RECOMMENDATIONS FOR SPECIAL CONSIDERATION OF CLAIMS OUTSIDE TERMS OF REFERENCE

	Page					
1	2		Allowance to Claimants for Expenditures etc.			
2	3	✓	ASARI	Charter hire	$ 4,725.00	
				Sale	3,353.00	
						$ 8,078.00
3	8	✓	NITSUI	Charter hire	910.00	
				Sale	250.00	1,160.00
				Equipment	392.97 (See Cs.43)	
4	11	✓	INOUYE	Vet. War I.		
				Farm sold to V.L.A.		Substantial loss.
				returned to INOUYE by V.L.A.		
				Depreciated while held 7 yrs. by V.L.A.		
5	16		JINNOUCHI	Life Insurance lapsed		Loss not established
				Non-payment of premiums		
6	22	✓	SAIMOTO	Charter Hire	2,318.65	
				Equipment	80.82	
						2,399.47
7	26	✓	TAKAI	Claims sold stock-in-trade at sacrifice price for $2000.00 valued at		6,200.00
8	27		WESTERN CANADA HOP CO-OP			
				Property remains unsold		
				Unsuitable except for hop drying		
				Loss claimed		4,000.00
9	30	○	OKABE	Property held under lease		
				Unexpired value		400.00
10	31	✓	ARIZONO	Fish Boat left at Cow Bay		
				Depreciation before vesting		
				complete wreck - sold for $10.00		
				Claim of 400.00		
11	33	○	MATSUSHITA-	Property held under lease		
				Unexpired value		150.00
12	34	✓	UNION TRADING COMPANY LTD.			
				Charter Hire	13,160.00	
				Equipment	300.00	
						13,460.00
13	37	✓	NAKAMURA	Charter Hire	13,987.50	
				Sale	10,170.00	
				Equipment	1,014.30	
						25,171.80
14	52	✓	25 Fishing Vessels sold by J.F.V.D.C.			
			12 signed by Japs under compulsion			2,431.37
			13 " " Custodian			1,898.03
15	56	○	NIKAIDO - Claim in respect of Leaseholds			
				Unexpired value		1,000.00
16	60		PORT ESSINGTON PROPERTIES - 4 claims			

MEMORANDUMS

1	Letter from Mr. Justice Bird to Mr. Varcoe
70	Bulb Farm Property (Inc. in Appx. "A" Awards)
72	Chattels overall percentage - Explains method arriving at F.M.V.
73	Greenhouse Properties - " " " " "
76	Hakoda Bay Properties -(Inc. in Appx. "A" Awards)

- COPY -

COURT OF APPEAL.

Law Courts
Vancouver, B.C.

April 6th, 1950.

F.P. Varcoe, Esq.,
Deputy Minister of Justice,
Ottawa.

Dear Varcoe,

RE JAPANESE PROPERTY CLAIMS COMMISSION.

The original and one copy of the GREAT WORK has gone forward today, addressed to the Clerk of the Privy Council, in care of yourself. The Secretary will arrange for packing and shipment of the files, transcript of evidence and exhibits in the course of the next week.

I am now enclosing to you Special Reports which I have made on various claims held to be outside the terms of reference, all of which I discussed to some extent with you when last in Ottawa.

Referring particularly to the Special Report on the request by the claimants collectively for an allowance to compensate them for the cost of presentation of claims,- Since the question of compensation for expenditures so made does not fall within my province,I have refrained from making any recommendation. However, I think you should know that Counsel for the claimants,more particularly R.J.McMaster, has been most helpful from my point of view throughout the Inquiry. McMaster's concurrence with various proposals made from time to time for the purpose of curtailing the investigation I feel has made it possible to complete the Inquiry in a very much shorter time than would have been the case had he adopted a different attitude. In these circumstances I venture the opinion that the cost of the Inquiry to the Government has been reduced by a sum considerably greater than the amount which the claimants now request should be paid to compensate them for disbursements made on the presentation of their claims, exclusive of legal fees.

The other matters dealt with in the Special Reports I think require no further comment. As suggested in our conversation in Ottawa on May 23rd last, I have expressed in these reports my opinion as to the compensation which might reasonably be paid to these claimants for losses sustained which are not open to recommendation under the terms of reference. Since no defence to these claims was put forward by the Government,I have in such cases indicated that in my opinion a prima facie case was made out by the claimant.

During the course of the Inquiry, office equipment and supplies were bought from time to time. Of these 5 tiers of frame filing cabinets, a typewriter desk and a suit case which was used for carrying files will need to be disposed of. Should I turn this equipment over to the Director of the Custodian's office to be retained by that organization or sold?

Yours truly,

H.I. Bird.

√ (1)

ALLOWANCE TO CLAIMANTS FOR EXPENDITURES MADE BY THEM ON THE PRESENTATION OF CLAIMS TO THE ENQUIRY, EXCLUSIVE OF LEGAL FEES.

Counsel for the claimants have requested that a special report be made on this subject.

A statutory declaration has been filed by R.J.McMaster, Esquire, who acted throughout the Inquiry as one of the Counsel for the claimants. This declaration, which is attached hereto, shows that the claimants had disbursed or assumed liability for the sum of $57,978.99 in respect of the various items shown in Schedule 4 to the declaration. There are also attached hereto letters on the same subject received by me from Mr.McMaster under date of February 4th and March 8th 1950.

I have no means of verifying the statement of these disbursements, but would accept Mr.McMaster's statement that he is satisfied such expenditures have been made. The total expenditure is somewhat less than 5% of the aggregate sum recommended for payment to the claimants. The Inquiry continued for two years and four months, during which time the claims of 1371 persons were investigated. Each of the claims related to one or more parcels of real or personal property, the average claim involving three such parcels.

The foregoing are matters which I think might properly be taken into consideration in determining whether any compensation is to be made to the claimants to reimburse them for the undoubtedly heavy expense to which they have been put in the presentation of their claims.

"H. I. Bird"

H. I. BIRD

Commissioner.

Declaration and letters appended to original.

(2)
Fishing
V.

CLAIM NO. 36 - Sadajiro ASARI file 893.

SPECIAL REPORT ON CLAIM RELATING TO A FISHING VESSEL HELD BY THE COMMISSIONER TO BE OUTSIDE THE TERMS OF REFERENCE.

The claim is made in respect of the Motor Screw Vessel "GLENDALE V" B.H.P. 51.5 ft. long, breadth to outside of plank 14.3 ft., depth from top of deck to bottom of keel 8.6 ft., gross tonnage 33.82 tons, registered tonnage 26.78 tons.

The claimant alleges that the vessel was built in July 1940 at a cost of $18,000. H. Bell Irving & Co.Ltd. assisted the claimant to finance construction, and hold a mortgage dated June 4th 1940 charged upon the vessel for the sum of $8000.

The claimant claims the difference between the value of boat and equipment at $18,000. and the selling price paid to the claimant of $14,647., that is to say $3353.

The claimant further claims for charter hire from January 14th 1942 to August 26th 1942, at $21.00 per day, $4725.00. Aug. 2nd.

The vessel was "requisitioned for naval service "by the Director of Marine Services on a bare boat basis. "The terms of charter hire will be determined later." Vide telegram, Director Marine Services to claimant dated January 14th 1942 (Exhibit 2 in Claim No.36)

The vessel is shewn to have been in the custody of the Director of Marine Services or the Department of Munitions and Supply continuously from the date of requisition to August 26th 1942, when it was sold to the Department of Munitions and Supply.

In my opinion the evidence of the claimant and the documents filed on the Inquiry establish that a contract was made, whereby the Director of Marine Services agreed

to pay an undetermined sum as charter hire.

Charter hire was not determined at any time. I therefore conclude from the terms of the requisition order that the Director of Marine Services must be taken to have agreed to pay a reasonable charter hire for the period during which the vessel is shewn to have been kept in his possession.

The claimant has sworn that the charter rate paid for this vessel prior to the date of its requisition was $21.00 per day. In the absence of other evidence I conclude that the claimant has established prima facie the right to recover for charter hire the sum of $4725.00.

The documents filed on the Inquiry, including letters and telegrams by K.Kimura representing the Japanese Fishing Vessels Disposal Committee, which are marked as Exhibits 4, 5, 6, 7 and 8 in Claim No.36, show that Kimura informed the claimant that the Department of Munitions and Supply had fixed the selling price on the basis of the value of the vessel at the date it was requisitioned for charter, i.e. January 1942 - "if you "are not satisfied with this price you must go to the "Exchequer Court in Ottawa and await their decision." In Exhibit 8 Kimura refers to the fact that C.Nakamura, the owner of three vessels, had no alternative but to accept the Department's offer for his vessels and "had to concede to the offer".

I conclude from examination of this correspondence that the claimant accepted the proposed price unwillingly notwithstanding his belief that the fair market value of the vessel was the cost of the same to himself 18 months prior to the requisition. There is nothing on the material

before me to indicate that he was a free agent in the making of this sale. In the absence of other evidence, I consider that the claimant has established prima facie that the fair market value of the vessel at the date of sale was $18,000.00, or $3353.00 in excess of the price paid to him.

H. I. BIRD
Commissioner.

April 4th 1950.

February 22, 1950.

Mr. Justice H. I. Bird,
Commissioner,
Japanese Property Claims Commission,
Court House,
Vancouver, B. C.

Re: Case 36, Sadajiro ASARI re Charter money:

The claim herein is made with respect to the vessel, "Glendale V". The boat was appraised upon instructions of the J.F.V.D.C., for $14,800. The Crown re-sale indicates that this appraisal was made as of the date of taking and not the date of sale. The vessel was requisitioned for charter on January 14, 1942 by the Department of Munitions and Supply and was requisitioned for purchase on August 2nd,1942. The price fixed as to the value of the boat by the J.F.V.D.C. on the sale to the Department of Munitions and Supply was $14,800, being the amount of the aforesaid valuation.

It appears that the boat was in the possession of the Department of Munitions and Supply pursuant to the requisition for charter for 200 days.

The evidence of the claimant shows that prior to evacuation he had chartered this boat at $21.00 per day per bare boat.

It is respectfully submitted that the claimant should be entitled to $400.00 at the charter rate of $21.00 per day less depreciation at 5% per annum based on the value of the boat as fixed by the aforesaid valuation. Mr. Gould in his evidence indicated depreciation at 5% being a proper depreciation. Therefore, from the sum of $4200 should be deducted a depreciation of $370,

$14800 - Valuation
5% = 740.
200 days = 1/2 year
1/2 of 740 = $370

leaving a balance of $3830.

It would appear that while the Government requisitioned this boat for hire on a bare boat basis, the charter rate was never fixed and no charter money was paid despite the fact that the claimant supplied the proper Department of Government with full information with regard to the boat and such information was provided upon being requested to furnish the same for the purpose of fixing the charter rate.

Respectfully submitted.

"R. J. McMaster"
Counsel for the Claimants represented through the Co-operative Committee.

(3)

Fishing Vessel

CLAIM NO. 43 - Ukichi NITSUI File. 1458.

SPECIAL REPORT ON CLAIM RELATING TO A FISHING VESSEL HELD BY THE COMMISSIONER TO BE OUTSIDE THE TERMS OF REFERENCE.

This claim is made in respect of the Motor Vessel "SILVER SPRING" and the equipment thereon.

The vessel was requisitioned for hire on a bare boat basis for service with the R.C.A.F. "terms of charter hire to be determined later" by telegram April 11th 1942 from the Director of Marine Services to the claimant at Ucluelet B.C. (vide Exhibit 1 Claim No.43).

On June 5th 1942, W.G.Stickney, Esquire, Secretary of the Advisory Board on requisitioning, wrote to the claimant advising that a hearing of the Board would be held June 10th 1942. There is no evidence before me to show that the charter hire of the vessel was determined, If it was determined, the claimant was not advised of the rate fixed. He has testified that the charter rate was $10.00 per day.

The vessel appears to have been sold by the claimant to the Director of Marine Services as at July 31st 1942, and will therefore have been held under charter for a period of 91 days. I conclude from consideration of the claimant's evidence and the documents filed before me that a contract was made for charter of this vessel at a reasonable rate which I conclude on the evidence was $10.00 per day. I consider that the claimant has established prima facie liability on the part of the Director of Marine Services for charter hire in the sum of $910.00.

This vessel is shewn to have been appraised in April 1942 at the sum of $3750.00 by an appraiser appointed for the purpose by the Japanese Fishing Vessels Disposal Committee. Apart from a memorandum filed by Counsel for

See copy of letter attached.

the Government to the effect that the appraisal at this price was made, there is no other material before me to support it. The claimant alleges that the vessel had a fair market value at the date of sale of $4000.00.

I consider that the claimant has established prima facie a liability by the Director of Marine Services on the sale of the vessel in the sum of $250.00.

The claimant further alleges that there was delivered to the Navy, upon surrender of his vessel, equipment to the value of $392.97 (vide Exhibit 9, Claim No.43). It does not appear that compensation was paid to him for such equipment. I consider that the claimant has established prima facie a liability on the part of the Government of $392.97 in respect of this equipment.

The total prima facie liability established - $1552.97.

H. I. BIRD

Commissioner.

April 4th 1950.

506 Royal Bank Building,
Vancouver, B.C.,
June 27, 1950.

1458

K. W. Wright, Esq.,
Chief Counsel,
Office of the Custodian,
Victoria Building,
7 O'Connor St.,
Ottawa, Ont.

Dear Mr. Wright: Re: Ukichi NITSUI - Case No. 43.

Special Report on claim relating to a Fishing Vessel held by the Commissioner to be outside the Terms of Reference.

The above is one of the "16 Special Recommendations" made by the Commissioner. In the Report he suggests that a prima facie claim was established as follows:

Charter hire	$910.00
Loss by sale of vessel	250.00
Loss of equipment	392.97
Total	$1552.97

We have pointed out to the Commissioner that the matter of equipment was dealt with by himself and that he recommended awards for the sum of $156.70 and $31.30 to cover this claim. These amounts are shown under Case 43 on Appendix I of "Recommendations for Payment of Awards."

Mr. Justice Bird desires me to draw this to the attention of Justice Department so that they may amend his Special Report on this case by deleting the last paragraph,-

by the Government although the claimant supplied the proper Government officials with the necessary information upon request.

Respectfully submitted.

"R.J.McMaster"

Counsel for the Claimants represented through the Co-operative Committee.

"The claimant further alleges that there was delivered to the Navy, upon surrender of his vessel, equipment to the value of $392.97 (vide Exhibit 9, Claim No. 43). It does not appear that compensation was paid to him for such equipment. I consider that the claimant has established prima facie a liability on the part of the Government of $392.97 in respect of this equipment."

The final sentence should then read "The total prima facie liability established - $1160.00.

Yours very truly,

F. G. Shear,
Director.

FGS/GN

by the Government although the claimant supplied the proper Government officials with the necessary information upon request.

Respectfully submitted.

"R.J.McMaster"

Counsel for the Claimants represented through the Co-operative Committee.

February 22, 1950.

Mr. Justice H. I. Bird,
Commissioner,
Japanese Property Claims Commission,
Court House,
Vancouver, B. C.

Re: Case 43 - Ukichi NITSUI.
Claim for Charter money.

This claim relates to the vessel "Silver Spring"which was appraised upon the instructions of the J.F.V.D.C. for $3750. and was requisitioned for charter by the R.C.A.F. in April, 1942. The vessel was subsequently requisitioned for purchase. We are advised by Government Counsel that the appraisal was made as of the date of taking for charter.

The boat was requisitioned for purchase on July 27th, 1942 and therefore was effectively under the requisition for charter for a period of 107 days. The claimant gave evidence that prior to evacuation he had chartered this boat atfrom $10 to $12 per day on a bare boat basis. Assuming the rate was $10.00 per day the charter monies ought to have been fixed at $1,070. We would suggest that it would be proper to deduct therefrom depreciation on the basis of 5% per annum based on the valuation obtained by the Government which would amount to $57.70 and that there ought to have been paid to the claimant the sum of $1,012.30 as compensation for the charter.

In this case as in other cases of requisition for charter, the charter rate apparently was never fixed by the Government although the claimant supplied the proper Government officials with the necessary information upon request.

Respectfully submitted.

"R.J.McMaster"

Counsel for the Claimants represented through the Co-operative Committee.

SPECIAL REPORT

CLAIM NO. 142 - Zennosuke INOUYE

This claim was made in respect of an 80 acre parcel of farm land situate in the Municipality of Surrey. It was sold by the Custodian to the Director, Veterans Land Act, the selling price being based upon an appraisal made by the Soldiers Settlement Board valuators at $3980.00.

Upon the presentation of the claim at Vernon, B.C., it appeared that the claimant was a Canadian Veteran of the 1914-18 war, who served for approximately 2 years in the 52nd Battalion C.E.F., and was wounded on the Somme. Upon his discharge from the Army, he took up the farm which is the subject of this claim, under the provisions of the Soldiers Settlement Act, developed the property, and lived thereon for more than 20 years until he was evacuated as a person of Japanese origin in the Spring of 1942.

I immediately reported these circumstances to the Minister of Veterans Affairs. Investigation by his Department established the fact that the farm had not been re-sold by the D.V.L.A., and as a result the farm was restored to the claimant, who is now in occupation.

Counsel for the claimant now informs me that the property suffered abnormal depreciation in the period of 7 years during which it was held by the D.V.L.A. He therefore requests that compensation be paid to the claimant.

The extent of the depreciation is estimated by Fred M. Clement, former Dean of Agriculture at the University of British Columbia, at from $2000.00 to $2500.00. I make no comment upon the report which is attached hereto, other than to say that Dean Clement has made many examinations of farm lands, the subject of claims which have been considered on this Inquiry. He testified in regard to many of these claims. I have found the information furnished by him most reliable

and helpful in determining fair market value at the date of sale by the Custodian.

I conclude from Dean Clement's report that the claimant has suffered substantial loss in respect to the farm property, as a result of his evacuation.

H. I. BIRD

Commissioner.

COPY.

CLEMENT CONSULTING SERVICES LTD.

March 10, 1950.

Messrs. Campbell Brazier & Co.,
675 West Hastings St.,
Vancouver, B.C.

Japanese Claims Case No.142 Z. Inouye

In accordance with your instructions we have examined the property described on Japanese Lands Photostat No.J.L. 653. We present herewith our findings and our estimate of the depreciation which appears to have taken place since the Farm Appraisal Report was prepared in July, 1942.

The owner operator is a veteran of World War I and is at present resting in Shaughnessy Hospital. He was evacuated in the winter of 1941-42 and the folding was appraised July 6, 1942.

According to the Photostat there were berry, currant, asparagus, rhubarb and tree plantings as follows:

6.29 acres of Strawberries
2.3 " " rhubarb
1.2 " " raspberries
.23 " " asparagus
2.0 " " currants

On the ten acre piece being negotiated with Mr.K.Hori but still registered in the name of Mr.Inouye there were

3.6 acres of orchard
2 " " strawberries

This latter ten acres seems to have been re-incorporated into the 80 acre block. The original appraisal includes the two parcels in one valuation and this report refers to the entire 80 acres. We could verify only the presence of currant bushes and trees. The buildings are as described except for one which is specified to be 21' x 36'. This building has burned down and we confirm only the building scar.

We note two statements appearing on the Photostat. "It is now being worked by a tenant who is doing a fair job only." Noxious weeds "not bad, some thistles and a little couch grass." The owner has now been back on the property for a year and in that time careful cultivation has brought many couch grass roots to the surface of the ground. Again quoting from the Photostat "there are 60 odd trees, apple, pear, plum and cherry, these have been well started and should do well enough with continued care." At the present time about 40 of the trees have been taken out because they are dead. The balance are being pruned and given some care.

The ditches have had to be re-opened and at the present time are working well. The rail snake-fence on the Sandell Road has fallen down and largely disappeared.

What seems to have been house number 324 Sandell Road on is not the property but adjoins it on the north and is not owned by Mr.Inouye. The house described as 1½ storeys, 21' x 36' and valued at $360.00 on the photostat burned down (in March 1949 we believe) just prior to Mr.Inouye's return to the property. We are advised that he received insurance money for it.

The forcing shed described as 20' x 60' and built of wood in fair repair, was, we think, considerably undervalued. No mention is made of the second storey which is divided into four rooms, each about 15' x 16'. This storey was used, we are advised, as pickers quarters during the harvest season. It has good floors and board walls. There is some tongue and groove lumber, electric lights and windows. At some time in the past few years the four rooms were used, three for chickens and one for storage. The rooms have not yet been cleaned up and we estimate that not less than $200.00 will be needed to do the job.

The house specified to be 18 x 20 with an addition 12 x 20 and valued at $375.00 was not in livable condition on re-occupation by Mr.Inouye. We are advised that many of the interior boards had disappeared and that the building was uninhabitable. Hardly more than a shell was left. We are advised that Mr.Inouye has spent upwards of $1000.00 in making the dwelling useful. It is now quite a safisfactory house and we believe that the estimate of $1000.00 spent is possibly somewhat conservative.

The forcing beds in the rhubarb house have had to be rebuilt at a cost of about $100.00 for materials.

Mr.Inouye found no rhubarb or strawberry plants left on the property and these had to be purchased in order to start new plantings. We examined the large cleared area bordering the Sandell Road and can report that on the southern part of the holding there is now only a weedy sod where strawberries are shown in the Photostat. We are advised that the entire cleared area was a matted grass field when Mr.Inouye returned to the property. Berry plants for re-setting have now been purchased for 1¢ per plant and one lot was purchased at $6.00 per 1000, Mr.Inouye being responsible for digging and removing the plants. We estimate that about $200.00 has been spent for the new strawberries set out. New rhubarb plants have been obtained and planted. We estimate their worth at something less than $200.00 - not including labour for digging.

There were no crops and no sales in 1949 from this property.

Mr.Inouye did grow 10 acres of potatoes on leased land, these are not yet all sold. About 1000 rhubarb roots were purchased for forcing and returns from these are now just starting. Except for the time spent on the potatoes and forced rhubarb mentioned it appears that the father, two grown sons and a daughter have devoted their time to clearing up the property, opening ditches, repairing buildings and to planting and caring for 3 acres of strawberries and 3 acres of rhubarb. These are now in fair condition and will yield some return this year. The plantings will not reach full production until 1951. One full season of time has been required to restore the property and plantings to a part of their former level.

From our observations and from discussions with the operator we estimate the value of the property to have been about $7200.00 in 1942.

There are three possible approaches to a determination of the depreciation of the property: i.e. depreciation beyond the ordinary loss to use and occupancy.

1. Direct Estimation

Repairing ditches	$200.00
Cleaning weeds and couch grass 26 acres at $20.00	520.00
Lost fruit trees	35.00
Lost fence	100.00
Burned house, less insurance	60.00
Repair dwelling	1000.00
Cleaning pickers quarters	200.00
Rhubarb and strawberry plants	400.00
	$2515.00

2. Time & Labour Estimation

3 men at $100.00 per month per man for 6 months	$1800.00
Purchase of planting materials	400.00
	$2200.00

3. The ledger of the Surrey Berry Growers Co-Operative Association for 1941 indicates that $2268.82 was marketed through their organization in 1941. There is no reason to believe that, had the farm been properly cared for between 1942 and 1948, the dollar return for marketings in 1949 would have been less. As it was the 1949 season was devoted entirely to restoration of the property.

We estimate that the minimum loss to extraordinary circumstances is $2300.00. This estimation does not take into account commodity price increases between 1942 and 1948. The price index for farm products has risen from 127 to 219 within the periods. Adjustment of the recorded marketings suggests that if farm production had remained steady on this holding-then about $3911.00 would have been marketed in 1949. The $2300.00 estimate is therefore a very conservative estimation of the loss.

It is interesting to note that of all the former Japanese holdings which this firm has examined in the past 18 months and which are being operated as small fruit farms, this property is showing the best progress. The occupant has made a real start towards the establishment of an intensive small fruit farm.

All of which is respectfully submitted.

CLEMENT CONSULTING SERVICES LTD.

J.W.CLEMENT

(5)

CLAIM No.143 - MRS. MASUYE JINNOUCHI

1. The claimant is named as sole beneficiary in two so-called policies of insurance covering the life of Mrs. Hatsu Jinnai. The claimant alleges that the Custodian neglected, notwithstanding directions given on her behalf, to pay certain assessments on these policies which matured in 1942 and 1943, in consequence of which both policies lapsed. She now claims to have lost the sum of $5500.00, being the total of the benefits allegedly payable under the said policies upon the death of Hatsu Jinnai, which is said to have occurred on October 9th, 1947.

Therefore she seeks to recover from the Custodian the said sum of $5500.00, i.e., a loss of personal property being a chose in action consisting of the benefits which would have accrued to her if the policies had been kept in force.

2. I rejected the claim upon the ground that it involved a claim for damages arising out of the alleged negligence of the Custodian or his agent, and ~~I therefore rejected the claim~~ consideration of such a claim is not authorized under the Terms of Reference, i.e., Order-in-Council P.C. 1810 of July 18th, 1947, amended by P.C.3737 of September 19th,1947.

However, I directed the claimant to lead evidence in support of the claim, so that a special report might be made thereon to the Governor-General in Council.

3. Evidence was adduced to support the following propositions:

(a) That the claimant was entitled as beneficiary named in two mutual benefit association certificates, to benefits described therein, vide,

Exhibits 10 and 11, which read in part as follows:

Exhibit 10: That the Provident Mutual Benefit Association will pay to Masuye Jinnouchi on the death of Hatsu Jinnai "an amount equal to the amount received by virtue of an assessment of $1.00 on each and every member in good standing at the time of the death of Hatsu Jinnai, such amount not to exceed $3000.00".

Ex XII
That British Columbia Mutual Benefit Association, under membership certificate No.A-11543 will pay Masuye Jinnouchi an amount equal to the amount received by virtue of an assessment of $1.00 "from each and every member in good standing at the time of death of Hatsu Jinnai, and that if and when the membership exceeds 2500 the said beneficiary shall receive a specified sum from each and every member in good standing as aforesaid, namely, the proportion of $1.00 which 2500 bears to the membership of the Association in actual members".

(c) That Hatsu Jinnai's membership in these Associations was maintained in good standing up to December 31st, 1942; periodic assessments having been paid by the claimant.

(d) That upon the claimant's evacuation she requested one Tagashira to arrange for payment of future assessments, but had no communication on the subject with the Custodian or his agent.

(e) That Tagashira instructed H.D.Campbell to pay assessments made on these policies subsequent to December, 1942, from funds held by Campbell or the Custodian

for the account of Tagashira. The instructions relied upon are contained in an undated memorandum (vide Exhibit 4) in which the two policies are mentioned, inter alia, under the following caption: "Will you kindly settle the following amounts for me from funds on hand to my credit from time to time as they fall due". No amount is shown opposite these two policies. The memorandum (exhibit 4) was delivered on December 19th or 20th by Tagashira to Campbell's office, who at once sent a copy to the Custodian (vide pp.133 to 140 transcript in claim No.165).

(f) That Campbell in the period of six months or more subsequent to September 30th, 1942, acted as the agent of the Custodian (vide Exhibit 16) in relation to Tagashira's wholesale tobacco business, and also as agent for Tagashira in relation to his affairs generally.

(g) That on or prior to December 20th,1942, both the claimant and Tagashira were evacuated from Vancouver and such property as they were unable to take with them was vested in the Custodian upon such evacuation.

(h) That on December 20th,1942, and for four months thereafter Campbell or the Custodian held for the account of Tagashira sufficient money to meet assessments made in respect of the two policies; that on February 2nd, 1943, Campbell paid an assessment of $7.00 made in respect of Provident Mutual Benefit Association policy certificate No.4042, but no payment was made in respect of B.C.Mutual Benefit Association certificate No. A-11543. Campbell's evidence is open to the interpretation that his office attempted to pay the premium on the latter policy in February,

1943, but the Association refused to accept it since the policy had lapsed.

(i) That one of the policies of insurance, i.e., No.4042 lapsed for non-payment of assessment in March,1943; the other, i.e., A-11543,lapsed on January 18th,1943.

4. Counsel for the claimant sought to prove that the insured Hatsu Jinnai died on October 9th,1947, by production of Exhibit 15, being what purports to be a death certificate issued by the Mayor of Mise-Mura Kanzaki-Gun Saga-Ken,Japan. This document was not identified satisfactorily, nor am I able to determine from examination of the translation of the Japanese document that it relates to Hatsu Jinnai,the person named as the insured in the policies, the subject of this claim.

Counsel for the Government introduced in evidence copies of letters marked respectively as Exhibits 12,5,6 and 8, being correspondence written by Campbell to Tagashira on January 19th, 1943, February 3rd, March 8th and April 13th, 1943, wherein Campbell requested authority to pay future assessments which might become payable in respect of the Hatsu Jinnai policies. I conclude from his evidence that Campbell at the date of this correspondence either was unaware of or had forgotten the instructions given on December 20th to pay premiums. On cross-examination Campbell acknowledged that on examination of his file it was apparent that at the time these letters and telegrams were dispatched he already had the authority which he was requesting in that correspondence.

The evidence outlined above, in my judgment, supports the following conclusion:

1. That the policies of insurance were in good standing at December 20th,1942.

2. That the policies provided for the benefits outlined in paragraph 3 (a).

3. That on December 20th, 1942, Tagashira, on behalf of the claimant, instructed H.D.Campbell to pay maturing assessments on the policies mentioned in No.2.

4. That Campbell forthwith thereafter gave notice to the Custodian of the receipt of the instructions mentioned in No.3.

5. That on February 1st, 1943, Campbell paid a premium of $7.00 on the first-mentioned policy.

6. That Campbell had sufficient funds in his hands,the property of Tagashira, to pay such assessments made in respect of those policies.

7. That no subsequent assessments were paid either by Campbell or the Custodian.

8. That as a result of non-payment of the premiums these policies lapsed.

9. That in the matter of these policies Campbell acted primarily as agent for the Custodian in whom Tagashira's assets were vested; and that Tagashira had reason to believe, and did believe, that Campbell then acted in such capacity.

10. It is asserted by the claimant that Hatsu Jinnai died on October 9th, 1947, but no sufficient proof thereof has been adduced.

11. No sufficient evidence has been adduced from which to determine whether, if the policies had been maintained in full force to the date of Hatsu Jinnai's death (if she be dead), recovery could have been made under these policies, and, if so, in what amount.

In my opinion cancellation of these policies resulted from the failure of the Custodian or of his agent Campbell to pay assessments pursuant to instructions given Campbell by Tagashira, a copy of which was sent to and received by the Custodian in December, 1942, which assessments were made subsequent to December 20th 1942.

In the absence of proof of the factors mentioned in paragfaphs 10 and 11 above, it has not been established that the claimant suffered the alleged, or any loss.

H. J. Friel

Commissioner.

February 1st 1950.

(6)

CLAIM NO. 211 - Kunimatsu SAIMOTO

SPECIAL REPORT ON CLAIM RELATING TO A FISHING VESSEL HELD BY THE COMMISSIONER TO BE OUTSIDE THE TERMS OF REFERENCE.

This claim is made in respect to a 60 h.p. Diesel powered fishing vessel used as a fish packer, gross tonnage 39.01 tons, net tonnage 26.53 tons. The value of the vessel when requisitioned by the Director of Marine Services in February 1942 was estimated by the claimant at $10,000.00 (vide Exhibit 14, Claim No.211). The vessel is said by the claimant to have been requisitioned for charter by the Department of Munitions and Supply about February 15th 1942. His evidence is verified to some extent by a letter from W.G.Stickney, Secretary of the Advisory Board on requisitioning, under date of April 30th 1942 (vide Exhibit 9, Claim No.211), as well as a letter from the Commanding Officer Auxiliary Vessels, H.M.C.S. "GIVENCHY" to A.E.McMaster, Japanese Fishing Vessels Disposal Committee, under date of 19th May 1942 (vide Exhibit 10).

The vessel was appraised upon instructions of the J.F.V.D.C. at $8750.00 at the time when the same was requisitioned for charter, and subsequently was requisitioned for purchase by the same Department about August 1st 1942.

The vessel consequently was held by the Director, of Munitions and Supply, under charter for 168 days. The claimant testified that his boat was normally chartered prior to evacuation at $32.00 per day, bare boat. Counsel for the claimant has suggested that a reasonable charter rate would have been $15.00 per day, or a total of $2520.00, from which sum he concedes that a depreciation allowance of 5% might properly be deducted, leaving a

balance of $2318.65.

In the absence of any documentary evidence to establish the fact of charter on a bare boat basis, it is not possible for me to reach any firm conclusion as to what understanding existed between the Department of Munitions and Supply and the claimant. If it appeared that there was a charter on a bare boat basis, I consider that the sum claimed by the claimant for the period under charter, i.e. $2318.65, is fair and reasonable.

The claimant further seeks to recover gear which is shewn to have been missing from the vessel at the time when she was requisitioned for purchase. An inventory of this lost gear, verified by the Commanding Officer, Auxiliary Vessels, is found in Exhibits 10 and 11, Claim No.211.

Counsel seeks to recover on the basis of the overall recommendation made in the general investigation 45% of the claim value of this gear, i.e. $80.82. I consider that the loss of this gear is established on the material filed as Exhibit 10, and under the circumstances that the claim of $80.82 is fair and reasonable.

H. I. BIRD
Commissioner.

April 4th 1950.

Mr. Justice H. I. Bird,
Commissioner,
Japanese Property Claims
Commission,
Court House,
Vancouver, B. C.

Re: Case 211 - Kunimatsu SAIMOTO.
Claim for charter money.

This claim relates to the vessel "May S." which was appraised upon the instructions of the J.F.V.D.C. for $8,750.00 and was requisitioned for charter by the Department of Munitions and Supply on or about the 15th day of February, 1942. The vessel was subsequently requisitioned for purchase by the same Department on or about August 1st, 1942. We are advised by Government Counsel that the appraisal was made as of the date of taking for charter.

The boat was requisitioned for purchase on or about August 1st, 1942 and therefore was effectively under the requisition for charter for a period of 168 days. The claimant gave evidence that prior to evacuation he had chartered his boat at a rate of $32.00 per day bare boat when used for certain purposes and at a rate of $25.00 per day when used for other purposes. However, when chartered at $25.00 a day it included two crew men. We would therefore respectfully suggest that the rate should have been fixed at at least $15.00 per day which would have resulted in the payment of charter money in the amount of $2520. We would suggest that it would be proper to deduct therefrom depreciation at the rate of 5% per annum based on the valuation obtained from the Government which would amount to $201.35 and that there ought to have been paid to the claimant the sum of $2318.65 as compensation for the charter.

In this case as in other cases of requisition for charter, the charter rate apparently was never fixed by the Government.

In this case there also arises the factor that an inventory was taken by the Navy in or about March, 1942 and it was ascertained that there was gear missing which the claimant values at $179.60. While there may be some question as to whether it can be said that this gear vested in the Custodian it does appear that the claimant should have been paid compensation for this loss while in the hands of the Government and I would respectfully submit that it would be proper for your Lordship to recommend to the Executive Council payment to the claimant of at least 45% of the claim value of this gear which has been the over-all basis of dealing with lost gear in relation to other cases where the boat had clearly vested in the Custodian.

Respectfully submitted.

"R.J.McMaster"
Counsel for the claimants represented by the Co-operative Committee.

77

(1)

not in

CLAIM NO. 341 - Nobukichi TAKAI

A claim was not filed by this claimant, due to the fact that he had been advised by his Counsel that his claim did not fall within the terms of reference. However, the claimant appeared before His Honour Judge Dawson, Sub-Commissioner, at Grand Forks.

It appears that the claimant and his family were required to vacate his premises at Egmont, B.C., an isolated fishing community on the Coast of British Columbia, on 24 hours notice. The transcript of his evidence, particularly at page 5, shows that he valued his general store, stock-in-trade, household goods and fish buying float at $5000.00, and 2 floats at $1200.00, totalling $6200.00. In view of the fact that he was required to vacate on such short notice, and his belief that the property would be raided by neighboring Indians if left alone, he effected a sale to Queen Charlotte Fisheries Ltd. of all his property situate at Egmont, for the sum of $2000.00. The Custodian has no information whatever in regard to this matter. Consequently, there is no material before me other than the statement of the claimant.

I have directed Counsel for the claimant to endeavor to obtain some information by letter from Queen Charlotte Fisheries Ltd., with a view to incorporating that letter in this report.

A.L. Pivet
Comm

(8)

CLAIM No.483 - WESTERN CANADA HOP CO-OPERATIVE UNION

This organization, the members of which were persons of the Japanese race, filed a claim in respect of a two-acre parcel of land situate near Mission, B.C., being the north west quarter of section 20, Township 17, Block 3, upon which the Union had erected during 1941 a drying plant for the treatment of hops. The structure is said to have cost approximately $7500.00.

The plant had been erected with a view to treatment of hops cultivated by persons of the Japanese race who operated farm land in the area.

The land formerly occupied by these people was not used for hop production subsequent to their evacuation. Thereafter it was found that the plant could not be used for the purpose for which it had been designed, and apparently it could not be adapted to other productive use.

In the result the Custodian was unable to find a market for the property at a price commensurate with the investment which had been made in it. The only offer received, being for the sum of $2000.00, was rejected as insufficient.

No doubt it is now open to the owners to resume possession, although in the absence of any hop production in the immediate area, the owners will likewise be unable to realize from it anything proportionate to the capital outlay.

I reject the claim as one which was not authorized under the Terms of Reference. However, Counsel for the claimants has asked that a special report be made to the Executive Council in view of the circumstances described above.

Such material as is available supports the conclusion that the claimants have suffered a substantial loss in consequence of the evacuation policy. At the time the claim was presented on September 30th, 1949, Counsel for the claimants urged that a recommendation should be made for payment to the claimants of not less than $4000.00. I am satisfied that the claimants have suffered a loss of not less than that sum.

OCTOBER 28th, 1949.

COMMISSIONER

CLAIM NO.483 - WESTERN CANADA HOP CO-OPERATIVE UNION

This organization of persons of the Japanese race filed a claim in respect of 2 acres of land situate near Mission, B.C., being the North West 1/4 Section 20, Township 17, Block 3, upon which the Union had erected, at a cost of approximately $7500.00, a drying plant for the drying of hops.

The Custodian was unable to sell the property. Presumably it is now open to the owners to resume possession.

I rejected the claim as one which was not authorized under the terms of reference. However, I have been asked by Counsel for the claimants to report the situation to the Executive Council.

I am advised by the Custodian that this plant was erected in or about the year 1941, and probably cost about $7000.00. The Custodian received an offer of $2000.00, which was rejected.

Such material as there is before me supports the conclusion that the claimants suffered a considerable loss in consequence of the carrying out of the evacuation policy. I have no sufficient material before me on which to base any recommendation. Counsel for the claimants proposed, at the time the claim was presented on September 30th 1949, that the claimant should be paid $4000.00.

"H. I. BIRD"
Commissioner.

October 28th 1949.

(9)

CLAIM NO. 491 - Denjiro OKABE

Special compensation is sought by this claimant in respect of a parcel of land held by him under lease dated April 1st 1941, for a term of 8 years (vide Exhibit 12).

It appears from the testimony of the claimant that he had cultivated this property and had planted thereon 5000 rhubarb roots at a cost of $1625.00.

It does not appear that the leasehold was sold or otherwise dealt with by the Custodian, the lease having terminated in consequence of the claimant's evacuation.

Fred M. Clement, formerly Dean of Agriculture, University of British Columbia, has reported that the plantation had a value of $400.00 for the unexpired portion of the term.

Since it has not been shewn that the claimant's interest was sold by the Custodian, I have held that the claim does not fall within the terms of reference. However, on Counsel's request, I have stated that I would report the situation to the Governor-General in Council, since it is apparent that, due to the evacuation, the claimant has suffered a substantial loss.

In view of Dean Clement's evidence, it is not possible to say that the loss is greater than the sum of $400.00, although the claimant's evidence would make it appear that he had a capital investment of not less than $1600.00 in the property.

Since the claim is not one open for consideration, I refrain from any recommendation.

H.I.BIRD
Commissioner.

(10)

CLAIM NO. 645 - Zentaro ARIZONO

This claim is made in respect of a fishing boat "HINATA I" which had been left by the claimant at the Suyehiro Boat Works, Cow Bay, near Prince Rupert, sometime prior to December 1941.

The evidence discloses that at the date the claimant first reported to the R.C.M.P. he was temporarily resident in Vancouver. He was not permitted to return to Prince Rupert. Consequently he reported the vessel as having been left at the boat works above mentioned, near Prince Rupert, in his J.P. form made April 9th 1942. It was then his belief that the vessel had been taken into custody of the Navy, in which it now appears that he was wrong.

The Executive Assistant of the Japanese Fishing Vessels Disposal Committee received a report under date of October 29th 1942 from the Canadian Fishing Company, marked as "Exhibit 7" on the Inquiry, to the effect that this vessel had been left at Cow Bay and was "in such shape that it was "not advisable to move it, as we could see very little salvage "had it been taken from where it was beached. Each tide "was going in and out, making the engine and boat quite "useless. This condition was given to Commander Reed's "Department verbally by the writer upon his arrival in "Prince Rupert about the end of April this year."

On the 27th November 1942 a report was made by F.H.Smyley, Extended Defence Officer, to the Commanding Officer H.M.C.S. CHATHAM, Prince Rupert, B.C., to the effect that the claimant's vessel was not taken over by the Navy as "the boat is a complete wreck and the engine has been "removed."

It appears that the wreck was sold by the Custodian for the sum of $10.00 in June 1943.

It is apparent from the foregoing that the Custodian had no direct responsibility for this vessel until the same was vested in that Department as at August 1st 1942. By that time it had so deteriorated as to be virtually valueless. However, it does appear that the location of the vessel was reported to the Custodian by the claimant in April 1942, and that the latter immediately communicated with the Executive Assistant to the Japanese Fishing Vessels Disposal Committee, resulting in a report made verbally in the same month. The condition of the vessel at that time was no better than as described in the reports mentioned.

In the circumstances I find it impossible to reach any conclusion as to the value of the vessel at the date of the claimant's evacuation, but the only evidence of value indicates that it then had substantially greater value than at the date when it was sold. I consequently have rejected the claim, but at Counsel's request file this report.

H. I. BIRD
Commissioner.

(11)

claim # 693.

file. 4960

CLAIM NO. 693 - Jinnatsu MATSUSHITA

This claimant also claims in respect of a rhubarb plantation on 2½ acres of land held under lease by the claimant for a term of 6 years commencing April 1st 1941. The situation here is identical with that discussed in Claim No.491 (Denjiro Okabe). Dean Clement values the plantation for the balance of the term at $150.00.

Since the claim does not fall within the terms of reference, no recommendation is made.

H. I. BIRD
Commissioner.

Case 1396

UNION TRADING COMPANY LTD.

This corporation owned certain fishing vessels which were surrendered to the Navy soon after December 7th 1941, pursuant to Orders in Council relating to Japanese owned fishing vessels. The great majority of the shares of the corporation were then held by a Japanese, Toyojuro Nakamoto, and his Japanese wife.

The Director of Marine Services, by telegram dated December 31st 1941, formally requisitioned two of the vessels,- M/V "BARCLAY SOUND" and M/V "WESTERN MAID" for hire on a bare boat basis, the hire rate to be fixed later, as appears from a telegram marked as "Exhibit 1" in Claim #1396. However, possession actually had been taken by the D. M. S. on December 9th 1941.

These vessels remained under charter to the Director, until September 15th 1942, when both vessels were requisitioned for purchase by a department of the Government, and later were sold to private purchasers through the Japanese Fishing Vessels Disposal Committee.

The charter rate for these vessels was never fixed, as provided by the telegram (Exhibit 1), and no payment for charter hire was ever made.

The evidence discloses that prior to December 9th 1941, when the vessels were requisitioned by the D. M. S., the claimant had chartered these vessels to others on a bare boat basis, at $20.00 and $17.00 per day respectively. Such rates, in my opinion, were fair and reasonable.

The claimant established further that it had installed on these vessels certain articles of equipment, at a cost of $404.30, none of which had been used for more than one month, all of which had been removed from the vessels while in the custody of the Navy and not subsequently returned to the claimant.

In my judgment the missing equipment had a market value of $300.00 at the date of its removal by the Navy.

The claimant presented an additional claim for loss sustained, by virtue of the termination of existing charters of M/V "B.C. PRIDE" and M/V "MARMAE" at $40.00 and $25.00 per day respectively, caused by the seizure of the vessels by the Navy on December 9th 1941.

It was shewn that the vessels were later sold by the claimant, with the consent of officials of the Navy, to the former charterers of the vessels, namely,- Nelson Bros. Limited, fish packers, on December 19th 1941 and March 17th 1942 respectively.

The claim now made in relation to the latter vessels is for loss of charter hire between the date of seizure and the date of sale, since it is alleged that the vessels subsequent to seizure by the Navy were permitted by the Navy to be used by the former charterers, Nelson Bros. Limited, who paid no charter fees for such use.

After hearing the evidence in support of the claim, I held that the claim as presented did not fall within the terms of reference laid down in the several Orders in Council relating to this Enquiry. However, I consider that in the circumstances the claimant has a justifiable claim for charter hire in respect of the M/V "BARCLAY SOUND" and M/V "WESTERN MAID", covering the period before mentioned, as well as for the value of the missing equipment as at the date of removal by the Navy. This conclusion is founded upon the telegram of the Director of Marine Services (Exhibit 1) and the subsequent use of the vessel by the D. M. S. which, in my opinion, constituted a contract under which the D. M. S. must be held to have agreed to pay a reasonable charter hire for the period of use which, from the evidence, I would assess at $20.00 and $17.00 per diem respectively.

I therefore recommend payment to the claimant of the sum of $10,660.00, made up as follows:

1. Charter hire M/V "BARCLAY SOUND" December 9th 1941 to September 15th 1942, i.e., 280 days at $20.00 per diem - $5600.00

2. Charter hire M/V "WESTERN MAID" December 9th 1941 to September 15th 1942, i.e., 280 days at $17.00 per diem - 4760.00

3. Equipment losses - 300.00

$10,660.00

I make no recommendation in respect of loss of charter fees for M/V "B.C. PRIDE" or M/V "MARMAE", since the position of the claimant is no different from that of any other person of Japanese origin whose vessel or motor vehicle was required to be surrendered to a Government authority forthwith after the declaration of war. However, it is to be observed that Nelson Bros. Limited benefited by the seizure to the extent that the company had the use of these vessels for 10 days in the case of M/V "B.C. PRIDE" and for 96 days in the case of M/V "MARMAE", without payment of charter fees, due to the fact that charters existing at December 9th 1941 were terminated by the surrender, resulting in a corresponding loss to the claimant, amounting to $400.00 in the case of M/V "B.C. PRIDE" and $2400.00 on M/V "MARMAE".

In the result, Nelson Bros. Limited appear to have benefited at the expense of the claimant by way of unpaid charter fees in the sum of $2800.00, due to the action of the Naval authorities in seizing the vessels and handing the same over to Nelson Bros. Limited for use by them.

"H. I. BIRD
COMMISSIONER"

506 Royal Bank Bldg.,
Vancouver, B. C.,
June 27, 1950.

Enemy 101

K. W. Wright, Esq.,
Chief Counsel,
Office of the Custodian,
Victoria Building,
7 O'Connor St.,
Ottawa, Ont.

Dear Mr. Wright:

Re: Union Trading Company Ltd.
Claim No. 1396.

As I have not previously written directly to the Justice Department, I am writing asking if you will kindly take up the following matter with I presume, Mr. Olmsted.

The Commissioner wrote to Mr. D. T. Braidwood on February 2nd last and stated -

> "Since this claim has been held to be outside the terms of reference, no decision will be delivered. I have prepared a report to the Governor-General-in-Council, which will be sent forward with the principal report. If The Counsil decides to award any compensation, presumably the decision will be communicated to the claimant by the Clerk of the Privy Council."

Mr. Justice Bird tells me that he thinks he did make a special report on this case, but he has no copy of same, nor does this office. I am rather inclined to think the Commissioner overlooked the preparation of this report, as it does not form one of the "16 Special Recommendations".

Mr. Justice Bird has asked me to enquire if there is a special recommendation covering this case among the records sent to Ottawa, and if so, to obtain a copy. On the assumption that no such recommendation can be located, the Judge asks that

68 days ending February 13th 1942,

at $6.00 per day - 816.00

$ 3,876.00

the complete file of this case should be returned to us and I will deliver it to him so that if necessary he may be able to make a special report to Ottawa.

Yours very truly,

F. G. Shears,
Director.

FGS/GN

68 days ending February 13th 1942,

at $6.00 per day - 816.00

$ 3,876.00

(13)

File 11633

CLAIM NO.1401 - Chosuke NAKAMURA

The claimant was the owner of 6 motor vessels and 2 scows, all of which were engaged up to December 7th 1941 in the fishing industry of British Columbia. Upon direction of the Royal Canadian Navy, all of these vessels were delivered into Naval custody at or soon after the above date.

The claim is made up as follows:

1. To recover $14,387.50 alleged to be payable under contracts made between the claimant and the Director, Marine Services, for charter hire on a bare boat basis of 3 of the motor vessels, i.e.,

M/V "KUROSHIO") M/V "ARASHIO")	Charter hire from December 7th 1941 to August 26th 1942, being 262 days at $25. per day for each vessel -	$13,100.00
M/V "SMITH SOUND"	Charter hire for 7 months 11 days ending August 26th 1942, at $175.00 per month -	1,287.50
		$14,387.50

2. Loss of use of M/V "NOOTKA SOUND" between December 7th 1941 and January 14th 1942, and charter hire of the said vessel by the Director of Marine Services, from January 14th 1942 to February 13th 1942, i.e. 68 days, at $25.00 per day - $ 1,700.00

Loss of use of M/Vs "BROUGHTON I" and "ROSE N", 68 days ending February 13th 1942, at $10.00 per day - 1,360.00

Loss of use of Scows Nos.1 and 2, for 68 days ending February 13th 1942, at $6.00 per day - 816.00

$ 3,876.00

Should be 22070.-

3. To recover $22,170.00, being the difference between the alleged fair market value of M/Vs "ARASHIO", "KUROSHIO" and "SMITH SOUND" and the price at which the same were sold by the Japanese Fishing Vessels Disposal Committee;

4. To recover the amount of a repair account of $379.45 covering repairs made to M/V "ROSE N", in consequence of damage alleged to have been done to the vessel while in the custody of the Royal Canadian Navy;

5. To recover $1014.30, being the amount of commissions and survey fees alleged to have been improperly charged to the claimant by the Japanese Fishing Vessels Disposal Committee;

32000 / 22000 / 10000 — 16000 / 14100 / 1900.

32000 / 21830 / 10170

10000 / 10170 / 1900 / 22070 / 100

14387.50 / 3876.- / 22070. / 379.45 / 1014.30 / 41727.25

the total claim as above set out being for the sum of $41,827.25.

Consideration of this claim not authorized by terms of reference.

I rejected the claim upon its presentation before me, on the ground that the terms of reference did not authorize consideration of any such claim. Nevertheless, pursuant to direction given me, I proceeded to hear evidence in support of the claim, to the end that a special report might be made in regard to it.

Evidence in support of claim.

Head 1 of claim.

The testimony of the claimant shows that M/Vs "KUROSHIO" and "ARASHIO" were requisitioned for Naval Service on December 31st 1941, by the Director of Marine Services; that the vessels were delivered forthwith thereafter to the Commanding Officer, Pacific Coast, at Steveston, B.C., and were in the possession of the Director of Marine Services continuously thereafter until August 26th 1942, i.e. for 239 days, when these vessels were purchased by the Department of Munitions and Supply.

He stated that M/V "SMITH SOUND" was requisitioned for Naval service about the same time as the two vessels before

mentioned; was immediately delivered to the Royal Canadian Navy, pursuant to the requisition order; and remained in the possession of the Navy continuously until August 26th 1942, i.e. for a period of 239 days.

The following documents were proved and filed as Exhibits in support of the claimant's testimony:

Ex.3. Original telegram dated December 31st 1941, Director of Marine Services to C.Nakamura, reading in part as follows:

"..... Vessels KUROSHIO and ARASHIO are hereby requisitioned for Naval service to be delivered forthwith to Commanding Officer Pacific Coast at Steveston B.C. Stop. Vessels requisitioned for hire on bare boat basis and terms of charter hire will be determined later..... Inform undersigned date and hour vessels handed over."

Ex.4. Copy telegram December 31st 1941, C.Nakamura to Director of Marine Services, Ottawa, reading in part as follows:

"Naval authorities Vancouver notified 3 p.m. today that boats ARASHIO and KUROSHIO requisitioned for Naval service ..... We also turned over the SMITH SOUND to Naval authorities at Vancouver on December 15th..... Appreciate receiving your confirmation of charter as soon as possible."

Ex.5. Letter dated January 5th 1942, Director of Marine Services to C.Nakamura, confirming telegram of December 31st 1941 and reading in part as follows:

"An Advisory Board which sits periodically in Vancouver for the purpose of making recommendations on charter hire of requisitioned vessels to the undersigned, will be requested to take your vessel under consideration

"as soon as possible..... You will be informed of the time and place the Advisory Board will meet."

Signed "J.G.Macphail"

Ex.7. Original telegram, January 22nd 1942, Director of Marine Services to Chosuke Nakamura, reading in part as follows:

"Advisory Board which makes recommendations on valuations and rate charter hire requisitioned vessels meets 10 morning 26th..... Your vessel SMITH SOUND listed for consideration....."

Ex.8. Telegram dated February 20th 1942, Director of Marine Services to Chosuke Nakamura, reading in part as follows:

"Advisory Board which makes recommendations on valuations and rate charter hire requisitioned vessels meets 11 a.m. 23rd..... Your vessels ARASHIO and KUROSHIO listed for consideration....."

The claimant testified that he attended the meetings of the Advisory Board, of which notice was given by Exhibits 7 and 8, when the question of value of these vessels was debated, but the Board on each occasion informed him that no instructions had been given it to consider charter hire.

The claimant said that from time to time he requested various representatives of the Federal Government to implement the bargain for fixing charter hire of the "KUROSHIO" and "ARASHIO", but the charter rate was not fixed at any time.

The claimant produced a letter dated June 6th 1942, from the Director of Marine Services to his agents, Martin & Shannon, with a Charter Party enclosed, which documents were proved and filed as Exhibit 9. The Charter Party is dated June 5th 1942, and purports to be made between Chosuke Nakamura as Owner and His Majesty the King represented herein by the Minister of National Defence as

Ex.9.

Charterer, and reads in part:

> "The Owners agree to let and the Charterer agrees to hire the said ship (M/S SMITH SOUND) for the term of one calendar month certain and thence forward until the Minister of National Defence shall cause notice to be given to the Owners that she is discharged from His Majesty's service. Hire to commence on and from the day ..... the ship is placed at the disposal of the Charterer."

Charter hire is therein fixed at $175.00 per month and "pro rata for any fractional part of a month", ~~is~~ signed by the claimant and J.G.Macphail, Director of Marine Services.

The claimant said that the charter hire was fixed arbitrarily by the Director, no discussion of the charter rate having taken place at any time; further, that he signed the Charter Party unwillingly, because he considered that he had no alternative, although the charter rate for this vessel on a bare boat basis had been $15.00 per day.

The claimant, as well as one David W. Wilson, then Manager of North Shore Packing Co.Ltd., testified that M/Vs "KUROSHIO" and "ARASHIO" were under charter to that company at the time the vessels were requisitioned as aforesaid, the bare boat charter rate for each vessel having been fixed at $25.00 per day by agreements between the parties, which were produced and marked as Exhibit 2. Ex.2. Both witnesses said that the figure named was the going rate of charter for each vessel as at the date when the same were requisitioned for charter by the Director of Marine Services.

The claimant testified that M/Vs "KUROSHIO" and "ARASHIO" were built to his order in 1939, at a cost of $25,000.00 each, which figure does not include certain equipment installed on each vessel prior to the date of requisition, the cost of which the claimant was unable to furnish; further, that the M/V "SMITH SOUND" was built to

the order of the claimant in 1940 at a cost of $15,000.00.

Wilson testified that the going rate of charter for M/V "SMITH SOUND" at the date of requisition was $15.00 per day.

Head 2 of claim.

The claimant further said that M/V "NOOTKA SOUND" had been surrendered to the Royal Canadian Navy on December 7th 1941, and was held by the Navy until January 14th 1942, when the vessel was requisitioned by the Director of Marine Services, pursuant to his telegram to the claimant dated January 14th, filed as Exhibit 6, whichreads in part as follows:

Ex.6. "By authority of power delegated to me by Minister of National Defence ..... vessel NOOTKA SOUND is hereby requisitioned for Naval service to be delivered forthwith to Commanding Officer Pacific Coast at Steveston B.C. stop. Vessel requisitioned for hire on bare boat basis and terms of charter hire will be determined later....."

This vessel was held under charter until February 13th 1942, when the vessel was delivered to North Shore Packing Co.Ltd., having been sold by the claimant to that company along with M/Vs "BROUGHTON NO.1" and "ROSE N." and SCOWS No.1 and No.2, pursuant to an agreement for sale made between the parties

Ex.10. under date of January 30th 1941. A copy of the Agreement covering the sale, signed by the claimant, was identified and filed as Exhibit 10.

The claimant testified that the charter rate for this vessel was not fixed at any time and charter money was not paid for the vessel's use.

The last mentioned vessels and scows were held in the custody of the Royal Canadian Navy from the date of their surrender by the claimant to the date of delivery to the packing company. The evidence does not show that these

vessels were requisitioned for hire by any Government department.

Head 3 of claim.

On August 26th 1942, 3 of the above mentioned Motor Vessels were purchased by the Department of Munitions and Supply, at the prices following:

M/V "KUROSHIO"	-	$22,000.00
M/V "ARASHIO"	-	21,830.00
M/V "SMITH SOUND"	-	14,100.00

The claimant testified that the fair market value of M/Vs "KUROSHIO" and "ARASHIO" in December 1941 was $32,000.00 each; that of M/V "SMITH SOUND" was $16,000.00.

The claimant stated that the sale prices in each instance were fixed by an appraisal of the vessels made by Lloyds. He contends that these prices did not represent fair market value, and states that he was compelled to sell at the prices before mentioned by pressure brought upon him by the Japanese Fishing Vessels Disposal Committee.

Ex.13-17 inclus. In support of this assertion, he filed on the hearing correspondence exchanged between himself and the Committee between August 10th and August 26th 1942. This correspondence, together with the evidence of the claimant, discloses that he reluctantly acquiesced in sale at Lloyd's survey prices conditional upon the immediate payment of charter money earned to that date by these vessels. His letter to the Committee dated August 10th 1942 is to that effect.

The following is an extract from a letter signed by A.E.McMaster, Executive Assistant, Japanese Fishing Vessels Disposal Committee, dated August 20th 1942, which acknowledges the claimant's letter of August 10th 1942 and concludes:

> "Our instructions from Governmental authorities is very definite to the effect that we must make these purchases on the basis of Lloyd's survey prices and, in that many of the owners with whom we have already dealt are accepting this price without consideration of a charter, we sincerely hope that you will withdraw this condition."

On August 26th 1942, the claimant replied to the letter of August 20th withdrawing his demand for charter payment "as you requested" and accepted the purchase price fixed by Lloyd's survey. He explains this action as follows, viz: In August 1942 he was being pressed very strongly by mortgagees of these 3 vessels for payment of the sum of $18,771.25 plus arrears of interest thereon, which he was unable to pay, due to the fact that 10 months arrears of charter money had not been received by him. At this time, great pressure was brought to bear upon him by a member of the Committee, Mr.Kimura, who informed him that the Department of Munitions and Supply presented the only possible chance to make a sale of the boats, and that it would pay no more than the lowest possible price. After the exchange of correspondence before mentioned, Kimura advised the claimant by telephone that "sales at Lloyd's purchase price with no charter money was then the Government's order. You have no choice. You have to accept that or you will not get paid anything. If any trouble, will settle after war is over. This is no time to quarrel or fight about these things." As a result of this conversation the claimant says that he agreed to sell the vessels, but did so unwillingly and only because he had to pay off the money he owed on these boats.

Ex.18. A letter to the claimant from his Vancouver agents, Martin & Shannon, dated October 28th 1942, filed as Exhibit 18, confirms the mortgage liabilities to which reference was made by the claimant in his testimony.

David W. Wilson, before mentioned, testified that the 3 vessels mentioned had a market value in February 1942 as follows:

M/V "KUROSHIO" and M/V "ARASHIO"	$26,000. to $27,000. each.
M/V "SMITH SOUND"	$15,000.

Ex.22. The office of the Board of Marine Underwriters at Vancouver B.C. wrote Government Counsel, under date of November 25th 1949, Exhibit 22, stating that the three vessels as of the date shewn below ~~year 1942~~ were valued by the Board, for insurance purposes only, as follows:

		Replacement	Present value
"ARASHIO"	July 19,1941	$28,000.	$24,000.
"KUROSHIO"	Aug. 21,1941	28,000.	24,000.
"SMITH SOUND"	Aug.2,1940	14,000.	14,000.

Head 4 of claim.

The claimant stated that the vessels "NOOTKA SOUND", "BROUGHTON I" and "ROSE N" and SCOWS 1 and 2 were severely damaged while in the custody of the Royal Canadian Navy, for which repair accounts amounting to $3,670.62 were incurred. He received payment of the sum of $3,291.17, but was not paid for the repair account for the vessel "ROSE N" in the sum of $379.45, which was paid by himself. He therefore claims in this respect the sum of $379.45.

Ex.11. A letter from the North Shore Packing Co.Ltd. to the claimant, dated June 25th 1942, enclosing copy of an account of repairs and supplies collectible from former owners was identified by the claimant, and filed as Exhibit 11. This statement of account covers items of repairs, labour and parts, as well as articles replaced in consequence of the fact that like articles had been lost from the vessel while it was in the custody of the Navy. The claimant stated that the total of this account, being $379.45, was deducted by the North Shore Packing Co.Ltd. from the purchase price and charged to the claimant's account.

Ex.12. The claimant identified a copy of a letter to North Shore Packing Co.Ltd. from F. Matheson for the Authorized Deputy of the Secretary of State and/or Custodian, dated December 19th 1942, received by himself,

wherein the author refers to the fact that provision for payment of the account for repairs has been made, but rejects the claim made in respect of M/V "ROSE N" on the following grounds:

> "No allowance was made on this claim. The vessel required no repairs, having suffered no damage while in Naval custody. The claim for missing inventory covered articles on which no claim could be allowed."

Head 5 of claim.

The claimant stated that the Japanese Fishing Vessels Disposal Committee required him to pay in respect of commissions on the sale of the vessels mentioned in this report the sum of $1,014.30. He says that the sale of all vessels "was entirely arranged by myself" and that he did not employ anyone to act as his agent and did not agree at any time to pay any sum of money for commissions. It appears that the sum before mentioned includes the cost of Lloyd's survey of the first three vessels mentioned, and commissions on all such vessels.

Government answer to claim.

Government Counsel stood on the position taken by him at the opening of the Inquiry, i.e. that the terms of reference did not authorize consideration of this claim; consequently no evidence was introduced on behalf of the Government.

CONCLUSIONS

Head 1 of claim.

The telegrams and other documents, along with the evidence of the claimant and that of David W.Wilson in my opinion provide prima facie proof of the following:

(1) That a contract for charter of M/Vs "KUROSHIO" and "ARASHIO" was made between the Director of Marine Services and the claimant, under which these vessels were held under charter by the Director for a period of 239 days.

The charter rate was not fixed as prescribed by the telegrams mentioned. In the circumstances payment of a fair andreasonable rate of hire is, I think, to be assumed. $25.00 per day has been shewn to be a fair rate of charter hire for each vessel. The claimant did not receive payment from the Director of the charter hire agreed to be paid. In my opinion, based on the evidence adduced before me, the claimant has not waived his claim for payment of charter hire of either vessel. There is prima facie proof, in my opinion, of the Director's liability to the claimant in the sum of $5975.00 for charter hire of each vessel for a period of 239 days, total liability for the two vessels being $11,950.00.

(2) There is prima facie proof that M/V "SMITH SOUND" was requisitioned for and held under charter by the Director of Marine Services from December 31st 1941 to August 26th 1942, i.e. 7 months 11 days, under terms of a formal Charter Party Contract, providing for hire at $175.00 per month. In this respect, the liability of the Director in the sum of $1287.50 is prima facie proved.

Head 2 of claim

Under this head the claimant seeks to obtain payment for the period during which these vessels were held in the custody of the Royal Canadian Navy, between December 7th 1941 and January 14th 1942, in respect of M/V "NOOTKA SOUND", and between December 7th 1941 and February 13th 1942 in respect of all other vessels mentioned in this head of the claim.

Since the order to surrender these vessels to the Navy was made pursuant to the authority of the Defence of Canada Regulations 1941, Secs.40 and 40(a), and the vessels were surrendered and subsequently detained by the Navy pursuant to such order, in my opinion the claimant

has no justifiable claim for loss of charter hire which might have been earned by the vessels had they not been so detained.

The claimant further claims under this head for charter hire on M/V "NOOTKA SOUND" for a period of 30 days from January 14th 1942 to February 13th 1942. In my opinion, there is prima facie proof of a contract for the charter of this vessel by the Director of Marine Services in the telegram dated January 14th, marked as Exhibit 6. The evidence establishes that charter hire was not determined as prescribed by that telegram; and that the current going rate of charter hire for the vessel was $25.00 per day. I consider that liability of the Director for such charter hire, in the sum of $750.00, has been established prima facie.

Head 3 of claim.

In my opinion the evidence of David W.Wilson and the letter of the Board of Marine Underwriters at Vancouver B.C., before mentioned, provides prima facie proof that at August 26th 1942, when these vessels were sold to the Department of Munitions and Supply, the fair market value of the vessels respectively was as follows:

M/V "KUROSHIO"	$26,000.00
M/V "ARASHIO"	26,000.00
M/V "SMITH SOUND"	15,000.00

The sale price fixed by the Japanese Fishing Vessels Disposal Committee, as set out in the opening paragraph of page 7, in my opinion in each case fell below the fair market value of the vessels.

It is worthy of comment that in the negotiations leading to the sale of these three vessels the Committee did not follow the policy laid down by its members in respect to the determination of sale price applied by the Committee on the sale of all Japanese owned vessels handled through the Committee. Counsel for the Government

filed a brief on this Inquiry in April 1948, outlining the procedure adopted by the Committee on sale of Japanese fishing vessels, wherein on page 2 the following appears:

> "The Committee, finding that ~~this agreement~~ disagreement as to price was the chief deterrent of sales, had the vessels appraised, and then adding 15 per cent. as a safety factor established such figure as a 'suggested negotiating price'. It may be of interest to observe that the prices obtained averaged over 5 per cent. higher than the 'suggested negotiating price'".

Here the Committee required the claimant to accept the survey price on each vessel. If the 15 per cent. had been added thereto, the "suggested negotiating price" of these vessels would have been $3150.00 and $2100.00 respectively greater than the survey price.

The evidence of the claimant, together with the correspondence exchanged between him and the Japanese Fishing Vessels Disposal Committee in my opinion provides prima facie proof that the claimant was not a free agent in concluding the agreement made between him and certain representatives of the Committee, whereby he agreed to sell these vessels at the prices before mentioned, but that he acquiesced in the sale for the reason that he was convinced by the statements of Kimura that he was required to sell at such prices.

In the circumstances, I am of opinion that the claimant prima facie has established the right to recover from the Minister of Munitions and Supply the sums following:

M/V "KUROSHIO"	$4000.00
M/V "ARASHIO"	4170.00
M/V "SMITH SOUND"	1900.00
	$10170.00

10,070.-

and thereby ~~could~~ to produce the fair market value of these vessels at the date of sale.

Head 4 of claim.

The evidence in relation to this claim is inconclusive. There is prima facie proof that the claimant has paid $379.45 for repairs and replacements to M/V "ROSE N."

However, the evidence does not establish that such repairs were made in consequence of damage sustained while in the custody of the Navy. I find no reason to doubt the credibility of the claimant in relation to his evidence on this subject, but consider that it falls short of proof that the Naval authorities were responsible for damage done the vessel. I recommend that this phase of the claim be further investigated.

Head 5 of the claim.

The evidence establishes that a charge was made against the claimant for the sum of $1014.30, being for commissions on sale of all of the vessels before mentioned, in addition to a charge for a survey made by Lloyd's. The evidence of the claimant, as well as the correspondence exchanged between him and the Japanese Fishing Vessels Disposal Committee, provides prima facie proof that the claimant negotiated the sale of such vessels as were sold to the Department of Munitions and Supply; further that the claimant personally negotiated the sale of the vessels sold to the North Shore Packing Co.Ltd. In these circumstances I am unable to find any justification for the deduction of commissions. It is not shewn that the claimant employed an agent to negotiate any such sale, nor that he agreed to pay commissions. I consider that there is prima facie proof of the claimant's right to recover the sum so charged to him, namely,- $1014.30.

11950 00
1287 50
750 00
13987 50
10070 00
1014 30
24071 80

To summarize, I consider that the claimant has established a prima facie right to recover the sum of $25,071.80 in respect of those branches of the claim covered under Heads 1, 2, 3 and 5.

Appended to this Report are true copies of the original documents to which reference is made in this Report. The transcript and all original documents will be found in Commission File No.1401.

19 50

Since Government Counsel did not lead evidence in defence of this claim, no recommendation is made in respect to it, the Report being limited to finding whether or not a prima facie case has been made out by the claimant.

H. J. Bird

Commissioner.

December 5th 1949.

copies of Exhibits attached to original.

(14)

SPECIAL REPORT RE 25 FISHING VESSELS SOLD AND DELIVERED TO PURCHASERS BY J.F.V.D.C. PRIOR TO AUGUST 1ST 1942.

Where it appeared in the course of the Inquiry that a fishing vessel had not been sold by the Custodian I held that the claim in respect thereof did not fall within the terms of reference and that consequently I had not jurisdiction to consider the claim. This ruling affects adversely claims in respect of fishing vessels made by 25 claimants.

All of these latter vessels were sold and delivered to the respective purchasers by authority of the Japanese Fishing Vessels Disposal Committee prior to August 1st 1942. Title to 13 such vessels was made subsequent to August 1st 1942 by Bill of Sale signed by the Custodian, the owners thereof having refused to confirm the sale made by the J.F.V.D.C. 12 of these owners executed Bills of Sale, but now allege that they did so under compulsion exercised by the J.F.V.D.C.

Counsel for the claimants has requested that a special report be made in respect of these vessels, in view of the circumstances surrounding the sales.

In my opinion the following factors require consideration in connection with these claims:

1. All fishing vessels owned by persons of the Japanese race were surrendered to the Navy soon after December 7th 1941, pursuant to Order-in-Council or other Government direction.

2. The surrendered vessels were held in custody of the Navy until sales were effected through the instrumentality of the J.F.V.D.C. set up pursuant to Order-in-Council P.C.288 of January 13th 1942, or in the case of approximately 200 such vessels until the

same were vested in the Custodian pursuant to Order-in-Council P.C.6247 of July 20th 1942.

3. The J.F.V.D.C. adopted the following procedure for disposal and re-employment in the fishing industry of surrendered vessels:

(a) All vessels were appraised by a Lloyd's or other competent surveyor;

(b) A negotiating price for each vessel was fixed by adding 15% to the appraised value;

(c) Prospective purchasers were invited to negotiate with the owners for purchase of such vessels through the J.F.V.D.C. on the basis of the negotiating price;

(d) Upon agreement being reached, a Bill of Sale was executed by the owner, the Committee caused the vessel to be delivered, and received the purchase price for the owners account.

4. All such vessels which had not been sold as at August 1st 1942 were vested in the Custodian, pursuant to Order-in-Council P.C.6247 of July 20th 1942. Thereafter the Custodian arranged for sale of these vessels, without the consent of the claimant, executed Bills of Sale thereof and made delivery of the vessels.

The 25 vessels which are the subject of the claims discussed here in my opinion were not vested in the Custodian, since P.C. 6247 vests in the Custodian "vessels..... seized and detained under the authority of .....P.C.9761, which have not been disposed of under the supervision of" the J.F.V.D.C. before August 1st 1942 (vide Para.1, P.C.6247). I consider that these vessels had been "disposed of" by the Committee prior to August 1st 1942.

I have had occasion to consider many claims by owners of fishing vessels which were vested in and sold by the Custodian. Upon consideration of the material before me on the hearing of those claims, I held that the claimant did not realize fair market value upon sale by the Custodian, due to the fact that there was deducted from the sale price in each instance sums to cover selling charges, repair accounts and other expenses incurred by the Custodian. Sales so made by the Custodian were based on appraisals made by a surveyor appointed by him. The policy of adding 15 per cent. to appraised prices adopted by the J.F.V.D.C. was not applied by the Custodian. In such cases I estimated the fair market value at 28.5 per cent. in excess of the selling price, to compensate for the deductions so made.

Counsel for the claimants in respect of the 25 vessels under consideration has submitted that the ruling applied by me to Custodian sales should be applied to the sales of the 25 vessels.

Appended to this Memorandum is a statement prepared by Counsel containing particulars of the sale of these vessels.

I find that 12 of these vessels were sold by the J.F.V.D.C. at prices equal to or greater than the Committee's negotiating price, i.e. Lloyd's appraisal plus 15 per cent.

The material before me, I think, supports the conclusion that fair market value was realized on the sale of these 12 vessels, namely,- vessels the subject of Claim Nos. 42, 120, 182, 201, 219, 294, 307, 881, 887, 918, 1263 and 701.

Vessels, the subject of Claim Nos. 639, 641, 642, 752, 753 and 1293, appear to have been sold at prices greater than the appraised price but less than the negotiating price. I find nothing in the material before me to justify the conclusion that these vessels were not sold at fair market value. It does not appear that any deductions were

made from the selling price of any of the vessels in this group.

The vessels covered by Claim Nos. 358, 897, 1172 and 1188, were sold at the amount of Lloyd's appraisal. There is no material before me to justify the conclusion that fair market value was not realized on these sales.

The vessel covered by Claim No.262 appears to have been sold at the appraised price, but there was deducted from the selling price repair accounts amounting to $39.25. I consider that the sum paid to the claimant was $40.00 less than fair market value.

The vessels covered by Claim Nos. 993 and 760 were sold at $250.00 and $375.00 respectively, but no material is available in regard to the appraised price of either vessel. Consequently there is no material upon which a conclusion can be reached as to whether or not fair market value was realized. If these claims were open to consideration under the terms of reference, I would hold that the burden of proof was upon the Custodian to establish that fair market value had been realized. In the absence of appraisals or other evidence, it has not been shewn that these prices were equal to fair market value. Consequently I would have added 15 per cent. to the selling price, i.e. $37.50 and $56.25 respectively, to achieve fair market value.

H. I. BIRD
Commissioner.

VESSELS FOR WHICH BILLS OF SALE SIGNED BY CLAIMANT

Case No.	Claimant's Name	Name of Vessel	Sale Price	Negotiating Price	Date execution	Proposed Adjustment (28.5%) as in other boat sales.	
42	Yoshio NITSUI	F.V.Amphitrite	$635.00	$635.00	Aug.20 1942	$180.97	
		Special equipment Gurdies 45% $200.				90.00	$270.97
120	Masao KAMACHI	M.K. 1011	150.00	150.00	Aug. 1942		42.75
182	Takeo FURUYA	Blue Haven	700.00	661.25	Aug.27 1942		199.50
201	Kaichiro HAMAURA	Acme K.	600.00	575.00	Aug. 1942		171.00
262	Manjiro YAMASHITA	M.Y.	375.00	430.00	Aug.31 1942	$106.87	
					Damages	39.25	146.12
294	Yoshio NAGATA	Y.N.	650.00	627.90	Aug. 1942		185.25
358	Jisuke FUKUSHIMA	M.V.Brocton Point	3260.00		Sept. 1942		929.00
639	Bunkichi YAMASAKI	B.Y.1329	250.00	264.50	Aug. 3 1942		71.25
887	Masaji OYE	Sea Rover	460.00	460.00	Aug.31 1942		131.10
993	Fusakichi YAMAMOTO	F.Y.	250.00		Aug.24 1942		71.25
641	Naonojo AKUNE	N.A.1216	374.00	430.10	Aug.17 1942		106.59
701	Eikichi MORISHITA	E.M.	374.00	374.00	Aug. 5 1942		106.59

$2,431.37

VESSELS FOR WHICH BILLS OF SALE GIVEN BY CUSTODIAN

Case No.	Claimant's Name	Name of Vessel	Sale Price	Negotiating Price	Date execution	Proposed Adjustment (28.5%) as in other boat sales
219	Soichi SAKURAI	S.S.	$125.00	$ 98.90	Nov. 2, 1942	$35.62
307	Hideo OKANO	H.O.	850.00	793.50	Oct.29, 1942	232.25
881	E.& Z.OIKAWA	E.O.	325.00	300.00	Oct.29, 1942	92.62
897	Masao HIRAOKA	Tzaartoos	865.00	992.45	Nov. 9, 1942	246.52
918	Mataichi DOI	M.D.	650.00	546.00	Nov. 9, 1942	185.25
1172	Shigeo SUGIURA	Cyclone	1080.00	1242.00	Nov. 9, 1942	307.80
1188	Yukio KOYANAGI	Miss Terra Nova	490.00	572.30	Oct.23, 1942	139.65
1263	Chujiro KAWAMOTO	C.K.	375.00	363.40	Oct. 1942	106.87
1293	Yonezo YAMAMOTO	Y.Y.	260.00	297.85	Oct.30, 1942	74.10
642	Kiichiro ADACHI	R.A.	350.00	363.40		99.75
752	Ichiro TABATA	Miyuki	475.00	529.00	Oct. 1942	135.37
753	Hiroshi TABATA	Belinda	475.00	529.00	Oct.29, 1942	135.37
760	Yukio TAKASAKI	H.Y.	375.00		Nov. 1942	106.86

12.98.03

(15)

CLAIM NO. 713 - Mitsu NIKAIDO

AND CLAIMS IN RESPECT OF LEASEHOLDS GENERALLY

Some persons of the Japanese race have filed claims for losses alleged to have been sustained in consequence of their compulsory evacuation from lands held under lease, as at the date of evacuation.

The Custodian did not sell any such leasehold interests, although in every instance he took steps to protect the tenant's interest insofar as reasonably could be done.

Several such holdings were sublet for the unexpired portion of the term by the claimants prior to their evacuation. In the case of other holdings, the evacuee sold the growing crop, at the same time giving a right of occupation to the purchaser to permit of cultivation and ultimate removal of the current crop.

I have held in relation to all such lands that the directions given me under the terms of reference do not permit consideration of claims for losses such as are alleged to have been sustained by these claimants. Consequently I have rejected all such claims. However, Counsel for certain claimants have requested that a special report and recommendation should be made in relation to such claims, since it is alleged that these claimants suffered loss in respect of their leasehold property, by reason of their compulsory evacuation therefrom.

In only one such claim, in my opinion, does the evidence support a conclusion that the claimant did in fact suffer loss. I refer to Claim #713 of Mitsu Nikaido.

This claimant had held under lease from the Department of Mines and Resources (Indian Affairs) a 15 acre parcel of land, being part of Langley No.1 Indian Reserve,

Whonnock, B.C., for a period of some 20 years prior to his evacuation in 1942. The tenancy first created about 1920 for a 5 year term subsequently was renewed for successive periodsof 5 years, the last renewal being effective as from April 1st 1941, at an annual rental of $180.00. The lease therefore had approximately 4 years to run after the date of the claimant's evacuation.

During the period of his occupancy, the claimant had cleared, broken and maintained under cultivation 10 acres of land, whereon successive crops had been raised. On his evacuation he had under cultivation 4 acres of strawberries, 1 acre of blackberries, 1 acre of blackcaps and 3½ acres of raspberries.

The 1942 crop on the leasehold parcel, as well as the crop on 3 acres, being part of an 80 acre parcel held in fee by the claimant, was sold by him for $750.00, the purchaser being given the right to occupy the lands until after the harvest. Although there is no direct evidence on the subject, it is reasonable to assume that this sum of $750.00 should be apportioned as to $575.00 for the 10 acres under lease, and $175.00 for the 3 acres held in fee.

F.M.Clement, Esquire, until recently Dean of the Department of Agriculture, University of British Columbia, called as a witness for the claimant, appraised the unexpired term of the lease at the sum of $2400.00, being his estimate of the market value of the land under cultivation at the date of the claimant's evacuation. Considering the property from the point of view of its rental value, he expressed the opinion that a fair rental for the balance of the term would be $45.00 to $50.00 per month, or a total rental of $2160.00 to $2400.00. The evidence further shows that plantings of the type under consideration will produce without replanting annual crops for a period of 3 to 4 years. This being so, the price realized by the claimant on the sale of his 1942 crop

indicates a reasonable possibility that a gross figure of from $2000.00 to $2300.00 could have been realized by the occupant of the land over the succeeding 4 year period. However, Counsel for the claimant contends that the selling price of the 1942 crop does not fairly reflect the market value of the leasehold, since the sale of the crop was in the nature of a forced sale, due to the imminence of the claimant's removal from the land, a submission which I consider has some merit.

It appears that these lands were again sublet in 1943, on this occasion at an annual rental of $200.00, the sub-tenant being required to pay the head-rent to the Indian Department. This transaction I conclude was made by the local Co-Operative Union apparently with a view to maintaining production from the property. I am satisfied that the rental does not truly reflect the market value of the leasehold in its then state of cultivation. I conclude from the evidence adduced before me that leaseholds of agricultural land were not by any means readily saleable.

Counsel has been unable to lead other evidence of value than that previously mentioned. Consequently determination of fair market value of this leasehold presents considerable difficulty. Dean Clement's appraisal indicates a probable market value of about $900.00, since there must be deducted from the average of the several figures mentioned by him, i.e. $2200.00, the head-rent over 4 years of $720.00 and the crop sale price realized by the claimant.

2200.-
720.-
1480.-
575.-
905.-

I have no doubt that the lands were worth a greater sum to the claimant, and in the circumstances consider this a proper case to apply the principle enunciated by the Supreme Court of Canada in the recent decision of Diggon-Hibben Ltd. vs. the King, unreported. Consequently,

if I was called upon to make any recommendation in relation to this claim, I would recommend the payment of $1000.00.

Signed H.I.BIRD
H.I. BIRD

Commissioner.

October 28th 1949.

(16)

PORT ESSINGTON PROPERTIES

Prior to evacuation of persons of the Japanese race from the protected areas of British Columbia, Port Essington was a fishing community situate 25 miles north of S.E. Prince Rupert, wherein two of the claimants had lived and carried on business for more than 35 years. Approximately one-third of the population of the settlement were persons of the Japanese race.

Prior to 1940 several large canneries had been established and were carrying on business in the immediate vicinity of this community, the presence of which created employment for the inhabitants. The evidence establishes that commencing in 1940 the population of the community had decreased progressively, due to the removal of certain of the cannery plants, the last of which was removed about 1944. Consequently Port Essington was reduced to the status of a "ghost town" by 1944, when the policy of liquidation of evacuated persons was adopted by the Dominion Government.

The Custodian found it to be practically impossible to find purchasers for real property situate in this community at prices which were in any respect commensurate with assessed values. Sales of real property which were made by the Custodian between 1944 and 1946 are shewn to have been made at figures substantially lower than Provincial Government assessments, a situation which, in my opinion, was attributable in part to the changes brought about by the removal of canneries and in part to the evacuation of persons of the Japanese race, who constituted a substantial part of the population.

Claims were filed, and investigated on this Inquiry, by 4 former residents of the community, to which claims

particular reference is made later. Real properties of 6 other persons of the Japanese race, who did not file claims, were administered by the Custodian, but I am informed by the Custodian that none of the properties of these persons were sold.

The over-all recommendation made in respect of rural properties (vide General Report) has been applied to real property of 3 of the persons who filed claims in respect thereof. Particulars of these claims are now set out.

CLAIM NO.44 - Mrs. Shino KAMEDA

The claimant was the owner of Lots 7 and 8, of Block 2, D.L.445, Port Essington Townsite, on which was erected a dwelling and general store which had been operated by the claimant and her deceased husband for 37 years. The original cost of these buildings in 1923 was shewn to be $3500.00 and the cost of repairs and alterations made in 1933 - $1750.00. The claimant carried a stock-in-trade of $6000.00 and had operated a profitable business for many years. A photograph of these premises filed on the Inquiry shews a well finished frame building, apparently maintained in a good state of repair.

The Custodian was unable either to find a tenant or a purchaser for these premises. There is evidence that the premises haddeteriorated substantially between the time of the claimant's evacuation and 1949 when the Custodian was divested of the property.

The claim made by this claimant in respect of loss sustained on sale of the stock-in-trade of the store and of her personal property was investigated and a recommendation made which is set out in Appendix I to the

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General Report. It is apparent that the claimant, who was a person of some substance, suffered material loss as a result of the evacuation policy.

CLAIM NO. 45 - Suekichi HONKAWA

The claimant was the owner of a small dwelling and boat shed, wherein he conducted prior to evacuation a boat repair and boat building business. The buildings were erected in 1928, and were valued by the claimant for the purpose of his claim at $1500.00, a valuation which on the evidence before me cannot be substantiated.

assessed 1944 and 1946 $670

These premises were appraised in 1944 on instructions of the Custodian at the sum of $900.00. They were again appraised in 1946 at $500.00, and were sold in 1946 for $500.00.

A recommendation has been made for payment to this claimant of the sum of $53.00 based on the over-all recommendations applied to rural properties. It is my opinion that the selling price of $500.00 does not fairly represent fair market value in an inhabited community. The loss sustained by this claimant appears to have arisen to a substantial degree as a result of the evacuation policy.

CLAIMS NOS.694 and 1289 - KISHIMOTO Eiji and Natsuo

This is a joint claim made in respect of Lot 6, Block 3, Port Essington Townsite, owned jointly by the claimants, being a general store and residence.
This property was assessed in 1940 at $2625.00.
In 1944 the Provincial Government assessment was reduced to $1150.00, no doubt in consequence of the changed conditions which had occurred in this community.
The property was appraised on instructions of the Custodian

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in 1946 and was sold in May 1946 at $750.00. It is described as a city lot on which were erected a general store with 2 living rooms above, also a small dwelling at rear. The condition of the buildings is reported to have been good.

The fact that this property was sold at $400.00 less than the reduced assessed value of 1944 suggests that its fair market value could not be obtained, due to the change in conditions.

CLAIM NO. 1016 - Matsujiro OHASHI

The claim is made in respect of 3 parcels of real property. One, a frame dwelling on Lots 1 and 2, S.1/2 Block 2, Port Essington Townsite, was valued by the claimant at $489.75, and was sold in June 1945 for $175.00. The Appraiser's report has application to this as well as other developed properties in the townsite. He says (Exhibit 6) "The property situation at Port Essington is "very stagnant and from all appearances indications seem to point to continuation of that condition and can under- "stand difficulty in even getting offers for property there. "It was thought for a time that as the town was more or "less established and dwellings were available at very low "cost there might be resettlement there, but the canneries "have moved further down the river. Nelson Bros., the last "big one, is at Port Edward. This has a bearing on values "..... as it affects all properties in this district."

A recommendation for payment of $38.75 to this claimant in respect of the parcel before mentioned has been made, based upon the over-all recommendation relating to rural properties (vide General Report).

Neither of the other parcels could be sold, and undoubtedly will have deteriorated, since neither were occupied for a period of 7 years.

assessed 1943/45/46 in each case.
Lot 1 35
Lot 2 35
Improvements 15
Total Assess. Value 85.-

Properties which the Custodian found it impossible to rent or sell, all of which remained unoccupied during the period of 7 years when vested in the Custodian, will no doubt have deteriorated appreciably. I have not been furnished with sufficient information as to the extent of deterioration to permit of any monetary recommendation. I am satisfied from the available material that persons who have made claims in respect of real property situate in Port Essington and which was sold by the Custodian have suffered some loss on the sale, which is attributable in part to the operation of the evacuation policy and in part to the depressed market conditions described by the appraisal report referred to under the head of Claim No.1016. If it is proposed to pay compensation to these claimants in addition to the sum recommended for payment, i.e. 10% of the sale price, plus $12.50, I consider that the additional sum should not be greater than 50% of the difference between the assessed value and selling price of each property, this conclusion being based on the assumption that 50% of the loss was attributable to the change in market conditions referred to.

As much as we might wish it,
are we right in saying the
Commissioner had the reduced 1944
assessment in mind + not the 1940
assessment?

I believe the 1944 assessment. Read final para
re Claim 694 + 1289 on page 16.

Properties which the Custodian found it impossible to rent or sell, all of which remained unoccupied during the period of 7 years when vested in the Custodian, will no doubt have deteriorated appreciably. I have not been furnished with sufficient information as to the extent of deterioration to permit of any monetary recommendation. I am satisfied from the available material that persons who have made claims in respect of real property situate in Port Essington and which was sold by the Custodian have suffered some loss on the sale, which is attributable in part to the operation of the evacuation policy and in part to the depressed market conditions described by the appraisal report referred to under the head of Claim No.1016. If it is proposed to pay compensation to these claimants in addition to the sum recommended for payment, i.e. 10% of the sale price, plus $12.50, I consider that the additional sum should not be greater than 50% of the difference between the assessed value and selling price of each property, this conclusion being based on the assumption that 50% of the loss was attributable to the change in market conditions referred to.

H. I. BIRD

Commissioner.

April 4th 1950.

February 21, 1950.

Mr. Justice H.I. Bird,
Commissioner,
Japanese Property Claims Commission,
Court House,
Vancouver, B. C.

RE: PORT ESSINGTON PROPERTIES

Your Lordship has indicated in a number of cases wherein claims were made with respect to property situate at Port Essington, B.C., that you intended to make a special report to the Governor-in-Council.

The evidence in these cases, all of which relate in whole or in part to store or other commercial premises indicates that before evacuation Port Essington was a reasonably thriving town. In the main, it was dependent upon fishing, canning and a small pulp industry. A large portion of the population was Japanese.

After the evacuation of the Japanese in 1942, the evidence filed by the Crown clearly indicates, the town became a ghost town. Unlike some other communities formerly populated by Japanese the town did not revive after their evacuation and the canneries moved away. Consequently the value of commercial premises and residences not only dropped but in most instances the properties became unsalable. Most of the sales which did take place did not take place until 1945 or 1946 after the properties had remained vacant in this isolated area for three or four years. Most of the properties on which claims were made remained unsold and presumably have now re-vested in the Japanese. Having regard to the effect of vandalism and deterioration over the years even were the town to now revive, these premises are now practically worthless.

It is conceded by Counsel for the claimants that the unsold properties claimed for fall outside the terms of reference. Insofar as the Government is seeking

by this Commission to redress in part at least the losses consequent upon evacuation, these properties merit special consideration. In no other place did evacuation so completely wipe out the value of real property. Your Lordship's attention is directed to the attached memorandum summarizing information from the claim files in each case. While all of these claimants suffered in greater or lesser degree the same hardship, we particularly commend for your Lordship's consideration Case No. 44, being the last case outlined in the attached memorandum.

Respectfully submitted,

"R.J. McMaster"
Counsel for the Claimants represented through the Co-operative Committee.

MEMORANDUM SUMMARIZING EVIDENCE IN CASES RELATING TO PORT ESSINGTON

CASES 694 and 1289 - Eiji KISHIMOTO and Natsuo KISHIMOTO

These claimants each claim a one-half interest in real property situate in the Township of Port Essington. The evidence is set forth in case No. 694. Photographs of the buildings are on file as exhibits.

The property was acquired by the claimants by gift from their grandfather in 1940. There was then situate on it two large premises including a store and a large shed. In 1941 the claimants erected a residence at an estimated cost of $1500.00. The assessed value of the premises in 1940 is shown to be $2625.00. However, the assessment had dropped in 1944 to $1150.00. The claimants alleged the fair market value at the time of evacuation to be $2240.

Mr. Shortridge made an appraisal (Exhibit 6) and advised the Custodian that upon evacuation Port Essington became virtually a ghost town (see transcript, page 9, line 19 ff.) The property was sold in May 1946 by the Custodian for $750.00.

CASE 1016 - Matsujiro OHASHI.

This claimant owned three parcels of land situate at Port Essington:

1. Situate on the first parcel of two lots was a residence. The claimant had purchased this in 1928 and had made improvements to the dwelling in 1941. At the time of evacuation it rented at $10.00 per month. The Custodian had sold the premises in June, 1945 for the price of $175.00.

2. Situate on the second parcel were a

store and dwelling accommodation. This property was purchased in 1930 for $1,000. The claimant estimated the buildings were then ten years old. He made improvements in the sum of $500.00. He claims a value of $1,000.

3. Situate on the third parcel was a Buddhist temple erected some time after 1926 at a cost of $1750. This building was used by the Custodian for the storage of Japanese chattels and suffered somewhat from vandalism.

The Custodian was unable to sell either the store premises or the temple.

CASE 45 - Suekichi HONKAWA.

This claimant owned real property in or adjacent to the Township of Pt. Essington upon which was situate a small cottage and a boat building plant. The claimant acquired the land and cottage in 1927 for $900 and in 1928 erected a boat building plant at a cost of $600.00. Mr. Shortridge gave the Custodian a report in 1944 in which he dealt both with the value of the buildings and the equipment. It would appear from his report that he valued the buildings at some $350.00. After the sale by the Custodian in March, 1946, the Custodian received an appraisal from Mr. Helgerson and pursuant thereto assigned out of the sale price the sum of $270. for the lands and premises. The assessed value had been $700.00.

CASE 44 - Mrs. Shimo KAMEDA.

This claimant had one of the larger store premises at Pt. Essington. The lands consisted of two lots, one being vacant. On the other was erected a three-room store with a large amount of living accommodation above. The property was acquired in 1923 for $3600. and extensive re-

pairs and improvements were made in 1933 at an approximate cost of $1750. The building was insured for $3,000. This property was never sold by the Custodian.

As appears from page 5 of the transcript, the claimant had been in the store business at Pt. Essington for 37 years. Her stock-in-trade prior to evacuation was $6,000. An examination of her personal property claim in this case as well as in case 39 (in which the claim related to her Vancouver home) indicates that her financial standing must have been above average.

From the evidence given on her behalf it would appear that up to the time of evacuation she operated a profitable business in the store premises at Pt. Essington.

"R.J.McM."

MEMORANDUM ON SALES OF FARM PROPERTIES DEVELOPED FOR BULB PRODUCTION.

Sales of farm properties where the claimants had substantial quantities of bulbs under cultivation at the date of evacuation were made by the Custodian, without regard to the value of bulbs in the ground. Consequently various claimants seek to recover the value of the bulbs at the date of sale.

It has been shown that the Custodian made no attempt to protect such bulbs from deterioration, nor to recover the same during the period when such properties were vested in him.

Evidence was adduced to establish that in the period 1942 to 1943 approximately 70,000 bulbs per acre had been planted on these properties; that sound commercial practice prescribes that bulbs be lifted annually, subjected to treatment for protection against pests, and thereafter replanted; that failure to pursue this practice results in rapid deterioration in the quality of the bulbs during the second year in the ground, and may result in total loss by the end of the third year.

The evidence further establishes that in 1942-1943 the demand for good quality bulbs produced in British Columbia was very great, due to the absence of imported products, and in the result bulb prices showed a substantial rise; that in this period bulbs sold at from $20.00 to $35.00 per thousand, depending upon type and quality; that the cost of lifting, treating and preparing bulbs for shipment was $6.50 per thousand. In 1944 the Custodian, in response to complaints made by various claimants, caused an investigation to be made of the whole situation, and was informed that bulbs then in the ground had deteriorated through lack of treatment to such an extent that only a small recovery could be made.
The Custodian was successful in some instances in recovering

a percentage of such bulbs, which were sold and credits passed to the account of the former owner of the land.

The recommendations made in the various bulb claims have been based upon the evidence outlined above.

"H.I. BIRD"
Commissioner.

December 29th 1949.

MEMORANDUM RE PERCENTAGE - CHATTELS

Counsel having examined approximately 1300 out of 1400 claims, with a view to determining the percentage which goods sold at auction bears to the sum claimed for the same chattels, it appears that the general average shows 46.05 per cent.

I HAVE THEREFORE DIRECTED that the figure of 46 per cent. shall be made applicable to claims for lost, destroyed or stolen goods which have been declared by the claimant and/or found by the Custodian, for the purpose of determining the amount of loss sustained, as well as goods sold and not paid for, being the goods referred to in Page 8 of the proposed settlement dated 14th April 1949.

"H.I. BIRD"

Commissioner.

January 13th 1950.

CLAIMS RELATING TO FARMS DEVELOPED FOR GREENHOUSE PRODUCTION.

Claims filed in respect of 12 farm properties situate in the Fraser Valley, as well as in the Gulf Islands, developed wholly or in part for greenhouse production, have been presented in the Inquiry. Such claims have raised questions of some difficulty in the determination of fair market value.

The evidence adduced on these properties discloses that,-

1. Except in one instance, no information on sales made in or shortly before 1943 by owners of land so developed was available to permit of comparison with selling prices realized by the Custodian.

2. The market for greenhouse properties was narrow, due to the highly specialized nature of such operations and the limited number of persons likely to be interested as purchasers.

3. In 1942-43 materials for greenhouse construction, and particularly glass and heating equipment, were difficult if not impossible to obtain.

4. In 1942-43 there was an abnormally strong demand for products such as bulbs, tomatoes and cucumbers grown in greenhouses, at prices higher than were realized for such products in and immediately prior to 1941.

5. There was an apparent conflict between witnesses called for the Government and for claimants respectively upon the existence in 1943 of a market for farm properties equipped with greenhouses. Certain S.S.B. Appraisers testified that such properties were relatively unsaleable at prices commensurate with the cost of greenhouse structures, whereas one Fatkin, a nurseryman and bulb grower of wide experience, called as a witness by Counsel for the

claimants testified that because of the factors recited in paragraphs 3 and 4 there was a ready market in 1943 for greenhouse properties at prices equivalent to replacement cost of such structures, less depreciation.

6. S.S.B. Appraisers, when appraising greenhouse properties, uniformly depreciated their estimates of value of such structures, irrespective of age, by 50 per cent., this policy of depreciation having been adopted due to the specialized nature of such operations and the limited number of prospective purchasers.

Upon consideration of the testimony mentioned in paragraph 5 and 6, I conclude that, although a strong market for greenhouse products existed through 1942-1943, there was not as in the circumstances might have been expected great demand for farms equipped with greenhouses, attributable in part to the limited number of persons available - whether engaged in such business or not- who had the qualifications and financial ability to operate them or to extend existing operations, and in part to the shortage of labor available for operation.

If these conclusions are sound - and the only available evidence satisfies me they are so - the apparent conflict in the testimony of these reputable and well-qualified witnesses is reconciled, though I think that S.S.B.Appraisers have over-emphasized limitation of the market in their estimates of fair market value of such properties, while Fatkin has overlooked the existing market condition to which reference has been made.

In view of the absence of the comparison factor mentioned in paragraph numbered 1, I have considered the question of fair market value of greenhouses in terms of depreciated replacement cost, as calculated by S.S.B. Appraisers and by Fatkin; that of other buildings and the

land under cultivation upon the basis adopted in relation to V.L.A. farm properties generally, which has been examined in detail under the V.L.A. head of this Report. I have accepted the calculations made by Fatkin in respect to replacement cost of greenhouses, in preference to those of the S.S.B. Appraisers, since I conclude that he had greater knowledge of and wider experience in the construction of such buildings and the cost of required materials. I have rejected the conclusion of S.S.B. Appraisers that such structures add only 50 per cent. of replacement cost to the value of the farm.

Fatkin testified that the replacement cost in 1942-1943 of a greenhouse 15 to 18 ft. wide by 100 ft. long was $15.00 per lineal foot, to cover construction of the house as well as installation of the glass and heating apparatus. This basis of calculation has been taken as a denominator for houses of a lessor or greater width and length, and is subject to deduction for depreciation of 25 per cent. in case of buildings 10 years old, 15 per cent. for buildings 6 to 9 years old, and 5 per cent. for buildings 3 to 5 years old.

Since I have reached the conclusion that the market for such properties was unusually limited in the period of 1943, I consider that a deduction must be made for such replacement cost of greenhouses so calculated of 20 per cent., for the purpose of determining fair market value.

The value so ascertained, in my judgment, is equivalent to the sum which the former owner might reasonably be expected to have been prepared to pay rather than to be ejected from it. (Diggen Hibben v. Regem, not yet reported in C.L.R.).

Commissioner.

December 15 1949.

CLAIMS RELATING TO REAL PROPERTY AT HAKODA BAY, B.C.

A claim was filed by each of the following persons in respect of a dwelling situate on a 5 acre parcel of land on the shore of Hakoda Bay, near Ucluelet, B.C., particulars of which, with assessed values, and the price realized on sale by the Custodian, are as follows:

CLAIM NO.	CLAIMANT	DWELLING	1946 Ass'd.Val.	SALE PRICE
787	YOSHIHARA N.	7 room unfinished	$1600.00	$ 623.44
788	YOSHIHARA M.	6 room new	1300.00	506.54
888	OYE, Tsunetaro	5 room built 1924	900.00	350.68
1101	HAKODA, Yutaka	6 room built 1923	1000.00	389.65
1108	NASU, Minoru	7 room built 1941 $1800.	1850.00	720.85
1339	WATANABE, T.	6 room built 1924	1100.00	428.62
1343	MATSUHARA C.		1000.00	389.65
1368	TERASHITA S.	8 room built 1927 Add'ns.1936, 1941.	1600.00	623.44
			$10350.00	$4032.87

These claims had been classified as rural real property at the end of the first year of the Inquiry, and recommendations were proposed to be made in respect thereof on the over-all basis applied to rural real property, i.e. 10% of selling price, plus selling expense charged to the claimants' account by the Custodian. Consequently there was credited to each of these claimants in Appendix I to the General Report the sums to which each claimant had been found entitled on the over-all basis.

After Appendix I had been completed, Counsel for these claimants submitted that these claims should be classified as special cases, in which submission I concurred for the reasons later mentioned.

It follows therefore that the sums credited in Appendix I, shewn opposite the claimant's name above, must be deducted from the recommendations now made. I have therefore set out in the concluding paragraph of this report, opposite each claimant's name, the sum so credited in Appendix I, as well as the balance to which he is entitled on the basis of the recommendation now proposed.

The claimants prior to evacuation were fishermen, residents of a remote and isolated fishing community situate on the west coast of Vancouver Island, occupied only by persons of the Japanese race. The dwellings, with the exception of those to which claims Nos.787 and 788 relate, were built prior to 1930, and were not entirely finished but nevertheless were habitable. The older dwellings appear to have been adequately maintained up to the claimants' evacuation.

The Custodian was unable either to rent or sell these dwellings in the three years following the evacuation of the owners, during which period the settlement was unoccupied.

In October 1945, the entire settlement comprising 60 acres of land on which stood 11 dwellings was sold en bloc to the Department of Indian Affairs for the sum of $4750.00, the price having been based on appraisals made by two valuators employed by the Custodian and another appraisal made by Soldier Settlement Board valuators.

It is abundantly clear that no market existed in the period under review for any property in this remote settlement. I have no doubt that the Custodian was fortunate to find a purchaser in the Department of Indian Affairs even at a price more than 100% lower than the

aggregate assessed value. However, the price paid on a sale made in these circumstances I think will have been substantially lower than the fair market value of such properties had the settlement then existed as an inhabited community.

In these circumstances the task of determining fair market value as at the date of sale in 1946 presents peculiar difficulties, since the dwellings and land when sold comprised the majority of the habitations in a deserted community, a condition which arose in consequence of the evacuation policy.

The appraisals furnished to the Custodian I find of little value, since it is not possible to determine with any degree of certainty to which dwelling a particular estimate relates. The S.S.B. appraisal on twelve 5 acre parcels and 7 dwellings thereon is shewn by Exhibit 127 to have been $3625.00, but no details of the appraisals were furnished, nor is there any identification of the dwellings appraised. The most reliable estimates of value available to me are those of the Provincial Government assessors made for taxation purposes, pursuant to R.S.B.C. 1948 Cap.332, Sect.30, showing an aggregate assessment for 1946 on the 8 parcels and dwellings now under consideration at $10,350.00, the distribution between the parcels being set out above.

I have therefore approached the problem on the assumption that at the date of sale Hakoda Bay was an inhabited settlement, of which the claimants' properties constituted the major part. On this basis, and not otherwise in my opinion, is it possible to envisage "a purchaser willing but not obliged to buy" property from "an owner willing but not obliged to sell" (vide Appendix III, or to determine the sum which "a prudent man

"in the position of the owner would pay rather than "to be ejected from the property" - Diggon-Hibben v. Regem, 1949 S.C.R. 712.

Therefore I consider that fair market value of these properties may fairly be estimated at 75% of the 1946 assessed value as shewn above. The assessed values are depreciated to the extent of 25% since I assume that the assessor's inspection of the premises in this remote district will have been some years before the time of sale. I therefore find that the fair market value of the respective properties is as follows:

	Fair market value	Credit given Appendix I	Recommendation now made.
No. 787 YOSHIHARA N.	$1200.00	$ 74.84	$501.72
788 YOSHIHARA M.	975.00	63.15	405.31
888 OYE T.	675.00	47.56	276.76
1101 HAKODA Y.	750.00	51.46	308.99
1108 NASU M.	1387.50	84.58	582.07
1339 WATANABE T.	825.00	55.36	341.02
1343 MATSUHARA C.	750.00	51.46	308.89
1368 TERASHITA S.	1200.00	74.84	501.72

I THEREFORE RECOMMEND payment to the respective claimants of the difference between the market value so ascertained, less credits given in Appendix I, and the sum realized on sale by the Custodian. In arriving at this estimate, I have taken into account the fact that on the sale made by the Custodian there was deducted from the sum to which the claimant was entitled the equivalent of 3 years taxes on his property, which had accrued subsequent to the claimant's evacuation.

"H.I. BIRD"

H.I. BIRD

Commissioner.

April 4th 1950.

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