory Committee), that the price so recommended was thought by the Committee to be and apparently in fact was the maximum sum obtainable on a sale to the D.V.L.A. The reasons for that recommendation, as expressed in the above quotation from Exhibit 32, do not support

a conclusion that the Committee believed the price was equivalent to the current fair market value of the lands. On the contrary, paragraph (d) of the recommendation would seem to indicate the opinion that the price recommended was in fact less than the fair market value. The other factors enumerated in paragraphs (b), (c) and (f) I conclude were considered by the Committee to provide justification for acceptance of the offer.

In the course of this Inquiry a mass of evidence has been adduced, directed to determining what was the fair market value of the lands now under consideration This evidence may conveniently be dealt with under the following headings:

1. The Soldiers Settlement Appraisal Reports.
2. The spot appraisals made by members of the Rural Advisory Committee.
3. The sale by the Custodian of 43 parcels appraised by the Soldiers Settlement Board Appraisers, but subsequently withdrawn from the V.L.A. deal and later sold under the Custodian's general sales policy.
4. The sales made by Japanese owners of 11 parcels, subsequent to Soldiers Settlement Board appraisal thereof and prior to the making of the V.L.A. deal.
5. Appraisals made in 1948 by Fred M. Clement, Dean of Agriculture, University of British Columbia, showing the agricultural value of D.V.L.A. lands in 1943.
6. Statistical analyses, verified and approved as mathematically accurate by Dr.Drummond,

Department of Economics, University of British Columbia, whereby a comparison is made between prices of Japanese owned parcels paid by D.V.L.A. and the assessed values for the same properties fixed by Municipal Assessors, contrasted with prices paid on private sales of comparable lands in the same municipalities made in the year 1943, likewise compared with the assessed values thereof; the selling prices on such private sales having been taken from the records of the appropriate Provincial Land Registry Offices.

S.S.B. Appraisal Reports.

1. The Soldier Settlement Board Appraisal Reports on each parcel, the subject of a claim, were put in evidence by Government Counsel at the time when each claimant was heard. Subsequently, each of the nine Soldier Settlement Board valuators, as well as other Soldier Settlement Board Officials engaged in 1942 on appraisal of these lands, was examined upon the reports so made and the methods of valuation adopted. I have reached the following conclusions in regard to these appraisals:

(a) That the appraisals were conscientiously made and reflect the honest opinion of each appraiser.

(b) That the valuations are most conservative,- a factor which may be explained by the fact that each of these appraisers had been engaged on Soldier Settlement Board Appraisals prior to and through the depression period, and was therefore influenced by that experience. The following statements made by one of the appraisers are quoted as explanatory of this conclusion:

"Q: In your appraisals throughout - I am referring particularly to these appraisals of the Japanese lands - were your appraisals conservative or generous?

"A: Conservative means cautious. My appraisals were cautious.

"Q: And why would you make your appraisals cautious rather than liberal?

"A: We had come through a period of depression in which land values seemed to be slipping, and we were in a period of great uncertainty and I was therefore cautious."

(c) That the valuations reflect agricultural value only. No consideration appears to have been given to any other potential use to which the property was adapted.

(d) That consideration was seldom given to prevailing market prices of comparable lands in the immediate vicinity.

(e) That no allowance was made in such valuations for fruit trees, berry plants, etc., or other growing crops.

(f) That the value of dwellings and other farm buildings situate on the land was discounted to a level which the appraiser considered that the veteran operator could afford to use or maintain from income derived from the farm.

(g) That the appraisers considered these properties primarily from the point of view of the ultimate use of the lands for veterans' settlement, but the testimony does not support the conclusion that the appraisers were consciously influenced by the latter feature in determining value.

(h) That for the reasons outlined in sub-paragraphs (b) to (g) inclusive the Soldiers Settlement Board valuations do not reflect the fair market value of such lands at the date when the appraisals were made.

Since all appraisals were made at least six months and many of them more than twelve months prior to the date of the D.V.L.A. transaction, during which period the market value of such lands is shewn to have increased by at least 10 per cent., the D.V.L.A. price paid for these lands was likewise much below the fair market value.

Spot appraisals made by members of the Rural Advisory Committee.

2. These appraisals were made in May 1943 by Messrs. D.E. McKenzie, Hal Menzies and Yasutaro Yamaga, currently members of the Rural Advisory Committee, each of whom had considerable experience either in connection with the sale or operation of comparable holdings in the Fraser Valley. Separate appraisals of every property were made by each member of the Committee, their several appraisals were subsequently reconciled at a conference of the whole Committee, and a Committee valuation adopted. Each property was considered by the Committee to represent an average farm of the various types owned by Japanese in five different municipalities. Two such valuations in Mission Municipality are shewn to be 2 and 21 per cent. respectively below the Soldiers Settlement Board appraisal price, and other properties from 10 to 193 per cent. above the Soldiers Settlement Board price. In my judgment, this comparison is inconclusive, since the properties represent less than 2.3 per cent. of all parcels sold to the D.V.L.A. Nevertheless, I consider that the comparison is not without significance.

Sale by the Custodian of 43 parcels appraised by the Soldier Settlement Board Appraisers, but subsequently withdrawn from the V.L.A. deal and later sold under the Custodian's general sales policy.

3. Two of these parcels were sold by the Custodian in 1942 and 1943 at 60 and 33 per cent. respectively in excess of the V.L.A. price. 15 parcels were sold by the Custodian in 1944 at 101.5 per cent. in excess of the V.L.A. price. There is evidence that Land Registry Office records on private sales made in 1944 of Fraser Valley lands reflect a rise in price over June 1943 of from 12 to 20 per cent. I conclude, therefore, that it is reasonable to assume a maximum increase in prices during this period of 20 per cent., and on that basis the Custodian's aggregate selling price of the 15 parcels in 1944 will show approximately 80 per cent. in excess of the aggregate Soldier Settlement Board appraisals on the same properties.

The sample so taken is likewise inconclusive in that only 17 parcels are involved but, as in the case of the sample considered under heading 2, some significance must be attached to the difference.

The remaining 26 parcels were sold by the Custodian during 1945 and 1946, a period of rapidly rising prices for these lands. Such sales show an even greater excess over Soldier Settlement Board appraisals, but in my judgment are significant only in that the prices realized show that a market was available in these years for such lands at very substantially higher prices than Soldier Settlement Board valuations, notwithstanding that the properties meantime had been vacant or in the occupation of tenants.

The sales made by Japanese owners of 11 parcels, subsequent to appraisal thereof and prior to the making of the V.L.A. deal.

4. These were private sales made in May, June and July 1942 by the respective owners for an aggregate of $17,250.00, the V.L.A. final offer therefor being $10,846.00 or approximately 60 per cent. less than the price realized on private sales.

A tabulation of the sale of 69 parcels withdrawn from the V.L.A. deal, after appraisal of such lands by Soldier Settlement Board appraisers, was filed as Exhibit 37 on the Inquiry. Included therein are the sales referred to in Numbers 3 and 4 above, as well as 10 sales made by the Official Administrator in 1942, 1945 and 1946, as well as 2 private sales made in 1946 and 1947. The aggregate of all sales shewn in Exhibit 37. is 102 per cent. in excess of V.L.A. prices.

Appraisals made in 1948 by Fred M.Clement, Dean of Agriculture University of British Columbia, showing the agricultural value of D.V.L.A. lands in 1943.

5. Dr. Clement, called as a witness on behalf of the claimants, testified in relation to a survey made by himself and associates in 1948 of 351 parcels of the land previously appraised by Soldier Settlement valuators in 1942. These lands included parcels situate in each of the municipalities wherein lands were acquired by D.V.L.A. from the Custodian. Since the number of parcels covered by the survey represents more than 47 per cent. of the 741 parcels included in the V.L.A. transaction, I consider it to constitute a representative sample of the whole.

Dean Clement 's conclusions, based in part upon physical examination of the lands made in 1948, in part upon production figures for a substantial number of the same parcels derived from records of co-operative organizations through which the Japanese owners had marketed produce from the same lands, and

in part from an economic study made in 1947 by the Department of Agricultural Economics, University of British Columbia, relating to the small fruit industry in the Fraser Valley, were expressed in these terms:

Exhibit 96, page 6.

> "We consider from the survey outlined above that the sampling which we have taken represents a fair sampling of the small fruit and mixed farm units formerly the property of Japanese persons, and appraised by the Soldier Settlement Board in 1942. We conclude on the basis thereof that the agricultural value of these properties at the time of appraisal by the Soldier Settlement Board lies between 182 per cent. and 184 per cent. of the value placed thereon.
>
> "With reference to Table 6, in which are listed the direct appraisals (properties on which we were unable to locate production figures) the agricultural value of these parcels exceeds the Soldier Settlement Board valuation by 79.6 per cent., which is within approximately 3½ per cent. of the valuations obtained by the application of statistics and direct examination."

It is to be observed that the conclusions drawn by this witness - a man who is eminent in the field of agricultural economics in Canada - are limited to agricultural value of the lands under review. The witness in the course of his testimony expressed the opinion that market values of the same lands in 1943 exceeded the agricultural values placed by him thereon.

Statistical analyses verified and approved as mathematically accurate by Dr. Drummond, Department of Economics, University of British Columbia, whereby a comparison is made between prices of Japanese owned parcels paid by D.V.L.A. and the assessed values for the same properties fixed by Municipal Assessors, contrasted

6. Both Government Counsel and Counsel for the claimants caused studies to be made of Land Registry office records showing ~~x~~ private sales made in the year 1943 of parcels of land of comparable type to the former holdings of persons of the Japanese race included in the V.L.A. transaction. These studies were subsequently filed as exhibits on the Inquiry. I have extracted from them the following information as indicative of the results shewn by such investigationsL

with prices paid on private sales of comparable lands in the same municipalities made in the year 1943, likewise compared with the assessed values thereof; the selling prices on such private sales having been taken from the records of the appropriate Registry Offices.

Maple Ridge Municipality:

167 parcels were sold to D.V.L.A. in June 1943, at a ratio of 36.39 per cent. below the assessed value thereof.

82 private sales of comparable parcels were made between March 1st and September 30th 1943, at an aggregate price of 49.2 per cent. above the assessed value thereof.

Surrey Municipality:

68 parcels were sold to D.V.L.A. in June 1943 at a ratio of 28.2 per cent. below the assessed value thereof.

276 private sales of comparable parcels were made between March 1st and September 30th 1943, at an aggregate price of 41.72 per cent. above the assessed value thereof.

Mission Village:

15 parcels of land situate within or close to the boundaries of the Village of Mission were included in the V.L.A. transaction, having likewise been appraised by Soldier Settlement Board appraisers. Since each of these parcels was situate in or close to a settled community of not less than 5,000 population, wherein off-farm employment was available to the occupants, and since there was erected on 14 of such parcels a habitable dwelling, I am satisfied that each of these parcels had a potential value as a residential site in addition to its agricultural value.

A similar study to those before mentioned, comparing V.L.A. and private sales with corresponding assessed values, shows the aggregate of

these V.L.A. sales to be 51.46 per cent. below assessed values, whereas the average of 40 private sales of what are assumed to be comparable parcels, made in 1943, are shewn to be 54.9 per cent. above assessed values.

Assuming that assessed values throughout the before mentioned Municipalities are consistent, D.V.L.A. prices in 1943 must be increased by the percentages shewn below to attain parity with prevailing market prices of comparable property in each Municipality:

Maple Ridge	-	136.01 per cent.
Delta	-	116.96 per cent.
Richmond	-	73.43 per cent.
Surrey	-	113.37 per cent.
Mission	-	86.37 per cent.
Mission Village	-	212. per cent.

I am not satisfied that the comparisons so made justify a conclusion that the selling prices on private sales in the period under review so greatly exceeded V.L.A. prices in the same municipalities, as above indicated, since in my judgment the evidence does not warrant an assumption that assessments throughout a municipality are consistent. However, I consider that great significance must be attached to the fact that V.L.A. prices invariably fall below assessments, whereas prices on private sales invariably exceed assessments. Moreover, although assessments throughout a municipality may not be consistent, it is I think not unreasonable to assume that the degree of consistency is relatively the same in relation to lands formerly owned by persons of the Japanese race and sold to the D.V.L.A. as lands the subject of the private sales.

The factors enumerated in the foregoing examination of Soldier Settlement Board appraisals bring me to the conclusion that these valuations generally were substantially lower than the fair market value of the lands at June 1943, being the effective date of the purchase by D.V.L.A.

Since these valuations provided the foundation for the price originally agreed to be paid by D.V.L.A. which was later reduced by $41,000.00 as noted above, through the change made in the effective date of the transaction, as well as by the imposition by the D.V.L.A. of conveyancing charges in the sum of $11,115.00 - i.e. $15.00 per parcel - I have no hesitation in finding that the claimants did not realize the fair market value of their lands.

Determination of fair market value represents a more difficult problem. The lapse of 5 years between the dates of the V.L.A. sale and of this Inquiry, as well as the very large number of properties involved, has made it practically impossible for Counsel on either side to produce evidence of the value of specific properties, the subject of claims. Consequently, it has been found necessary to approach the problem on an over-all basis, that is to say:

1. By comparison of Soldier Settlement Board and Rural Advisory Committee appraisals on 17 parcels.

2. By comparison of D.V.L.A. offers on 54 parcels later sold by the Custodian or by Japanese owners.

3. By comparison of Soldiers Settlement Board appraisals of 351 parcels with Deal Clement's appraisals of the same properties.

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3. By comparison of Soldiers Settlement Board appraisals of 351 parcels with Deal Clement's appraisals of the same properties.

4. By comparison of D.V.L.A. prices paid for parcels in each municipality with private sales made in the same year of what are assumed to be comparable parcels - no doubt a somewhat broad assumption.

5. By taking cognizance of the fact that the D.V.L.A. deductions of $52,115.00 before noted serve to increase by that amount the difference between the aggregate market value of the lands sold and the aggregate price received by the claimants.

None of the comparisons so made, in my opinion, provides by any means a conclusive test for determining fair market value, but nevertheless those comparisons, considered with the factor mentioned in paragraph 5 above, provides reasonable support for the conclusion that the aggregate of D.V.L.A. prices must be increased by 80 per cent. thereof to attain fair market value.

Consequently I recommend payment of 80 per cent. of the D.V.L.A. price paid to the Custodian, which sum has been apportioned in Appendix I hereto between claimants whose property was situate in each municipality in the proportion shewn in respect of each municipality by Exhibit 117.

FISHING VESSELS AND GEAR

201 vessels were sold or otherwise disposed of by the Custodian. Claims for the total sum of $160,432.00 were presented on the Inquiry by former Japanese owners of 109 vessels surrendered to Government authorities after December 7th 1941. Included in these claims are 75 vessels sold by the Custodian, 27 vessels sold under authority of the Japanese Fishing Vessels Disposal Committee, and 7 vessels and scows, none of which either came into the possession of the Custodian or were sold by him.

By Order in Council P.C. 9761 of December 16th 1941, all vessels and equipment, the property of persons of the Japanese race, were directed to be surrendered to the Royal Canadian Navy. Approximately 1150 such vessels were subsequently assembled in the Fraser River near New Westminster B.C. and at Prince Rupert B.C.

Sales through Disposal Committee.

By Order in Council P.C. 288 of January 13th 1942, the Japanese Fishing Vessels Disposal Committee (hereinafter referred to as J.F.V.D.C.) under the chairmanship of Mr.Justice Sidney Smith, was created, with power to promote the early employment of these vessels in the fishing industry of British Columbia. Upon the appointment of J.F.V.D.C., all of the surrendered vessels were examined and appraised by O.W.Phillipson, Mechanical Superintendent of Anglo-British Columbia Packing Company Limited, a man of wide experience in the British Columbia fishing industry, who had extensive knowledge of vessels employed in the industry, the cost of construction, and present day value thereof. The J.F.V.D.C. program of sales promotion resulted in disposal of more than 80 per cent.

of all surrendered vessels within the period of seven months ending July 31st 1942, at prices 10 to 15 per cent, in excess of appraisal figures, leaving only 181 vessels which had not proved saleable during that period at the prices set by the Committee. The sales so made for the most part were approved by the respective owners, by whom the Bills of Sale were executed.

Sales by Custodian.

These 181 vessels, together with 20 others later discovered at various points on the coast of British Columbia, were vested in the Custodian, with power of sale, under the terms of Order-in-Council P.C. 6427 of July 20th 1942.

I conclude from the evidence which has been adduced before me that the great majority of these vessels were of a poorer grade than those disposed of by the J.F.V.D.C., and that many of them were obsolete of obsolescent. The evidence of Japanese claimants relative to the vessels sold by the Custodian shows that more than 80 per cent. of the hulls were over 10 years old, of which 45 per cent. were 15 years or older, and 30 per cent. were over 20 years old. 60 per cent. of the engines were 10 years old, and 26 per cent. of the engines over 20 years old. Phillipson's evidence is to the effect that fishing vessels of the class under consideration have little value after 15 years.

These vessels, upon vesting in the Custodian, were removed to Vancouver Harbour to facilitate inspection by prospective purchasers and for greater protection against the elements. All had then been exposed to the weather for upwards of 8 months, during which period it was found possible to perform

only such maintenance work as was considered sufficient to keep the boats afloat. In the result, deterioration in condition and consequent depreciation in market value occurred.

Soon after August 1st 1942 each vessel was re-appraised by John Gould, a competent marine surveyor engaged as such for many years on the coast of British Columbia. These appraisals were made on the basis of the condition of the vessel at the time of appraisal.

Rejection of claims.

I have rejected as unauthorized under the terms of reference claims presented in respect of 27 vessels before mentioned which, on the evidence before me, were shewn to have been sold and delivered by the J.V.V.D.C., although the Custodian had completed title to some of them. I have also rejected claims in respect of 7 vessels and scows before mentioned which were delcared, and which did not come into the possession of the Custodian at any time. Consequently, the recommendations now made relate only to 75 vessels sold by the Custodian for the sum of $38,504.15, for which claims were presented in an amount of $85,572.00. These vessels were advertised for sale in advertisements carried in newspapers circulated throughout British Columbia, whereby particulars of the vessels offered were furnished and interested persons informed of the locations where the vessels were available for inspection. A representative of the Custodian was constantly available to display vessels to prospective purchasers.

Except for the sale of 51 vessels sold by the Custodian to Nelson Bros. Limited, to which reference

is later made, all vessels were sold at a price in excess of or equal to the price fixed by the Gould appraisal.

Charges made by Custodian to owners.

Expenses incurred by the Custodian in respect of these vessels, for watchmen's services, wharfage, appraisers' fees and insurance, were calculated to amount to 13,5 per cent. of the aggregate selling price of all vessels sold by him. Consequently the Custodian charged the expense thus incurred to the several owners, and deducted from the proceeds of sale payable to each owner 13.5 per cent. of the price at which his vessel was sold.

Nelson Bros. transaction.

Prior to the vesting of these vessels in the Custodian, the J.F.V.D.C. had made an agreement with Nelson Bros. Ltd., a canning and fish packing firm, whereby possession was given to that firm of 51 of the vessels later vested in the Custodian, with a right to purchase the whole or any part of that number at prices fixed by the J.F.V.D.C., the purpose of the deal being to provide for the immediate employment of the vessels in the fishing industry. Prior to the expiration of the term of that agreement, and subsequent to the vesting in the Custodian, Nelson Bros. Ltd. exercised the option on 25 of these vessels. Title thereto was made by the Custodian. The proceeds of sale, less the deduction of 13,5 per cent. above mentioned, were then credited to the accounts of the several owners.

Subsequently, the Custodian agreed to sell the remaining 26 vessels en bloc to Nelson Bros. Ltd. at a price of 10 per cent. below the aggregate appraisal value of the said vessels, in order to avoid the protection and selling expense included in the 13.5 per cent. deduction before mentioned. Nevertheless, the latter deduction was applied in respect of these.

vessels.

By the terms of Orders in Council P.C. 5523 of June 29th 1942 and P.C.6885 of August 4th 1942, compensation was authorized to be paid in respect of equipment losses and damage done to vessels while in the custody of the Navy. Adjustments were subsequently made to provide for payment of such compensation to each owner. Due to an error on the part of a member of the Custodian's staff, credit in the total sum of $1080.62 for such compensation was given to the purchasers of certain vessels which should have been credited to the owners. Distribution of this sum between the several owners has been made in Appendix I appended to this Report.

Payment of damage compensation.

In my judgment, all reasonable means were adopted by the Custodian to obtain fair market value for the vessels sold by him, and I consider that such sales were made at the fair market value of each vessel at the date of sale.

Conclusions

This conslusion, however, does not take into account the several factors previously discussed, nor the fact that these vessels had suffered abnormal depreciation in value between the date of surrender to the Navy and the date of sale, such depreciation being largely attributable to exposure of the vessels to the elements while kept at moorings in the Fraser River and also to the difficulties experienced in providing sufficient man power to permit the taking of adequate care of the vessels during that period. Each of these factors, in my opinion, contributed to reduce the proceeds of sale ultimately paid to the claimant to a figure less than the fair market value of the vessel at the date of its delivery to the Royal Canadian Navy. Consequently, while I recognize that such depreciation is not open to consideration under the terms of

reference, which relate to fair market value at the date of sale by the Custodian, nevertheless I consider that in justice to the owners the loss so sustained should not be borne by them.

In my judgment, adequate compensation would be made for the loss thus sustained by allowance of 10 per cent. of the sale price of each vessel sold to Nelson Bros. Ltd., and 15 per cent. of the sale price of 24 vessels sold to individual purchasers, since the former group were retained in the custody of the Navy for less than 6 months, whereas the latter group were subject to exposure for 10 months or longer.

I consider that the deduction made by the Custodian of 13.5 per cent. of the sale price of all vessels, for expenses of administration, should be compensated by payment of a like sum to the several claimants, to the end that each of them will thus receive the fair market value of his vessel.
I further recommend additional compensation of 10 per cent. on the sale price of 26 vessels, to off-set the deduction of the same percentage made in the circumstances noted above.

I therefore recommend payment as follows:

Recommendations for payment to owners of fishing vessels.

1. To the owners of 24 vessels a sum equivalent to 15 per cent. of the selling price of the vessel in respect of which claim is made.

2. To the owners of 75 vessels sold by the Custodian 13.5 per cent. of the selling price of their vessels, to compensate for administration and selling charges made by the Custodian to each owner.

3. To the owners of 21 vessels sold to Nelson Bros. Ltd., 10 per cent. of the selling price thereof

to compensate for deduction of the same percentage made by the Custodian.

4. To the owners of several vessels mentioned on P 44 hereof the sum set opposite the owner's name, which sums amount in the aggregate to $1080.62.

NETS AND FISHING GEAR

Claims were presented before the Commission by 173 claimants, for losses alleged to have been sustained, in the aggregate sum of $148,958.91, in respect to fishing nets and gear.

The testimony of numerous officials and other employees of the Custodian's office, all of whom had been engaged in the administration of fishing equipment and subsequently in the liquidation of such property, discloses that problems of exceptional difficulty arose in this connection, attributable inter alia to the following factors:

1. Difficulty in identification of nets from the descriptions furnished by owners, due to the fact that large numbers of nets of similar type - the property of numerous owners - were stored in many cannery net houses situate at various points in British Columbia.

2. The failure of many evacuated persons adequately to tag such equipment.

3. The intermixture of nets - the property of numerous owners - in many of the cannery net houses.

4. The interchange and removal of identification tags from nets and gear by unauthorized persons when the nets were stored in net houses used by the Custodian after the same had been vested in the Custodian.

5. Unavoidable delay by the Custodian's organization in obtaining physical possession of such equipment.

6. The necessity for the Custodian to remove from many cannery net houses equipment of Japanese fishermen in response to requests of the cannery operators.

7. The scarcity of adequate storage accommodation available to the Custodian.

8. The fact that many evacuees left nets and gear in their former homes, where the same were subject to rapid deterioration.

9. The perishable nature of such equipment.

In the result, great difficulty was experienced in determining with any certainty the ownership of nets and gear. It appears that extensive damage to nets occurred due to the fact that the Custodian could not provide adequate storage facilities. The Director of the Custodian's office frankly acknowledged the probability of incarrect identification of much of this property, and conceded that extensive damage had been caused to certain of the equipment, due in part to improper preparation for storage by many owners, as well as in a considerable degree to the difficulties experienced by the Custodian's organization in handling and storage.

Because of the perishable nature of such equipment, cannery operators were invited by the Custodian in May 1942 to submit tenders for the purchase of nets held in their custody. Tenders when received were submitted to the Japanese owners, and many sales were thus negotiated with consent of the owner, resulting in recovery of approximately $48,000.00. However, in many instances no reply was received to the Custodian's letters, through no apparent fault of the owner or the Custodian. Consequently appraisals of these nets

were obtained by the Custodian and tenders equal to or in excess of such valuations were subsequently accepted by him without the consent of the owners.

All nets and gear sold by the Custodian without the owners' consent were first appraised by C.P.Leckie, a distributor of commercial fishing supplies, or in some instances by net experts presently in the employ of cannery operators, such appraisals having been made in the period May to October 1942. At the same time a net inventory was taken, on which was listed 3700 nets.

Mr.Leckie, in his evidence on the Inquiry, has said that he made his net valuations by reference to a depreciation table based on the selling price in 1942 of a new net of the same type, depreciation being calculated on the appraiser's estimate, made from examination of the equipment as of the period during which the net was estimated to have been in use.

Various witnesses called by claimants as well as by the Government agree substantially that the value of a used net largely depends upon the care given it, and that market value is not readily determined in the absence of knowledge of the history in use of the net. No history being available due to the absence of the owners, the valuations so made were necessarily somewhat unreliable.

I conclude from consideration of the evidence of Mr.Leckie, as well as that of other net experts, that the method of valuation adopted provided as raliable a test for determining value as could be applied in the circumstances, but nevertheless must be taken as furnishing no more than a rough estimate of value.

In view of the uncertainty of the appraisals, and the fact that selling prices were determined to a

Recommendations for payment to owners of nets and fishing gear.

substantial degree upon such valuations, I am not satisfied that fair market value was realized on the sales made by the Custodian, and consider that 25 per cent. of the selling price should be added to achieve fair market value. I therefore recommend accordingly.

Property considered under this head, and claims made in relation thereto, as in the case of other personal property, has been divided into several groups for the purpose of this report, i.e.-

1. Property sold by claimant.
2. Property left by claimant with an agent appointed by him.
3. Property shipped to owner.
4. Property abandoned as valueless.
5. Property of which the Custodian had no record at any time until the claim was filed.
6. Property recorded by the Custodian but now missing.
7. Property declared but not found by the Custodian.

Claims for property included in Groups numbered 1 to 5 have been rejected, for the reasons assigned for rejection of miscellaneous personal property similarly classified. Care has been taken to include in groups 1 to 5 only such property as is clearly established on the evidence tofall within one or other of these groups.

Groups 6 and 7.- The property included in these groups have been so included for the same reasons assigned in respect of identical groups of miscellaneous personal property.

For the purpose of determining the value to be placed on these missing articles, I have assumed in respect of claims made by claimants for property sold by the Custodian, as well as for property which is missing, that the claims in respect of each classification were consistent with the value established

by evidence adduced. Therefore I have related the selling price of goods actually sold to the claim made in respect thereof, and have determined the ratio between the two; then applied the same ratio to the claim made for missing goods; and thus have assumed that the Custodian would have realized on the sale of the missing goods the same percentage of claim as the price of goods sold. Since I have concluded that such prices were 25 per cent. below fair market value, I have then added 25 per cent. of the assumed selling price to that price, and have recommended payment for such missing goods in the aggregate sum so calculated.

I believe that rough justice is attained by the adoption of this method, and do not apprehend that any more accurate approach can be made to the problem, in view of the absence of any satisfactory evidence. I am not prepared to accept the claimant's value of such missing goods, since it appears that his claim for goods actually sold, in my opinion, was excessive to the estent of approximately 25 per cent. If any claimant preferred a claim for missing goods only, the recommendation in respect thereof has been based upon the over-all ratio between claims for all goods sold and all claims for like property, with the addition of 25 per cent. to average selling price, to achieve fair market value.

MOTOR VEHICLES

Persons of the Japanese race were required to surrender to the Royal Canadian Mounted Police all motor vehicles in their possession on or before March 9th 1942, pursuant to the provisions of Order in Council,P.C.1486 of February 24th 1942. These vehicles, upon surrender, were assembled and stored in the open at Vancouver and Victoria, British Columbia, under the protection of the R.C.M.P.

The evidence discloses that the Custodian sold 428 vehicles, including trucks and motor cars, of which 352 vehicles were sold in 1942, 60 in 1943, and the balance prior to 1947.

Claims have been presented on this Inquiry in respect to 154 of these vehicles, i.e. 36 per cent. of the number sold, for a total sum of $109,660.62.

It is to be observed that the vehicles, for which claims have been made, included models of every year from 1926 to 1942, of which 25 per cent. only were less than 5 years old.

Preparatory to offering these vehicles for sale, the Custodian's office at Vancouver called upon the assistance of motor car dealers presently engaged in that business in Vancouver and Victoria, upon whose advice valuators were selected and a policy of sale by tender adopted.

The valuators selected were responsible and well-qualified persons presently engaged as dealers in new and used motor vehicles. The fact that the majority of the appraisals were made while the cars

were parked in the open and without facilities for adequate tests leads to the conclusion that the valuations were based upon somewhat superficial examinations of the vehicles. Consequently, I place less confidence in the validity of these valuations as indicative of market value than I do upon the comparative prices realized by dealers upon the sale of similar cars in 1942, as shewn in Exhibit 108, to which reference is made later.

71 of the more modern and better conditioned vehicles were subsequently sold by the Custodian to various Dominion and Provincial Government Departments, at the prices fixed thereon by the appraisal.

In July 1942 the remaining vehicles were advertised for sale by public tender in 11 daily and weekly newspapers published in various parts of the Province and circulating throughout British Columbia.

All earlier sales were made at appraisal or greater prices. Subsequently, when it appeared that sales could not readily be made at appraised prices, by the methods adopted by the Custodian, the Custodian, on advice of motor car dealers, adopted a policy of acceptance of offers 15 to 20 per cent. less than appraisal. Ultimately the cars remaining unsold were sold by auction.

In the final result, sales by tender are shewn to have realized 54.45 per cent. of the aggregate claims, and sales at auction 62.77 per cent. of the aggregate claims.

The evidence discloses that during 1942, when the majority of the vehicles were sold by the Custodian, Used Car Dealers in the City of Vancouver alone had available for sale 2000 used motor vehicles. Gasoline rationing was then in operation, and maximum price regulations had been put in effect, although at this time the demand for used cars was extremely light and the majority of dealers' sales were made at figures appreciably below ceiling prices. Dealers engaged at the time in the used car business testified that 1942 was a period of little demand and low prices in the used car market in British Columbia.

Subsequent to July 1942, all unsold cars were removed to lots operated by used car dealers, and there offered for sale.

In the absence of satisfactory evidence upon which to base a conclusion whether the Custodian had realized fair market value on these sales, Counsel for the Government and claimants, for the purpose of comparison with Custodian sales prices, have collaborated on the preparation of a study of (a) used car sales made by dealers in the period under review, as well as (b) values of various makes and models shewn in a publication in the trade known as the "Red Book".

It is, I think, reasonable to assume that the prices shewn in this study, filed as Exhibit 108, relate to cars which had been reconditioned or to some extent prepared for sale; further, that sales of cars made by dealers are usually accompanied by some form of guarantee of efficient operation covering a limited period. On the other hand, vehicles sold by the Custodian were sold "as is", without reconditioning and without any form of guarantee.

A comparison of dealer and Red Book prices of 60 cars, of the types, years and models sold by the Custodian, discloses that the very great majority of Custodian sales were made at prices less than dealer and Red Book prices. On only 7 of the 60 sales is the Custodian price greater. On 53 sales the Custodian price falls from 5 to 75 per cent. below dealer and Red Book prices. On average, the Custodian price is 30 to 35 per cent. lower.

Neither the information found in Exhibit 108, nor other evidence of market value of the cars sold by the Custodian provides satisfactory evidential foundation upon which to base conclusions as to fair market value. Yet it is necessary to attempt to apply this evidence, since I am satisfied that none other is now available.

Upon consideration of all the evidence, and taking into account the fact that vehicles sold by the Custodian were sold "as is", I have reached the conclusion - not without some misgiving - that the fair market value in 1942 exceeded the prices realized by the Custodian by 25 per cent. thereof.

Recommendation for payment to owners of motor vehicles.

I therefore recommend payment to the several claimants who have made claims in respect of motor cars sold by the Custodian of a sum equivalent to 25 per cent. of the price at which the vehicle, the subject of claim, was sold by the Custodian.

PERSONAL PROPERTY EXCLUSIVE OF VEHICLES, FISHING BOATS and OTHER VESSELS, NETS AND GEAR.

Considered under this head are claims for the aggregate sum of $975,501.87, relative to a great variety of personal property, including chattel property sold by the Custodian, in respect of which claims are made for the sum of $521,162.02, as well as personal property valued by the claimants at $454,339.85, claims for which will be examined below in greater detail.

The following procedure was adopted by the Custodian's office for protection and subsequently for the liquidation of personal property left in the protected areas by persons evacuated therefrom.

Prior to evacuation each evacuee was required to sign and deliver to the Custodian a "J.P.". form, containing particulars of his property left in a protected area, and its location.

In March 1942 and for many months thereafter a force of inspectors employed by the Custodian was engaged in checking the information furnished in the J.P. forms, examining and listing the chattel property found, and in many instances removing such property to storage centres provided by the Custodian to ensure more adequate protection. The expense entailed was borne by the Custodian.

Liquidation authorized by the terms of Order-in-Council P.C. 469 of January 19th 1943 was begun in respect of chattel property in June 1943, and was continued during the ensuing three years.

The Custodian, after consultation with the two Advisory Committees previously mentioned, adopted a

policy of sale by public auction of all chattel property, with the exception of articles which, in the opinion of the Custodian or the auctioneer employed by him, could more advantageously be sold by tender.

One or more experienced autioneers carrying on business in numerous centres within the protected areas of British Columbia, selected on the advice of an Advisory Committee were then appointed to conduct auction sales at those centres.

Sales by Tender.

Articles selected for sale by tender were first appraised by qualified persons and subsequently offered for sale by advertisement in local newspapers. In each instance the highest tender was accepted, subject to the tender being equal to or in excess of the appraised price.

Sales to tenants of goods on premises held under lease.

In some instances, to avoid the expense of removal to auction rooms, goods stored in premises then under lease were sold to the tenant at prices equal to or in excess of an appraisal made by the auctioneer in charge.

Auction Sales.

Some 260 auction sales were held at 20 different centres over a period of approximately 3 years.

Successive sales in any one centre were held at intervals of time to avoid glutting the market. All such sales, in my opinion, were adequately advertised in the local press, the several advertisements being prepared by the auctioneer concerned.

I conclude from the evidence of various persons, including many of the auctioneers employed who testified regarding the conduct of the auction sales, that the sales invariably were well attended, the bidding was spirited, and in the main fair prices were realized. Since so great a quantity of goods was thus disposed of (more than $90,000.00 was realized on auction sales and

more than $94,000.00 on sales by tender) at sales which took place four years or more prior to the hearings at which this testimony was heard, the evidence in regard to such sales was necessarily of a general character. Concequently I am unable on the material before me to reach any firm conclusion as to whether or not fair market value was thus realized. However, I am entirely satisfied that every reasonable and businesslike effort was made by the organization set up by the Custodian to dispose of these goods in the best interest of the owners. The evidence discloses that the cost of sales by auction, including handling expense, advertising and auctioneers' fees, was deducted by the Custodian from the proceeds of sale payable to each claimant, resulting in a charge calculated at an average of 23.2 per cent. of the sale price. Alike deduction was made on sales by tender covering appraisal and advertising cost, amounting in all to 12 per cent. of the sale price.

I consider that fair market value was realized on sales made by private treaty to tenants, and that apart from the deduction before noted fair market value was realized on sales by tender, since in each of the latter instances the appraised value was realized on such sales, but since the evidence leaves me in doubt as to whether fair market value was realized on sales by auction I propose to resolve the doubt in favor of the claimant, and to add as compensation therefor 6.8 per cent. of the sale price realized.

In the result, although fair market value was realized, in my opinion, on sales by tender, the same was not received by the claimants, due to the deduction

mentioned. The same situation applies in consequence of the deduction made from the proceeds of sale by auction.

Recommendation for payment to owners of personal property.

Consequently, I recommend payment to claimants, in respect of goods sold by auction, of 30 per cent. of the sale price; to claimants in respect of goods sold by tender 12 per cent. of the sale price.

Turning now to the claims for personal property valued by claimants at $454,339.85, which are included in the second category before mentioned. These claims fall into 14 separate classifications and may conveniently be considered under the following heads:

Custodian's classification of personal property the subject of claims.

1. Chattel property declared, but not found.
2. Chattel property recorded and now missing.
3. Chattel property included in real property sales.
4. Chattel property abandoned by Custodian.
5. Chattel property of which the Custodian had no record at any time.
6. Chattel property sold by a claimant.
7. Chattel property left with claimant's agent.
8. Chattel property shipped to claimant.
9. Chattel property now in storage.
10. Good-will.
11. Business.
12. Insurance premiums.
13. Accounts receivable.
14. Buildings located on lands of another.

Group 1 and group 2 comprise chattels declared to the Custodian by the owner either at the time of or soom after his evacuation. Those in group 1 could not be found by the Custodian's inspectors; those in group 2 were found by an inspector and recorded, but were found to have disappeared before sale.

I am satisfied on the evidence that the property included in each of these groups was left in a protected area by the respective claimants, and that the same vested in the Custodian as of the date of the evacuation of each claimant, by virtue of Order-in-Council P.C. 1665 of March 4th 1942. The evidence of extensive pilferage of chattel property of evacuated persons, to which reference is made earlier in this Report, in my judgment justifies the conclusion that the property included in these two groups was stolen after the same had vested in the Custodian.

Consequently I consider that compensation should be made to claimants in respect of missing goods included in Groups 1 and 2.

The evidence of various claimants as to value of chattel property in respect of which claims are made under these heads, in my opinion, must be discounted substantially. It is obvious from such evidence that the valuations are based upon original cost with comparatively little discount made for depreciation, regardless of the period of use. Moreover, it appears, that sales by the Custodian of such property of these claimants as was sold realized on the average somewhat less than 40 per cent. of the valuations placed thereon by the claimants. I therefore conclude that the claimants' valuations on missing goods likewise substantially exceeded the fair market value of the goods at the date of evacuation.

In the absence of any satisfactory evidence of fair market value of the missing goods, I consider, assuming reasonable consistencey in the valuations made by the claimant of all his goods, that the sum which the Custodian would have realized on sale of the missing goods may best be estimated by relating to the sum claimed

for a claimant's missing goods the ratio of the selling price of his goods which were sold by the Custodian to the sum claimed by that claimant in respect thereof, i.e., assuming that the Custodian sold a claimant's goods at $40.00, for which he had claimed $100.00 (a realization of 40 per cent. of the sum claimed) I think it is not unreasonable to assume that the same claimant's missing goods would have sold for approximately 40 per cent. of the sum claimed for those goods. This approach to the problem, while unsatisfactory, nevertheless is in my opinion the only practical approach which can be made on the evidence before me.

I propose, therefore, to apply to the determination of fair market value of missing goods in Groups 1 and 2 the same formula as was applied to goods sold by the Custodian, and therefore recommend payment in respect of all claims for such goods of the estimated selling price thereof calculated on the basis outlined in the preceding paragraph, plus 6.8% of such selling price, so as to realize what I conceive to have been the fair market value of such goods.

Group 3: Goods included under this head consist of articles which were considered at the time of sale to be fixtures and therefore were delivered with the real property whereon the same were installed, although no additional consideration was paid for such articles. The claims now recommended for payment of compensation include such articles as clearly appear to be chattels, or in respect of which there is doubt whether the article in law had become part of the freehold.
I would apply the principle adopted for Groups 1 and 2 to the determination of fair market value of goods in

this group, and recommend payment accordingly.

Referring to Groups 1, 2 and 3,- there are some cases where claims are made for property included in these three groups and no other goods of those claimants were sold by the Custodian. In such cases only I consider that the over-all ratio of selling price to claim will more nearly do justice to the situation, and therefore recommend payment of the over-all percentage on all such claims.

Claim for goods abandoned by Custodian rejected

Group 4: In this group are included goods abandoned as valueless by one or more of the persons employed by the Custodian to superintend the collection and sale of evacuee property. I am satisfied on the evidence that adequate care was taken by the persons responsible for the decision so made. I have therefore rejected claims for goods in this group.

Claims for goods not declared by claimant rejected.

Group 5: Claims included under this head amount in the aggregate to a sum in excess of $70,000.00. Notice of the existence of such property was first given to the Custodian by these claimants at the time when the claim was filed in December 1947, or later. No reference to such property had theretofore been made to the Custodian by any such claimant, either in his J.P. form or any correspondence exchanged subsequent to evacuation. In many instances a claimant has said in evidence that he had forgotten to declare the goods. In others a claimant has acknowledged at the time of presentation of the claim that he had deliberately withheld information in respect of such property, and again that the property had been hidden by him to prevent discovery by the Custodian or anyone else.

In the circumstances I consider that no responsibility can be attached to the Custodian in respect of such goods. I have therefore rejected all such claims.

Claims for goods left with agent rejected.

Groups 6 and 7: Chattels comprised in this group are not open to claim under the terms of reference. There has been included in Group 7 only such property as has been clearly proven to have been left with an agent appointed by the claimant, with the intention that the claimant should rely on that agent to provide safe custody for the goods.

Claims under these heads have therefore been rejected.

Goods shipped to claimants by Custodian.

Group 8: There have been included under this head only such property as has been proven to have been shipped to and received by the claimant. Where it appeared on the evidence that goods had been shipped by the B.C. Security Commission or the Custodian, but had not been received by the claimant, such goods have been dealt with as lost or stolen, and therefore subject to claim.

I have rejected all claims included in this group.

Group 9: This group comprises claims in respect of articles for which there was no market in an Occidental community, since the articles comprise Buddhist and other religious figures, shrines, and articles of a similar type. These articles have been held in storage by the Custodian available for delivery to the owners who, when known to the Custodian, have been so advised by him.

Claims made in respect of such articles have been rejected, as not open to consideration under the terms of reference.

Claims for loss of good-will.

Groups 10 and 11: These groups comprise 13 claims for an aggregate sum of $31,816.00 and made in respect of loss of good-will alleged to attach to business operations carried on by these claimants up to the date

of the claimant's evacuation; also 10 claims for the aggregate sum of $118,235.00 for losses alleged to have been sustained upon the sale of business operations, likewise carried on by such claimants.

Such claims have been rejected as not open to consideration under the terms of reference, except where it was shewn that the business involved in the claim had been sold by the Custodian as a going concern. In such cases consideration has been given to such claims as factors in determining the value of the business.

Other rejected claims.

Group 12: Claim No. 1030 includes inter alia a claim for the value of a garage and contents destroyed by fire subsequent to the claimant's evacuation. Recovery for this loss was made by the Custodian from the insurance company of a lesser amount than the value placed on the building and contents by the claimant. He claims for the difference. The claim was adjusted and paid by a responsible insurance company. I find no validity in the claim, and have therefore rejected it.

Claim No. 143 is founded upon alleged neglect of the Custodian to pay life insurance premiums to maintain in effect two policies of insurance on the life of a Japanese woman who died in Japan subsequent to the date of the claimant's evacuation. The claimant alleges that she was a beneficiary for value under these policies of insurance, and that she has suffered loss by the failure of the Custodian to meet premiums which fell due on these policies subsequent to the date of her evacuation, the Custodian having been put in funds to provide for payment of the premiums. I have rejected the claim as not open to consideration under the terms

of reference.

Group 13: This group comprises 4 claims for the aggregate sum of $3620.00 in respect of accounts receivable alleged to be due to the claimants by various debtors at the time of the claimants' evacuation, which accounts were not recovered, allegedly due to the failure of the Custodian to enforce payment.

Such claims have been rejected as not open to consideration under the terms of reference. However, it is, I think, desirable to point out that the Custodian made reasonable efforts to recover for the account of evacuated persons accounts payable to them of which the Custodian had notice. In consequence of the action so taken by the Custodian, a dubstantial sum of money was recovered, and credited to the accounts of persons entitled. The evidence adduced in support of the claims included in this group does not support a conclusion that any of these claimants suffered loss due to neglect on the part of the Custodian to take necessary steps to enforce payment.

Group 14: 18 claims for a total sum of $14,895.00 were made in respect of buildings which, upon investigation by the Custodian, were found to be located on lands to which the claimant had no title.

In cases where any such building or structure was found to be movable, the same, if saleable, was moved under direction of the Custodian, and sold. In other instances attempts were made by the Custodian to obtain some payment from the owner of the land, which in some instances met with success, and money so recovered was credited to the claimant.

All claims made under this head have been rejected, although, as previously stated, some realization was

made for the account of the claimant in certain instances.

Since Appendix I was completed, I have had occasion further to investigate claims made by persons in respect of real properties at Hakoda Bay. My conclusions in respect to those properties are attached hereto. The additional recommendations made in respect thereto have been incorporated in Appendix I.

I wish to record my appreciation of the valuable assistance furnished me throughout the lengthy course of this investigation by Messrs. John W. Hunter, D. T. Braidwood, James A. Macdonald and Jack C. Campbell, in the capacity of Counsel for the Crown, and R.J. McMaster, A.G. Virtue, K.C., and F.A. Brewin, Counsel for the majority of the claimants, upon each of whom has fallan some part of the heavy burden of sifting the mass of material in the Custodian's files and the presentation of the very great volume of evidence from which these conclusions are drawn and upon which my recommendations are founded.

I am deeply grateful to F.G. Shears, Esquire, Director of the Custodian's office at Vancouver B.C., and the members of the Director's staff, whose services have been made available continuously from the beginning of the Inquiry to myself and to Counsel for the claimants, as well as the Crown.

Finally, I wish to acknowledge the great service Mr. Watson and Miss V.J. White have rendered in the capacity of Secretaries to the Commissioner, and the many courtesies which each of them has extended in smoothing the way for everyone connected with the Inquiry during the past two and a half years.

"H. I. BIRD
COMMISSIONER"

"APRIL 6TH 1950"

APPENDIX III

APPENDIX III

RE: FAIR MARKET VALUE

Two questions arise in relation to the term "Fair Market Value" as used in the terms of reference for this Inquiry, found in Order-in-Council P.C.1810 of July 18th 1947, as amended by Order-in-Council P.C.3737 of September 17th 1947,- the first being one of interpretation of that term, and the second,- the means to be adopted to determine such value.

Since like questions arise in the assessment of compensation money payable upon the compulsory taking of land under statutory authority, it is I think reasonable to assume that "fair market value" as found in the terms of reference is there used in the sense that the same term has been interpreted in authoritative decisions of the Courts in Canada and in England in expropriation cases. Consequently, I propose for present purposes to assign that meaning to the term, and to apply the tests for determination of "fair market value" which have been adopted by the Courts in such cases.

The meaning given to "fair market value" in the decisions before mentioned is compendiously expressed by the learned author of "Nicholls on Eminent Domain", 2nd Edition, at page 658, in these terms:

> "By 'fair market value' is meant the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the land was adapted and might in reason be applied."

And see:

Vyricherla v. Revenue Divisional Officer Vizagopatan (1939) A.C. 302, at pages 312 and 313.

King v. Elgin Realty (1943) S.C.R. 49, at 51 and 52.

King v. Lawson (1948) Ex.C.R. 44, at 48.

Examination of the foregoing and other leading decisions in expropriation cases discloses that various tests have been applied by the Courts in assessing the fair market value of property of divers types having various characteristics, each assessment being made in the light of existing conditions at the given date. Consideration of the claims which had been heard in part prior to the presentation of argument on these questions indicates the necessity that reference should here be made to many of these tests, in view of the diversity in type and characteristics of the properties, the subject of the claims, to ensure if possible that some one or more of the principles now adopted may be related and applicable to every property in respect of which a claim is made.

The principles which I extract from these expropriation decisions, as likely to have application to one or more of the claims made, are as follows:

1. Every element and indication of value which a prudent purchaser would consider should be taken into account.

2. Market value should be based upon the most advantageous use to which the property is adapted or could reasonably be applied.

3. The value for the use to which men of prudence and wisdom and having adequate means would devote the property, if owned by them, must be taken as the ultimate test.

See: Lawson Case, pages 48 and 49.

4. All the definitions of "market value" connote "realizable money value", i.e. the amount which a prudent purchaser would be willing to pay or a willing seller

reasonably expect to obtain.

Lawson Case, pages 82 and 83.

5. The highest money price which the land would bring if sold in the open market to one buying with knowledge of all the purposes to which it was adapted, allowing a reasonable time in which to find a purchaser.

6. Value of land for any and all uses to which it might be put in the light of present business conditions and those that might reasonably be expected in the immediate future.

7. What probably could be obtained if a purchaser was sought, applying the ordinary business methods.

Lawson Case, page 81.

8. Evidence of other sales reasonably near the fixed date, having regard to the activity in the district, is not without probative value, providing the conditions are reasonably comparable.

King vs. Edwards (1946) Ex.C.R. 311 at 320

And see: Vyricherla Case p.312.

9. "Market value" does not mean the same thing as "market price". The latter assumes a condition of fact, namely,- an existing available market for property of the kind in question ..... There may perhaps be a similar kind of "market price" for some kinds of real estate, but it can only be of a very limited nature.

Lawson Case at pages 80 and 81.

10. In cases where it is shewn that a market existed at or about the given date for property of the type under review "the market price" (at or near the given date) "which if it be not spasmodic or ephemeral is the best test of the fair market value of property of

this description".

Untermeyer v. A.G. for B.C.
(1928) S.C.R. 84, at 91.

11. The owners were entitled to that which a prudent man in their position would have been willing to give for the land sooner than fail to obtain it.

Pastor v. Minister of Finance
(1914) A.C. at 1088.

12. The value should be the sum which the Arbitrator estimates a willing purchaser will pay and not what a purchaser will pay under compulsion.

Vyricherla case, at 316.

13. Prospective advantages or potentialities may be taken into consideration in assessing fair market value, but only the present value of such potentialities as at the given date.

King vs. Elgin (1943) S.C.R. 49 at 52.

14. The value of the property as a whole must be estimated, not the values separately of its component elements.

Lawson Case, page 50.

15. The value of the land which should be awarded by the Arbitrator is in no sense more than the price that the legitimate competition of purchasers would reasonably force it up to.

Sidney v. North Eastern Railway (1914)
3 K.B. 629.

16. The value of the land to the owner is the amount of money that he could get for it in a competitive field.

Cedar Rapids v. LaCoste (1914) A.C.569.

17. The real question to be investigated was: for what would these subjects have been sold had they been put up to auction without the Appellant company being in existence with its acquired powers but with the possibility of that or any other company coming into existence and acquiring powers?

Cedar Rapids Case at 579.

18. Intrinsic value is not the basis for determining fair market value.

King v. Manuel (1915) 15 Ex.C.R. 381 at 384

19. Evidence of municipal assessment is not a test to be relied upon as evidence of market value.

Edwards Case, page 322

20. Reinstatement or replacement cost, less depreciation, is not a true test of fair market value.

Edwards Case, page 328.

Counsel for the claimants advances two further propositions, for which he submits there is Judicial authority.

In support of the first of these, namely,- "that fair market value cannot be realized unless it is made "to appear that all prospective purchasers are present and "bidding" Counsel relies upon the language used by Hanna J. at page 655 in Smyth v. Revenue Commissioner (1931) I.R. 643. This language, in my opinion, goes no further than to assume a market created by a reasonably wide dissemination of information in regard to the prospective sale. So limited, it falls within the principles set out in the numbered paragraphs above, but I do not consider that the judgment can be taken as authority for the proposition expressed by Counsel in his opening.

The second proposition is based upon a passage in the Judgment of the Supreme Court of Canada in Untermeyer Vs. Premier Gold Mining Co.(1929) S.C.R. 84, and is expressed by Counsel in these terms, i.e. "In considering fair market value one must be satisfied that the conditions of the market are reasonably normal." The passage at page 91 of the Judgment delivered by Mignault J., speaking for the Court, in my opinion has particular reference to "market price", for the Learned Judge says: "I think that the market price in a case like that under consideration (i.e. the value of shares quoted on a stock exchange) where it is shewn to have been consistent determines the market value of the shares." The quoted passage I take to be the governing principle which is to be extracted from this Judgment, and is one which I have adopted under No. 10. The Judgment, in my opinion, is not authority for the proposition advanced by Counsel in the terms above quoted. I do not consider that either the Untermeyer or the Smyth Judgments provide any extension of the principles which for convenience I have numbered 1 to 20.

H.I. BIRD

Commissioner.

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