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1726 Brief on Kagetsu Claims Case ([1950])

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B R I E F

RE

CLAIM NO. 1588

(E. KAGETSU, DEEP BAY LOGGING COMPANY, KAGETSU & COMPANY)

AND

COMMISSIONER BIRD'S REPORT

81-88

KAGETSU & CO., LTD.
TIMBER EXPORTERS
VANCOUVER CANADA
FOR
RETURN OF
VESSEL
BOOM NO.
AT
LOADED TO

BRIEF re CLAIM 1388 and COMMISSIONER BIRD'S REPORT

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I N T R O D U C T I O N

At the outset, it is strongly stressed that no criticism is directed towards the war evacuation policy towards those who were assigned the difficult task of liquidating Japanese property, towards any party who were retained as advisers regarding liquidation, or towards the purchasers of Japanese property. It goes without saying that an emergency state existed and all had but one goal -- to win the war. It is believed that those concerned with the liquidation of our property diligently took reasonable measures to protect the interests of the claimant. However, the fact still remains that circumstances beyond the control of the liquidators developed, which produced most unfavourable results for the owners.

NO CRITICISM

This brief is respectfully submitted with the contention that the claimant should not suffer because of the war emergency.

Rather than criticism, great admiration is felt for the Commissioner for the commendable manner in which he presided over the entire inquiry and for the comprehensible presentation of his report in this case.

Notwithstanding the above, the claimant does not feel at all satisfied with the Commissioner's conclusions in those matters that had to do with:-

The value and quantity of timber on Block 195, Cowichan District.

The value and quantity of standing timber

ITEMS 1, 2 & 3

on 11 Blocks, namely Blocks 617, 504, 566, 274, 263, 198, 234, 267, 276 and Lot 88, all of Newcastle District; together with the value of certain cut timber in the woods, and the value of the land and immature stands on the aforementioned Blocks, all of which has been labelled as the Deep Bay Property.

And, lastly, the railroad on the Deep Bay Property.

These items have been enumerated by the Commissioner as numbers 1, 2 and 3 respectively.

This brief is written on the assumption that the reader is already acquainted to some degree with the facts in the Commissioner's report which is herein appended. The pages referred to herein are those of the transcript of the Inquiry.

The claimant from the start (p.9-10 Norris) emphasized that because of the evacuation, all the assets had markedly dropped in value from such reasons as:

GOING CONCERN

(1) The thriving Deep Bay property could no longer be considered as a going concern especially when the camps were modelled to suit Japanese and the forced cessation of operations had resulted in complete disorganization of camp and equipment. And, this was truly a going concern. "In my opinion, it was very efficiently managed and as far as forest protection and utilization was concerned, it was as good as any other " said one witness (p.266-7 Byers; see also p. 43-44 Norris).

ALIENATION TO ALASKA PINE CO

(2) The alienation of adjoining tracts of timber to Alaska Pine Company. Evidence was produced (p.40-42A, p.45, p.90-91 Kagetsu; p.758-9 Field) to show that the claimant would have had access to at least an additional 60 million feet of timber in which to operate, thereby materially enhancing the value of the Deep Bay Property. The Crown

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acknowledged (p.42 McPherson) the unfavourable effects of this misfortune. Prior to the sale, Mr. C. Stewart who was acting as the claimant's solicitor, wrote to the liquidators thus: "The whole picture has been wrecked, as you know by the option.....we would have made a deal before now." (Ex.32).

(3) The market was well aware of the inevitable sale of Japanese property, hence were expecting bargain basement prices. This is why the claimant could not effect sales at reasonable prices immediately following evacuation. Consider further, for example, the ridiculously low offer (Ex.45, p.2, 1945 report; p.679 Wray) of only $12,000 for the Deep Bay Area by Mr. E. L. Robson, a logging contractor for Alaska Pine Company! This particular offer was so low the liquidators felt "...exceedingly annoyed..." at what was considered to be a very "frivolous offer" (p.680 Wray). A further example is the apparent indifference (p.886 Shaw) of H. R. MacMillan Company just before the advertisements of sale. This same indifferently inclined party was the sole bidder for either of the claimant's tracts of timber! It is not likely, therefore, that the bids were very high. Buyers knew that these sales were of a forced nature especially with the acute lumber shortages (see Ex. 44 & 50 re urge from Timber Controller) therefore, were naturally at a decided psychological advantage.

EXPECTED BARGAIN PRICES

(4) The liquidators had to make sales by calling tenders with such unattractive stipulations as (see Ex.28, Ex.46):-

No warranty to title
Immediate cutting of timber (p.726-27 Wray)
Highest bidder not necessarily accepted

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Consequently, only one party, H. R. MacMillan Company, saw fit to submit a tender for either of the properties. This is most significant because many were seeking stands of timber about that time as brought out by the evidence of more than one witness (p.294 Byers; p. 573 Brown).

UNFORTUNATE ADVERTISEMENT

Reluctance to buy because of the above is obvious. (p.370 Allison). Some of the less apparent reasons were:

The buyers would not be able to use this timber for forest management purposes because the contract would not permit of postponed cutting (p.601 Schultz)

The advertisements were construed to mean no time would be afforded to permit of well studied logging operation plans (p.601 Schultz).

American buyers were not interested unless they could hold the timber until export embargoes were lifted (p.571 Brown).

SPECULATION PRECLUDED

(5) All elements of speculation for a future lucrative market was entirely eliminated to prospective purchasers because the timber could not be held (p.587 Brown) since the condition of sale was for immediate operations; and at a time when the upward trend of the timber market was obvious.

INTANGIBLE VALUES LOST

(6) Intangibles such as goodwill and verbal agreements, for example with E. & N. Railway (p.15) and Victoria Lumber and Manufacturing Co. (neighbour operation), could not be passed on by the vendor to any succeeding operator.

PECULIAR VALUES LOST

(7) Items having peculiar value only to the claimant no longer had much value, for example, farmlands around camp, baseball field, foreshore lease, booming grounds, oyster beds (p.37-38, also Ex. 7). The claimant having pioneered in the cultivation of oysters, many are now actually engaged in a prosperous oyster business in that vicinity.

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EXPERIENCED RAILWAY OPERATORS SCARCE

(8) Loggers skilled in railway operations were becoming scarce. Those who favoured railway operations, therefore, were mostly the big concerns with long experience and with available technically trained personnel. The smaller logging contractors, who greatly increased in number during the war, preferred truck operations because the initial capital outlay was smaller and the planning was much less involved. (Those who are logging in the former holdings of the claimant might be classed in this latter group.) Had more of these smaller logging companies been experienced in railway operations, as the claimant definitely had been, the assets of the Deep Bay Property would have had greater sales value. That is to say, the Deep Bay property had added value to the claimant or to any other logger experienced in such an operation as his.

The brief history of the claimant's stand in chronological order is as follows:-

HISTORY

(1) The claimant approached the custodian in vain (Ex.11) for continuation of operations, at least for a limited time especially in view of the dire need for logs for the war effort.

(2) Having thus failed, the claimant gradually considered private sale negotiations, but the obvious necessity for sale resulted in no attractive offers.

(3) The claimant then was willing to compromise, but even that produced no results.

(4) The custodian then deemed it necessary to take the helm.

(5) The claimant while trying his best to co-operate, persisted in his unwillingness to sell at the offered prices which were so very low. (See Ex.32, Ex.35, also p. 228)

The claimant makes appeal therefore, in view of the above, that the term "fair market value" in Order-in-Council P. C. 1810, as amended by Order-in-Council 3737 be extended

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to mean fair and reasonable compensation (p.1202-1209 Norris). Reference is made to the judgment of the Supreme Court of Canada in the case of Diggon-Hibbon Ltd. vs the King (1949) S.C.R. 712. In this case, the court approved of the case of Irving Oil Co. Ltd. vs The King (1946) S.C.R. 551, thereby ruling that compensations should be made for a party being prevented from continuing in business. The claimant or, the custodian acting on his behalf, because of the war emergency could not continue in business, one which had been gradually built up since 1923 into proportions of a sizable community (Ex.7; p.35-37, p.236).

Further, the judgment was that all elements of value to the owner were to be compensated. The Supreme Court ruled that a <u>ten percent</u> allowance on the fair market value be awarded to compensate for various intangible and indirect losses.

The claimant merely asks that in lieu of this ten percent compensation, all aspects of this case be considered not <u>unkindly</u>, but with much circumspection, fairly and reasonably. It is suggested that leniency is justified in view of the manifold adverse circumstances. And, it is believed that strict consideration of the elements of this case would be grossly unfair for many reasons outlined herein.

The Commissioner not only has disallowed this ten percent compensation (reasons not being given) but also, in the major issues, those involving timber, he has compensated merely for the difference between actual price of sale and what in his judgment was the fair market value. Unfortunately, the fair market value that the Commissioner has arrived at is usually the value which had shrunken as the result of the adverse effects of the evacuation of the Japanese from the

coastal areas of British Columbia.

At this point, the claimant wishes to stress that circumstances have been most adverse for him from the start of the conflict with Japan. To begin with, the rapid evacuation put him at a decided disadvantage so far as company and personal matters were concerned, especially in the way of records, not to mention mental confusion. After being evacuated, he did not, personally at any rate, have access to records which would have been most helpful to him in evaluating his various properties. Because of the existing circumstances, he had to rely mostly on memory and resort to guesses. Even at the time of drafting the initial claim, was this the case (p.137, p.180-81, p.184 Kagetsu). Unfortunately, even at the time of the inquiry, he did not have available certain records (p.481 Baldwin; p.738 Wray) which would have been of value not only to him but to the Commissioner as well, because through such matters as the sale of furniture, things had become lost. This is raised merely to explain what might be construed as inconsistency on the part of the claimant with regard to certain figures of value or quantity.

The claimant asks that this case be weighed on the merits of the evidence produced, without prejudice from certain figures which may have been given prior to the opening of the inquiry. Moreover, it is held that, in some cases, reports of volume and price to which the claimant allegedly committed himself are vague because much of the Deep Bay Property was in fact the property of not the Deep Bay Logging Company, but the claimant personally. This

MISUNDERSTANDING AND CONFUSION EXISTED

confusing situation was made worse by the inadequate knowledge of English on the part of the claimant, and by the fact that vital communications had to be done by wire (telegrams). Discussions prior to or during the sale of the Deep Bay Property, e.g. re volume of 17 million or the price of $40,000 for the timber are shrouded with misunderstanding on the part of the claimant on the one hand and the liquidator on the other (p.756 Field).

ORIGINAL COST

It is the claimant's opinion also that the case should not be prejudiced by what certain properties had originally cost the owner. Not only have there been many years of charges such as interest on loans and taxes, (e.g. the cumulative cost of Block 195 to 1942 was $121,515 - p.17) but for the timber the risk had been high. Major losses from fire, disease, insects or storm, especially from the former, are commonplace in the logging industry. And, insurance against these hazards has never been possible. Also it goes without saying that it is this spirit of speculation, the willingness to take risks that makes for success of the free enterprise system. The claimant had taken risks for which rewards were on occasions deservingly forthcoming.

PROPERTY NOT USED

The claimant also stresses that this case should not be prejudiced by what was and what was not used by the purchasers of his property. For example, circumstances were adverse (p.932 Shaw) for the operators succeeding the claimant to use the existing booming grounds and dumping pier. It was not that the latter had no value. Had the claimant

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VALUABLE PROPERTY NOT USED

continued to operate, such improvements would beyond any shadow of doubt have continued to be invaluable. With regard to the railway, there is little doubt that it would have continued in use by the claimant (p.851; p.1074) especially with war shortages, notwithstanding the difference in opinion of witnesses concerning the efficiency of such hauling. And had the railway not remained idle to deteriorate for two years following the claimant's evacuation and had the purchasers not been so shrewed, as H. R. MacMillan Company is reputed to be, as to realize that by not buying the railroad they would receive the same roadbed gratis; there is some doubt as to whether the succeeding loggers would have abandoned the railroad method in favour of trucking.

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TIMBER CLAIMS

A - MARKET TRENDS

The Commissioner established the following as effective dates of sale: Block 195 - June 15, 1943

Deep Bay Area - March 13, 1944

INDEPENDENT MARKET FOR STUMPAGE

At this point, it may be well to outline some of the factors which cause the price of standing timber, that is, stumpage, to rise. As is explained later, it is fallacious to think that stumpage prices are inflexibly dependent on the price of logs. Quite independent of the log market, there exists a market for standing timber. And, the demand for standing timber depends on the shortage of supply, which condition was being felt from before World War II. The demand also depends on the foresight of sawmill operators. That is, to what extent they can envisage the need to add to their timber inventory to insure sustained production. Speculation, in a very favourable capital appreciation precipitated by the war, is still another cause for an increased demand in standing timber. And, lastly, there is the logger who wishes timber for immediate operations.

All these factors from the early days of the war had but one effect-- that of making stumpage values steadily rise on any timber tract of fair proportions (p.369 Allison). Especially was this true of

ONLY 7 PERCENT PRIVATE

private timberlands which aggregately form only 7 percent of the forests of British Columbia, the remaining 93 percent with concommitant logging restrictions being held by the crown (p.1018 Schultz).

Up until November 1946, a price ceiling for logs existed (P 98 BURKE, also see EX 12) Therefore

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while the demand for logs was extremely high during 1943, 1944 and 1945, log prices rose only in a controlled fasion as the ceilings were raised. It is emphasized that the rapid rising of log prices subsequent to 1945 was

CAUSES FOR LOG PRICE JUMP

the result, not of higher demand but because the ceiling was removed. The powers-that-be in any big industry can prognosticate roughly the demand immediately ahead. Surely, if a surge of demand was pending, the ceilings would not have been removed. The demand for logs was at peak levels prior to 1943, as confirmed by the testimony of Mr. J. H. Burke, Manager of the B. C. Loggers Association, who stated: "By early 1942....I can say that practically any log of reasonable quality sold at ceiling prices." (p.99). He further said: "The last four years (which takes us prior to the lifting of the ceiling) anything that could be called a log and given a grade would sell." (p.105). Such was the high demand for all logs during 1943 and 1944 as compared with later years.

EARLY RISE OF STUMPAGE FROM DEMAND

Furthermore, it was not the demand but rather the increase in production costs which caused log prices to rise after 1945. When cross-examined, Mr. Burke said, "If you will say the increase was due to the increased cost of producing longs, I will agree."(p.100).

DEMAND & LOG PRICE NOT PARALLEL

Therefore, the rapid rise in log prices is no criterion of increased demand for logs. Mention might be made of statements made by crown witnesses. Mr. Keith Shaw, senior executive of the H. R. Mac Millan Company, testified thus: "The market conditions change and they change fast. Take the present market for the lower grades of cedar and hemlock, and you wonder whether you are going to take it out in the spring or

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not" (p.912). Mr. Eustace Smith, a well known timber cruiser, said: "Today they are taking out less (cedar) because cedar is no good now." (p.820). Yet, since 1940 prices of cedar and hemlock have steadily increased to the point where in 1948 they were about double 1943 prices (see Ex. 12).

The actual log prices (average for the year) from B. C. Loggers Association are as follows:-

	Cedar	Hemlock	
1943	$21.19	$18.14	Demand very high for both
1944	22.99	19.88	" " " " "
1948	42.11	36.97	Demand poor for both

This lack of parallel between log demand and log prices prove the unreliability of using the latter as any kind of guage for stumpage values.

Throughout the war, no attempt whatsoever was made to peg stumpage prices. Consequently, stumpage prices rose percentage-wise relatively faster than log prices. And, the rise came much earlier also (p.398 Allison), which was explained by one well qualified witness (p.294 Byers) thus : "There were large mergers of logging companies in this province, and that created a condition of alarm amongst the smaller operators. And they thought that if they did not get into the timber business themselves and purchase standing timber, that they would not be able to purchase logs to keep their mills running. And from then on, the race for timber was on. And stumpage prices started to skyrocket and they skyrocketed long before the price of logs, when the controls were taken off."

EARLY RISE OF STUMPAGE FROM DEMAND

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In regard to the value of standing timber as against logs, the Commissioner asked one of the leading timber operators of British Columbia: "What was the situation in '43, Mr. Brown?" to which he replied. "It was starting up. It was definitely better. People were looking to buy timber at that time in quite a few instances (p.573)." And, by "people" he was referring not only to local timbermen, but also to foreign interests, as attested by: "And, in view of the fact that there were these prohibitions on exports, the foreign buyer was pretty well out anyway, whether he had to operate immediately or not, wasn't he?" (posed by crown counsel). Mr. Frederick B. Brown replied, "No, they were looking for timber and still are even with the prohibition on Crown granted timber on the assumption they will change in the future. They are still interested." (p.587). The witness (Mr. Brown) was well qualified to make that statement as he in fact had very influencial American connections (p. 571)

B - UTILIZATION

The Commissioner has concluded that current utilization is closer than in 1943 or 1944 to the extent that ten percent increase in volume has resulted. To this, the Claimant vehemently disagrees.

UTILIZATION DEPENDS NOT ON LOG PRICE

One might point out that utilization depends chiefly on the demand for logs. It is important to distinguish between <u>demand</u> and <u>price</u> of logs, which do not by any means, as already explained, parallel each other. The price of logs has depended mostly

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on the cost of production and price control. It is easy to see that if production costs are high, as they currently are, loggers definitely cannot afford to practise close utilization to any great extent.

In this connection, witnesses had the following to say:

CLOSE UTILIZATION TESTIMONY

William J. Allison, a prominent logger: "I would say about 10" top diameter would be about average." (p.391). This was in reference to 1940, but he further said, "I don't think there has been any change since 1940 until now." (p.392). The Commissioner asked, "Was it economical to cut down to as low as 12" DBH (Diameter Breast Height) or was it say in the period from 1940 to 1944?" He replied, "I would say so, my lord, in certain operations. Where they had reason for wanting small timber, it would be economical to do it." (p.392) Earlier, Mr. Allison had testified that in 1940, 10" logs were saleable (p.378).

Frederick B. Brown, one of the best known loggers in British Columbia, when questioned about 1943.. "Yes, I think 9" and 10" top was as low.....at least 85 to 90 percent of the loggers were cutting that," (p.583) suggesting that that was the case using ordinary equipment.

Charles N. Pretty, prominent timber broker of long standing, "I think the Government qualifications are the same today as they were roughly six or seven years ago, that is the government timber sales. It is possible in the case of hemlock that smaller logs are being taken at the present time, but generally speaking, from the experience I have had, there is very little difference." (p.629).

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CLOSE UTILIZATION TESTIMONY (cont'd)

Charles D. Schultz, widely known forester and forest engineer, had this to say: "I think keen management would go after that (Close utilization) every time, because obviously if management buys an area of timber for a lump sum, every stick taken off is going to increase the over-run to reduce the original stumpage price and make the operation more economical." (p.520). "Well, I would say from 1936 on you get that trend of increased utilization." (p.521).

William Byers, timber expert of long standing, said: "I would say that the change occurred around '35 and '36. They were taking out logs of that diameter (12" butt). And I think that can be proved by the scale and by the tally sheets and the royalty account on which you will see these logs taken down to 8,9, and 10 inches in diameter". (p.269). Evidence was subsequently produced (p.450-455) by borrowing records from the Forest Branch verifying the above. To the question, "I take it from your evidence that pretty nearly everybody in this province from 1938 on....as a general policy were taking out trees down to 12" breast height?" W. Byers said, "As a general practice, yes." (p.346).

The Commissioner asked John N. Burke, "There was evidence led yesterday to the effect that logs 12" at the butt (or) breast high, were marketable and actually marketted as logs in the period 1940 to 1944" to which he replied, "I will certainly say that is correct." (p.103).

The Commissioner veritably made repeated reference to Chief Justice Sloan's Forestry Report of

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SLOAN REPORT

B.C. (1945) in which is described a re-logging operation at Ladysmith on a cut-over made prior to 1943 (Ex.55). The extract was, "The original logging produced approximately 6,405 cubic feet per acre, and logs down to a top diameter of from 9" to 10" were recovered, indicating close utilization under present logging methods." To this all witnesses to whom the Commissioner presented the matter subscribed, e.g. Mr. Eustace Smith (p.819). In particular, Mr. C. D. Schultz replied, "We (Bloedel, Welsh & Stewart Logging Co.) were trying to get our fallers to cut to 6" at that time, but that was the general practice at that time." (p.523).

CLAIMANT'S UTILIZATION

It was further brought out in the evidence (p.491-2) that from 1938 on, the claimant himself on many occasions made up booms of small logs only and sold them on the market as "peewee booms". This practice was at one time common to many loggers. One could also well mention marketable poles and piling which were in great demand during the war.

Having established that close utilization has existed for a long time, it is attempted hereby to enlarge on the relative utilization between 1943 or 1944 and the present. Mr. J. N. Burke asserted, 1948 UTILIZATION DOWN " You would be right if you said the sale of all quality logs was falling off and small logs of some species." (p.107). This is in contrast to the high demand which existed previously as indicated by the same witness. "(In) the last four years (previous to '48) anything that could be called a log and given a grade would sell." (p.105 Burke).

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Furthermore, in reply to the question: "Well, do you say today they are taking out more cedar than they were in '43?" Mr. E. Smith, crown witness replied, "No, today they are <u>taking out less</u> because cedar is no good now, but a year ago it was very good." (p.820). In another instance he said, "There isn't market today even for poor hemlock." (p.800).

Another witness, Mr. Charles N. Pretty said: ".....some discretion is commencing again at the present time (1948)." (p.629).

1948 UTILIZATION DOWN

Mr. Keith Shaw representing the purchaser of both Block 195 and the Deep Bay Area, asserted, "The market conditions, they change and they change very fast. Take the present market for the lower grades of cedar and hemlock, and <u>you wonder whether you are going to take it out</u> in the spring or not, and that would <u>make a very great deal of difference</u> to the amount that was left, because if the logger cannot take it out at a profit, <u>it has to stay.</u>" (p.912).

When questioned on the current actual utilization of the T'sable River Logging Company who now operate on what was formerly the Deep Bay Property, Mr. C. D. Schultz testified, "....we found from the current logging practice on the area, it was 18" (inches) or over." (p.1011). "....our inspection of the (cut) timber indicated the cutting was <u>18"</u> and over."(p.1011). This is as against 12" of previous years as already proven.

Obviously, the degree of utilization depends on economics and consequently it fluctuates in response to economic conditions. And, while in 1947, the price

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of logs was very favourable to the logger, conditions subsequently have been such as to force loggers to become lax in utilization, to the point where utilization in 1943 and 1944 in many instances could be considered superior.

C - VOLUME

The following are the pertinent volumetric estimates, all species included, which were produced as evidence:

For BLOCK 195:

Smith's Volume.....30,996 M.b.f.
Schultz's Volume.....55,474 M.b.f.

For DEEP BAY AREA:

Smith's Volume.....16,598 M.b.f.
Schultz's Volume.....56,520 M.b.f.

Liquidation was made on Smith's estimates. The claimant hastens to add that the seemingly wide disparity between the cruises of Smith and Schultz, who are both fully qualified and competent cruisers is in fact not real, as the two cruises are not altogether comparable although they are both for areas within the same boundaries.

In the first place, it is important to appreciate the object of Mr. Smith's cruises. While, as the Commissioner reports, Mr. Smith acknowledged his cruises to be conservative, he made them also with the view to ascertaining only the minimum of standing timber. He has not purported otherwise.

Consider for example his opening paragraph of one of his reports (Ex.45 Schedule 2 '45 report)

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"I made a general examination of the timber...and while this was not a systematic cruise, the check I made should give a fair idea of the amounts accessible..." He further remarks, "...my check would indicate that the cruise....is all there." Further, the Commissioner at one point asked, "The figure you estimated is a confirmation of the Prior (E.& N.) cruise (Deep Bay Area) rather than your own figures?" Mr. Smith replied, "That's right. After I had cruised it, I felt sure the timber was there." (p.863). Lastly, with regard to Block 195, he testified thus, "I never made a re-cruise." (only a check in 1940 on a very old cruise of 1923) (p.843). His estimates were obviously only of a cursory nature.

By reason of the nature of his cruises, Mr. Smith does not give any description of the method in which his cruises were carried out for either of the properties. His justification lies in the fact that doubtless his were only general examinations. In marked contrast to this, Mr. Schultz endeavoured to get as good an estimate as possible under the circumstances.

INTENSE SYSTEMATIC CRUISE BY SCHULTZ

His sampling was carried on meticulously. Further, other aspects of the cruise were executed with far greater care and detail than is customary for commercial cruises (p.511-512, p.595, p.1005-1007). In the case of Block 195, he made technical analysis of his sampling to confirm the accuracy of his cruise (p.513,515, also Ex.15). On the Deep Bay Area, Schultz used the most up-to-date methods of cruising known to forest engineers, that of doing his ground work

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in conjunction with aerial photographs (p.1002-3. Ex. 61). It might be added that Mr. Smith's remarks about aerial photography were, "It is extremely useful for mapping... getting out very accurate maps.... they are very good."(p.1161).

It is easy to see that cruising is far from an exact science (p.841 Smith), for obvious reasons such as the vastness of the area, variations in the shape of trees, heterogeneous composition of the stands, etc., etc. It is not like measuring the content in a pile of lumber where by taking the external measurements, a quick estimate can be ascertained reasonably accurately. There are no short cuts to cruising. Therefore, when it is deemed advisable for economic reasons, for inadequate time or any other reason, to make a timber cruise which is not too intense, the accepted practice is to make the estimate very conservative. And, the logic is very sound. When master logging plans are developed on the basis of these cruises, the operator after huge capitalized expenditures will inevitably find more timber than was reported instead of an acute shortage which would make him go bankrupt. In short, if a close estimate is required, such as for purposes of important lump sum sales, such can be attained only by a very intense systematic cruise. Unfortunately, the liquidators found it inopportune because of war conditions to have intense cruises made (p.746).

To enlarge further, Mr. Smith's cruises not being intense cruises but merely checks, are low as to be

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expected as has been other of his cruises of that type. This is verified by the following:-

ALL QUICK CRUISES LOW

Crown Counsel asked "And, when you speak of it (actual cut at Nanoose) being considerably over the Eustace Smith Cruise, could that be accounted for by the fact that Eustace Smith might have cruised down to only 18" D.B.H.?"

Mr. Charles W. Pretty, prominent timber broker, replied, "I don't think that would have anything to do with it. Many of Eustace Smith's cruises have been very conservative." (p.631). Also, logging operators will agree that E. & N. cruises (Timber of Vancouver Island subsidiary of C.P.R.) have up to not long ago been consistently extremely low (p.27, p.38-39 Kagetsu; p.383 Allison) for the very same reason that the cruises were of a very general nature. Testimony was given that its rough cruises have had overruns exceeding 100 percent on occasions (p.27, p.38-39 Kagetsu). It was only in 1940 that the E. & N. by degrees inaugurated systematic cruising methods (p.829 Smith).

The Commissioner understandably experienced some difficulty in reconciling the disparity in the estimate of volume submitted by various experts. It is his opinion that inadequate discrimination between "merchantability" and "accessibility" is the explanation. It is held that the volumes claimed are unequivocally from the point of view of "accessibility" as defined by Chief Justice Sloan and reproduced in the Commissioner's report of this claim.

MERCHANTABILITY VS ACCESSIBILITY

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Consider, for example, Schultz's Forest Inventory of Deep Bay Area (Ex.61) on which the claimant's volumes are based. On page 2 of the report, it states, "Deductions were made for breakage and defect from inspection of the ground and timber conditions." Average deductions applied were as follows:- Cedar and Hemlock 30 percent, Balsam and Fir 20 percent. To insure the recoverabilty and "accessibility" of the volumetric estimates, a total of 11,143,000 board feet has been deducted for this account.

Furthermore, excluded because of questionable accessibility were 3,302,000 board feet which is the volume of all the wood between 12" and 18" in diameter at breast height. This sizable deduction was made not because the timber was not "merchantable" as there is no doubt it was, but because the claimant and his experts could not count on this smaller timber being "accessible" in this particular case.

Also, perusal of page 1 of Exhibit 15, Schultz's timber estimates for Block 195, will readily reveal that a very considerable amount has been deducted for factors of "accessibility" namely to the extent of 13,518,000 feet board measure!

The Commissioner reports, "The claimant caused volume cruises to be made...Both are expressed to relate to conditions pertaining to 1943, though in my judgment the appraiser (Schultz) has not successfully avoided the influence of the changed condition which are shown to have occurred subsequent to 1945.... These factors in my opinion serve substantially to explain the divergence of opinion noted on both principal

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issues (volume and price)."

DATE NOT FACTOR

To avoid misconception, price trends of standing timber have been herein already dealt with. As to volume, one might consider Mr. Smith's volume of Block 195 for which his original cruise of 1923 was 30 million feet. In 1940 after almost two decades, his revised estimate was only 31 million feet (p.789). This is despite growth and improved utilization which had taken place during that long interval. Consider further the question put by crown counsel, "Would there be any other types of timber included in your inventory, exhibit 61, which wouldn't have an economic value in 1943?" to which Mr. C. D. Schultz replied, "No. It is my considered opinion that the timber in question all has an economic value in 1943." (p.1100). Hence, to repeat, the divergence is not so much a matter of date, but rather the object or nature of the cruises that were made.

ACTUAL CUT

Again since aspects of utilization have been already presented, almost unshakable figures of volume can be found in the actual cut from the two areas in question. Under the government system of timber marks for wood coming off specified areas, there can be no question of the accuracy of the following figures as to source of the logs (p.259, p.288 Byers; p.908 Shaw; p.1104 Schultz). These figures also represent not the scale in the woods, but the volumes at the dump or delivery point.

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For the Deep Bay Area the government scale records show:-

DEEP BAY CUT

Cut up to Dec.'48	16,721,024 bd. ft. (Ex.22)
Cut Jan. to Dec. '49	5,852,700 " "
Cut Jan. to end of June '50	1,070,372 " "

Total to end of June '50 -23,644,096 Bd. ft.

This is as against Smith's cruise of 16½ million feet, Schultz's 56½ million feet and the Commissioner's conclusion of 19½ (17 plus 2½ felled & bucked) million feet. And, it is knownfor a certainty that much timber still stands, enough to permit of several more years of operations. The facts are definitely in favour of Mr. Schultz's estimates being correct.

As for Block 195, the timber mark issued is such that the wood on adjacent Block 403 must be treated jointly. This is to the claimant's disadvantage because evidence shows that Block 195 was superior in that it contained larger timber and less hemlock (p.264,289 Byers, p.793 Smith).

The government scale records show:-

Block 195 CUT

Up to end of Sept '48 (ex.23)	58,752,003 bd.ft.
Oct, Nov. & Dec. '48	4,000,000 (ESTIMATE)
Jan. to Dec. '49	8,781,263 " "
Jan. to end of June '50	2,642,065
	74,175,331

Mr. Smith's cruise of Block 195 was 31 million feet. His cruise for Block 403 was 21 million feet (p.795 Smith), making the combined total of 52 million feet. Here again much timber still remains to be logged which in fact indicates that the Commissioner's conclusion of 41 million for Block 195 or aggregately for

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the two blocks of 70 million is very low. Schultz's cruise shows 55½ million feet for only the one, Block 195, which according to the above will ultimately prove correct on the basis of any reasonable calculation of apportioning to the respective blocks the final volume realized.

It might be well to point out that Mr. Smith's low estimates as indicated by the foregoing, cannot be explained away by arguments pertaining to hemlock. It has already been proven under the subheading "Market Trends" that the demand in 1943 and 1944 for

HEMLOCK NOT REASON

hemlock was high (p.99, p.105 Burke). Mention could be made of the large mill of Alaska Pine Company (New Westminster) which cut even during the early forties, <u>hemlock in the main</u>, rather than fir (p.847-48). Also, there were logging operators such as Pioneer Logging Company (Port McNeil) which took out in 1943 <u>hemlock only</u> (p.1095 Schultz). Furthermore, exhibit 55 shows that in 1943, hemlock ranked next to fir in the log volume cut. It shows that the cut of hemlock was in fact three times that of spruce for which British Columbia became so famous during the war. The demand for hemlock in 1948 dropped considerably as pointed out under sub-heading "utilization" which further favours the claimant's contentions. And, any intimation that as an exception the cut of hemlock remained high only on the former tracts of the claimant, can be easily refuted. True there is evidence that H. R. MacMillan Company by agreement had to take what was cut from Block 195

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or from the Deep Bay Area, all undesirable species with the desirable, but also by agreement, such were paid for at prevailing log prices(p.898,p.903 Shaw). Therefore, the loggers concerned would respond to the drop in demand in the same manner as any other logger, that is by taking out less hemlock. And again, Mr. Keith Shaw's testimony may be repeated, "Take the present market for the low grades of cedar and hemlock and you wonder whether you are going to take it out in the spring or not...."(p.912).

BLOCK 198
TESTIMONY

BLOCK 198

E. Langston in reply to, "How what sort of Fir did you find on Block 198?" -- "It was the very best that I have seen." (p.86)

Frederick R. Brown said, "....Fir and Hemlock I would say is of a very good grade." (p.879).

William Ewart, timber broker and consultant and former chief scaling supervisor of British Columbia, "Well, it is above average, considerably above average. A very desirable type of timber, I would say." (p.884). "As I mentioned before, the average for the past ten years for No. 1 is approximately 5 percent, with 40 percent No. 2. Here we have 11.5 percent No. 1 and only 25.5 percent No. 2." (p.885). With regard to hemlock, he said, "....would indicate that the stand of hemlock is pretty good." (p.886, see ex.24).

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B. QUALITY & GRADE

GOOD QUALITY

It goes without saying that Douglas Fir has always remained the choice species in British Columbia and Balsam and Hemlock the less desirable species. The price of Cedar on the other hand, has fluctuated and during 1943 and 1944, commanded a price above even Douglas Fir (see Ex.12). The proportion of the various species on the claimant's tracts is shown in appendix B. Suffice it to say that the percentage of Fir in both areas is very high. Witness after witness concurred that both Block 195 and Deep Bay area were very good stands from the point of view of species composition and grade as exemplified by the following extracts of testimony:

BLOCK 195 TESTIMONY

BLOCK 195

R. Kagetsu in reply to, "Now what sort of Fir did you find on Block 195?" -- "It was the very best that I have seen." (p.26)

Frederick B. Brown said, "....Fir and Hemlock I would say is of a very good grade." (p.579).

William Byers, timber broker and consultant and former chief scaling supervisor of British Columbia, "Well, it is above average, considerably above average. A very desirable type of timber, I would say." (p.264). "As I mentioned before, the average for the past ten years for No. 1 is approximately 5 percent, with 40 percent No. 3. Here we have 11.5 percent No. 1 and only 25.5 percent No. 3." (p.265). With regard to hemlock, he said, "....would indicate that the stand of hemlock is pretty good." (p.286, see ex.23).

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Mr. P. F. Sheehan wrote that (Ex.5). "The fir on this portion of the Block is not extra large, but it is exceptionally long, sound, clean bodied and straight.... The Hemlock and 'larch' (that is, balsam) on this lot... is nice, long, clean, sound timber and will make a fine grade of lumber." Regarding cedar, he wrote "....there is some exceptionally large and fine trees." As to other parts of Block 195, he again wrote, "The fir on this lot is of an exceptionally high average both as to quality and size, very long, straight, clean, sound and according to the B. C. Grading rules will in the log, run 40 percent No. 1, 50 percent No. 2 and 10 percent No. 3." Obviously, at the time he thought this was indeed a superlative stand. And, this was back in 1923 when utilization was markedly inferior.

Charles A. Schultz said, "Yes, I think Block 195 is good ground and easy construction and had first class timber on it from the evidence and on examination." (p.511, also see foot of p.515). Later he said, "It shows evidence of what we term a good stand which is typical of that area." (p.524).

One need only consider that Mr. Smith and Mr. Keith Shaw of H. R. MacMillan Co. went into that tract (p.790 Smith) around 1943 to look for peeler logs which are the highest premium logs on the market.

DEEP BAY AREA

Frederick B. Brown said, "Well, this is a high percentage for fir, apparently, and very similar to our Royston timber. I think it is very good. It is a good average fir." (p 579 and Ex 22)

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DEEP BAY TESTIMONY

William Byers said. "They were very good stands of timber, easily accessible with a high percentage of fir."(p.251). "The grades of fir were very much above average. The grades in cedar were above average and hemlock was also above average." (p.257)

Charles L. Schultz had this to say about the main Deep Bay stand, after having asserted that the fir ran 70 percent No. 1 and No. 2, "what is good fir." (p.1015). He further said that for the Vancouver District, the average grade for fir in 1944 was only 3 percent No. 1 and 50 percent No. 2, a total of only 53 percent (p.1016).

Exhibit 22 verifies the superiority of the Deep Bay timber from the actual production. He went on also to comment (p.1015) about the good quality of cedar.

E. ACCESSIBILITY AND LOGGING FACTORS

BLOCK 195

This tract was easily accessible because it was bounded at least on two sides by former operations whose old roads offered alternative outlets.

BLOCK 195 EASY ACCESS

Mr. Smith in his report (Ex.53) to the liquidators wrote, "The ridges back from the main creek gullies however are on the average, good logging ground and for the most part, well timbered.

.....would have a reasonable crossing of the south branch and fair construction through the eastern part of the Block.

.....we are of the opinion that a truck road can be constructed at a reasonable cost right into Block 195.

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....The road can continue on a very slight grade to enter Block 195.

The cost of construction through the old Scottish Palmer works will be very reasonable as most of the route follows along a gravel sidehill." Charles A. Schultz said, "I consider it a good logging chance. It is good ground....no unbroken ground for heavy breakage...It has a heavy gravel content....it is easy road construction." "Cowichan Lake area is a very favourable area to operate in, due to the fact you have small towns like Duncan and Cowichan Lake lying adjacent to the logging area and a ready labour supply. You are close to communication and transportation. In case machines break down you get them into that area very quickly as compared with the north coast. for instance. The Cowichan Lake area has for many years been a favourable operating area." (p.516. see also p.510 Schultz).

TESTIMONY

Keith Shaw himself acknowledged in connection with road construction, "There was not a great deal of rock work." (p.941).

DEEP BAY PROPERTY

This was a going operation up to the time of evacuation so there remains little question of accessibility. If there remained any dispute, it hinge on whether it was economical to continue operating a railway show, about which witnesses could not agree. In any case it was definitely the claimant's intention to continue operating the railway (contrary to

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the Commissioner's interpretation).

Evidence had been produced to show that a large volume of adjacent timber to the west was available to the claimant. (p.40-42A, p.45,p.90-91 Kagetsu; p.758-9 Field). Had such been the case to any operator, there is little doubt that a railway operation would have been economical.

RAILWAY VS TRUCK

Going on the premise that no other timber was available, it is still argued that if not a railway, a truck-railway operation could have been profitably carried on to log the more difficult areas (p.1081 Schultz) as practised by several large operators. (p.358 Myers).

SIZE OF AREAS

Going still further, if an entire conversion to trucks was to be made (circumstances developed such that the new operators preferred conversion) then cost of opening up depended on the value of the existing railroad which at the time of evacuation was in good condition (p.559-60 Swenson, also Ex. 45 Schedule 2, 1945 Smith). Witnesses could not agree to the value of a railroad grade for a truck road. The fact remains, however, that more than half of the old grade was used by the operators who succeeded the claimant. (p.1137 Schultz).

DEEP BAY ACCESS

With regard to the terrain, one witness, C. D. Schultz, testified thus: "...it is an extensive area and it is relatively speaking an easy country." (p.1079). In reply to the question, "In point of fact, there are some high grades there, aren't there?", he replied, " No, not very bad. They are relatively easy." (p.1079).

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MARKS

NOT SALVAGE CASE

The crown counsel suggested, "....could only treat the proposition as a salvage area after Kagetsu had taken out the best." To this and to the use of the word "patch", Mr. Schultz took strong exception, asserting, "It is a concentrated area...so the term "Patch" would hardly be fair or hardly give the right picture of it. It is a body of timber. It is timber that wasn't logged...."(p.1090).

SIZE OF AREAS

The extent of the timber is easily realized when one considers that fair sized operations (p.1092 Schultz) have now taken place for five years, with many years' timber still standing. One might further mention that these "patches", which collectively formed the Deep Bay timber sale, were 994 acres, 652 acres and 175 acres in size. Compare these with the average size of the government timber sales in the Vancouver district which was in 1944 only 164 acres (Ex.25,p.36). Mr. Smith himself agreed to their being of considerable size (p.1191,p.1193). A look at the map of the Deep Bay Area (Ex.61) will readily reveal that the operations were not a

ORDERLY PROGRESSION

case of taking the best first but definitely one of orderly progression. Surely, a prudent operator, as the claimant was, would not have currently built a new office building (p.45 Kagetsu, p.877 Skelding) or purchased major pieces of equipment, for example, a brand new speeder for $4,000, had sustained full-scaled operations not been contemplated for many years to come. And, it is indeed unlikely that a permanent concern operating on a community scale

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would be so short-sighted as to take all the best first.

It is important to appreciate that the logging terrain in British Columbia is such that one is limted in the direction the timber can be taken out. It is not flat ground where develpment can be made from any or all directions. Sisable stands of timber are habitually left, therefore, with the view to logging out by a certain planned route. As often as not, the remaining stands contain the choicest of timber. Specifically, the claimant had left two bodies of timber, namely, one to the north in Block 504 and adjacent blocks, and the other to the south in Block 276, with the view to first logging Blocks 617 and 566 and adjacent timber (see map appended on Ex. 61).

CLAIMANT DEVELOPING PLANS

Following this, the steel was to be lifted and relaid to develop the northerly parts of Block 504 and adjoining timber (p.126 Kagetsu). Thence, the development was to be westward crossing T'sable River (Tumblewater Creek) to tap the 60 million feet of timber on the other side. As for the timber left in Block 276, it is adjacent to more timber to the south (p.1068 Schultz) and it was the claimant's hope of selling (foot p.125 Kagetsu) that timber to another operator, it being more natural to log with that timber lying outside his boundary. It has in fact been so logged since (p.1189). Failing such a sale, he could at any time have logged it himself.

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F. STUMPAGE VALUE

It has already been shown that for both Block 195 and the Deep Bay Property, the timber quality was good, running high to fir with above average grades in that species. Both these areas, furthermore, had favourable terrain for logging and required less than the usual costs for opening up with roads. To market the logs, the haul to the dump was relatively short. Sheltered booming grounds were available, and the tow to market was relatively short. No hazardous waters had to be crossed as usually the tow was merely across the Strait of Georgia.

WHY TIMBER MOST DESIRABLE

NO ROYALTY

In addition both these tracts had the further advantage of being royalty free which saves the operator around one dollar per M. (p.331 Byers, p.577 Brown).

EXPORT FEATURE

Still further, these being Crown Grant timber, during normal times, the logs could be exported to more profitable markets. (see p.1031 Schultz). The advantage of this feature is considered to have an added value of from 50 cents to $1.00 per M.b.f. (p.570 Brown).

The exportable feature and the timber being royalty free were not contested at the inquiry as there was no doubt whatsoever that those were facts.

Then too, both tracts were of such a size as to permit of fairly large scaled operations for many years, an important factor to purchasers. Also, the owner not only would have absolute title to the timber, but the land also was his for reforestation purposes, farming or for whatever purpose one chose

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to utilize the ground.

Lastly, for the Deep Bay Property, the purchaser received the devloped booming grounds, the foreshore lease, the dumping pier, 40 camp buildings, which all told had considerable potential value in addition to the timber. (Ex.45 -p.3 '45 report).

LUMP SUM VS EXTENDED PAYMENTS

Counsel for the crown made attempts to ascertain the relationship between lump sum cash sales and those on stumpage basis, that is, so much per M as the logs are produced and scaled.(This term is not to be confused with stumpage value which is unit value of standing timber.) The advantages of a cash sale would be assurance of being paid and capital is made immediately available to the vendor. On the other hand, overrun on cruises is frequent and payments on stumpage basis in the long run nets the vendor more money. The same is true when a cruise is unreliable or outdated. Moreover, contracts can be written to award the vendors a premium for rising log prices. And lastly, only the timber and not the title to the land changes with the sale. (p.918 Shaw). Because of these factors, vendors usually are not willing to make generous discounts for cash sales. The fact of the matter is that much depends on the parties negotiating and existing circumstances. This is verified by the various replies counsel received from witnesses. Some quoted 25 percent, others as low as 5 percent. Mr. C. N. Pretty, a timber broker of long standing, was likely the best qualified to

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comment on this aspect. He thought ten percent discount for cash was reasonable (p.635). Mr. Wm Byers, another timber broker, was of the same opinion (p.325).

It might be well to add also that there are still other types of sales. Among these is the E. & N. Railway timber sales which is virtually a lump sum sale with extended term payments (carrying interest charges).

SCHULTZ' STUMPAGE APPRAISAL

For the Deep Bay Area, Mr. C. D. Schultz, a very experienced timber appraiser, approached the matter by way of technical analysis (Ex.62). After considering all factors including log market value of various species in 1944, cost of opening up, depreciation on equipment, various logging and overhead costs, etc. he arrived at a stumpage value in 1944 of $4.30 (p.1031). The same witness earlier estimated Block 195 timber to have been worth between $4.00 to $5.00 /M (p.517).

At this point it might be well to explain that as one expert put it, "Practically every timber development except those carried on years ago from the shoreline, have capital investment with some approach roads." (p.1093 Schultz). Bearing in mind, therefore, that road building was of no consequence for either Block 195 or the Deep Bay Area, some sales which would appear at least comparable to those of the claimant are listed below:

COMPARABLE SALES

W. J. Allison, a well known logger, reported (p.367) a purchase early in 1944 from Charles McCargle of 16 million feet near Nanoose Bay, Vancouver Island for a lump sum which worked out to $4.93 per M. Schultz

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COMPARABLE SALES AND DEEP BAY STUMPAGE TESTIMONY

who in fact had seen this timber testified that it was inferior to those of the claimant (p.521; p.1033). Mr. Allison, therefore, thought $4.00/M for the Deep Bay Area very reasonable (p.405).

Frederick B. Brown interests in 1944 sold a tract at Harrison Bay, B. C. for $2.75/M. Since it carried royalty, Mr. Brown said, "We would probably get $3.75 or $4.00 for it" if it was royalty free. Charles N. Pretty, timber broker, told (p.623-627) the Commissioner about a contract between Almworth Company (Dollar interests) and H. R. MacMillan Company which had been negotiated in 1943. His calculations came to about $4.75/M that H. R. MacMillan Company paid. And the size of the timber was comparatively small. Mr. Pretty suggested at least $3.75/M cash for the Deep Bay Area's timber value in 1944.

Frederick B. Brown mentioned (p.568-9) making a purchase in 1945 from the Stekko family for Van West Logging Company, Royston, Vancouver Island. The price was on stumpage basis which he calculated to be around $4.75/M. This tract was about 11 miles from tidewater.

Reference is again made to the size of the timber tracts. One witness declared "The bigger the block you purchased, the more valuable it is." The claim was not based on the assumption that the large tract (at least 60 million feet) which adjoined the Deep Bay Property to the west was available at the time of the sale, although it actually was when the claimant left his

ONE DOLLAR PER M LOST

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operations (p.40-42A; p.90-91; p.750-9, etc.).

This is another instance where the claimant suffered from forced cessation of operations and evacuation as brought out by the following testimony by Mr. C. N. Pretty. ".....if I were buying a piece of timber to log and it had 40 to 50 million feet behind it, I would gladly pay another dollar a thousand for the timber...."(p.636).

FOREST SERVICE SALES

Extracts (Ex.24) from records of timber sales effected during 1943 and 1944 by the Forest Service in the Vancouver Forest District were produced in evidence. Most of these sales brought comparatively low prices because only small amounts of timber were involved, only the timber and not the land went with the sale. Competition usually did not exist because the volume interested only neighbouring operators, the logs were not exportable, the timber had to be cut in a limited time and royalty had to be paid (p.275 & 357 Byers). Notwithstanding all these adverse factors, a great many sales were made at prices in excess of $3.00 per M for the choice species. Since royalty of $1.22 had to be paid in addition, the cost to the operator was in excess of $4.22. The average bids (Ex.25 or p.334) received by the Forest Service were in fact as follows:-

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	1943 Bid	1944 Bid
Fir	$ 2.76	$ 2.57
Cedar	2.95	2.95
Hemlock	1.48	1.58
Balsam	1.42	1.64
All species	2.17	2.41

Royalty usually amounts to about $1.00/M (p.331) hence the average cost to the operator was about $3.17 for 1943 and $3.41 for 1944. In view of the unfavourable aspects associated with these timber sales, as already described, one made the following testimony..."in my opinion(Gov. timber sale) is not comparable to stands of timber such as the Deep Bay Logging operation which should command a higher stumpage rate." (p.357 Byers, see also p.297). Therefore, it is suggested that $4.00/M or $4.50/M is not unreasonable for much more attractive timber limits, not forgetting that the exportable feature in itself provides an added value from 50¢ to $1.00 (p.570)."

MACMILLAN LOGGING CONTRACTS

Shortly after purchasing both Block 195 and Deep Bay Area, H. R. MacMillan Company sold the timber rights to private logging companies. The contracts were involved and were so drafted as to maintain certain advantages to the vendor (p.896-905; p.921-924). Consequently, it is impossible to make satisfactory evaluations. The contracts to quote the Commissioner "....impose an unusually heavy burden on the logger over and above what is normally a logging contract as I know it." Despite this, for both areas, their selling price was considerably in excess of the rate the claimant received.

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In spite of the above evidence, the Commissioner has concluded that for Block 195 the fair stumpage value is $3.00/M and for the Deep Bay Area $2.50/M. The claimant feels that these values are very low and hardly fair in view of the evidence.

REVISE
$6.00 to $6.50

On the point that deterioration due to forced evacuation should not be a cause of loss to the owner. However, since the value of this timber is dependent on the price of the standing timber, an upward revision appears necessary on this account. Therefore, rather than this timber having the value of $6.00 per M which was based on the stumpage value of only $2.50/M (instead of $4.00), it should be revised to $6.50 per M.

$11.50
CONCEDED

As reported by the Commissioner, admittedly, the claimant overlooked introduction of comprehensive evidence to support certain contentions. Therefore, no mention will be made of indirect logging charges including workmen's compensation, camp overhead, profit and risk, depreciation, etc., which should be in part chargeable to falling and bucking or to the branch road construction, also chargeable to this wood, all of which increase the actual value by several dollars to bring it up to what was originally claimed. Nonetheless, the claimant wishes to add that it appears that compensation has not been granted for 700,000 board feet of logs (p.61-62 Kagetsu) which had been yarded, swung

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FELLED, BUCKED & COLD-DECKED TIMBER

On this phase, the claimant finds the reasoning of the Commissioner acceptable, especially on the point that deterioration due to forced evacuation should not be a cause of loss to the owner. However, since the value of this timber is dependent on the price of the standing timber, an upward revision appears necessary on this account. Therefore, rather than this timber having the value of $5.00 per M which was based on the stumpage value of only $2.50/M (instead of $4.00), it should be revised to $6.50 per M.

REVISE
$5.00 to $6.50

As reported by the Commissioner, admittedly, the claimant overlooed introduction of comprehensive evidence to support certain contentions. Therefore, no mention will be made of indirect logging charges including workmen's compensation, camp overhead, profit and risk, depreciation, etc., which should be in part chargeable to falling and bucking or to the branch road construction, also chargeable to this wood, all of which increase the actual value by several dollars to bring it up to what was originally claimed. Nonetheless, the claimant wishes to add that it appears that compensation has not been granted for 700,000 board feet of logs (p.51-52 Kagetsu) which had been yarded, swung

$11.50
CONCEDED

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COLD-DECKED LOGS

(relayed) and cold-decked, that is in a pile preparatory for loading. The claimant suggests at least an extra $3.50 per M on this account to the volume involved. Corroboration of this is found on Page 2 of exhibit 62 where Schultz's figures for 1944 indicate:-

COLD-DECK WORTH $3.50

Cold Decking	$ 1.50
Yarding (excluding loading) at least	1.50
Small faction of following charges:	
Fire Protection	
Workman's Compensation Insurance	
Camp Overhead	
Profit and Risk	
Depreciation	
...which aggregately comes to around $6/M.....very easily	.50
Extremely conservative estimate --	$3.50

Another approach is to consider the average price of logs in 1944 which was around $20.00/M. 700,000 board feet was at the stage of logging whereby the logs needed merely to be loaded on cars and hauled to the dump. That is to say, almost all the costly logging processes had been completed. Yet, the claimant is asking for only half of the ultimate value of these particular logs, namely $6.50 plus $3.50 or a total of $10.00/M.

To reiterate, the full amount of the original claim is not being asked for in this phase because certain evidence could have been more fully presented. So, the claimant feels the following very reasonable: -

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	2,500 M b.f. @ 6.50	$16,250
plus	700 M b.f. @ $3.50	2,450
		$ 18,700

The Commissioner has recommended only $12,500 as the value of this particular 2½ million feet of wood which value the Claimant finds too low.

BAD VALUE BEFORE

SPECIAL VALUES

the last five years, yes....and in the last five (i.e. from '45) there have been numerous exchanges of crown granted young growth, and even have logged lands that were purchased by concerns interest in logging B. C. operations." (p.1069).

The fact is that the claimant always attached considerable value to logged-off lands as attested by his having continued to pay taxes (ex.61 p.20) on all his logged off areas (p.54 Kagetsu).

As to the specific value of this land which supported immature timber of various age-classes, the claimant has taken figures used in 1946 by the B. C. Forest Service. On the average, it is about $7.75 per acre, being in the aggregate $43,225.00 (Ex.61, p.20) for 5569 acres.

Mr. Smith reported (p.1158 also p. 1196) an instance where $10.00 per acre was paid by one logging interest. Therefore, in view of the

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LOGGED OFF LANDS

General evidence was such that it was difficult to establish from what date operators had generally attached value to logged off lands. There is, however, the following evidence.

Counsel asked, "Is immature timber such as that ever taken into account by a logging operator, when he is proposing to buy a stand of timber." Mr. C. Schultz's reply was, "I would say in the last five years, yes....and in the last five (i.e. from '43) there have been numerous exchanges of crown granted young growth, and even bare logged lands that were purchased by concerns interest in logging B. C. operations." (p.1069).

HAD VALUE BEFORE

The fact is that the claimant always attached considerable value to logged-off lands as attested by his having continued to pay taxes (ex.61 p.20) on all his logged off areas (p.54 Kagetsu).

SPECIAL VALUES

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proximity to tide water and this being well represented by very old cuts which are now well restocked, it is the claimant's opinion that the awarded $1.50 per acre is much too low. Evidence was given (p.1168 Smith) that even government wild land cost $5.00 per acre.

In the vicinity of the camp about 35 acres had been cleared and most of it had been under cultivation (Ex.26 Clements). Mr. J. W. Clement, an agricultural consultant, attached a value of $25. per acre on this, which comes to $875.00. (not included in claim) It is suggested that apart from any commercial value, this cleared-off land had considerable value to the claimant whose operation was a going concern. This is mentioned merely to show that while the claim is for value of the land as potential forest, there were in fact other values as well.

ADDED VALUES

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LOGGING RAILWAY

50¢ PER M

The claimant attaches a value of 50¢ per M on the railway that had existed. This is not, contrary to the Commissioner's understanding, on the premise that he would have increased his timber holdings but merely the value in taking out the Deep Bay timber then existing. It is felt that this is in fact conservative when one considers such remarks of Mr. Allison, a well known railway logger of long standing, " Yes, railroad logging is usually supposed to be very economical." "When was that?" he was asked, to which he replied, "It is just prior to 1944." (p.367). Later, the Commissioner inquired, "How did you arrive at a figure of fifty cents a thousand (charges for use of five miles of a certain logging railroad), he replied "...we used ten cents a mile per thousand for the basis of figuring it." "And that figure was fixed arbitrarily?" "No, that was only our information of what it was worth, after we had made several investigations of what other people charged."(p.368).

The Deep Bay Property had 8½ miles of railroad which actually would figure to 85¢ per M so the claimant considers 50¢ per M very conservative.

There was further evidence (p.807) by Mr. E. Smith, crown witness, who considered 50¢/M reasonable had the railway continued in use.

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This railway was in good condition at the time of the evacuation (p.33 Kagetsu, P. 559-60 Swanson). Even in 1943, Mr. E. Smith described it as being in "fair shape" (Ex.45 Sch.2, '45 report). And it is held with emphasis that the criterion should be what value this railroad had to the owner. In this connection it is mentioned that there is nothing in the evidence regarding the claimant's intention of converting to truck hauling. 50¢ per M times a volume of 56,520 M.b.f. or $28,260 is thought to be not unreasonable. However, even if it is held that the value to the purchaser should be the consideration, it can be argued that being awarded $1000 for 4½ miles of road actually used, less than $225 per mile of road, not to mention the value of bridges, is far too low. Most experts agreed that old railroad grades had some value as truck roads, but divergent opinions were held. Some considered for those parts that were used, that hardly any change was needed, others thought widening was necessary. Be that as it may, from various evidence (p.1164) it is indicated that a mile of surfaced road would cost from $6,000 - $10,000 a mile in that area. Mr. Smith said, "It would depend on how much surface work had to be done. The break through could be done probably for $4,000 but heavy loads are on the big trucks and

$225 PER MILE TOO LOW

EASILY WORTH $2600 PER MILE

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you have to surface it."(p.1164). Even if widening was necessary, then one mile of the railway grade would surely be worth $2,600a mile as adduced in exhibit 62. Hence four miles would have effected a saving of at least$11,700 to the operator for which sum the claimant should be compensated.

ITEM I
BLOCK 195

As to item 1, sale of Block 195, in the claimant's opinion the fair market value is: 85 million board feet @ $6.90/M which equals $347,500.--

This was sold for $93,000, so the claim is:

$347,500 minus $93,000 which equals $254,500.00

The Commissioner concluded the value to be only $111,000 (37 million board feet @ $3.00/M) thereby recommending compensation of a mere $18,000.00 which in the light of the evidence would appear far too low.

ITEM II
DEEP BAY PROPERTY

Item 2 is the Deep Bay Propertye. The values considered reasonable are as follows:

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S U M M A R Y

This brief deals only with items 1,2 and 3 as enumerated by the Commissioner. Item 4 is such that the claimant has no right to further discussion. Items 5 and 6 are to be later disposed of between counsel.

ITEM I
BLOCK 195

As to item 1, sale of Block 195, in the claimant's opinion the fair market value is:

55 million board feet @ $4.50/M which equals $247,500.--

This was sold for $93,000, so the claim is:

$247,500 minus $93,000 which equals $154,500.00

The Commissioner concluded the value to be only $111,000 (37 million board feet @ $3.00/M) thereby recommending compensation of a mere $18,000.00 which in the light of the evidence would appear far too low.

ITEM II
DEEP BAY
PROPERTY

Item 2 is the Deep Bay Property. The values considered reasonable are as follows:

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	54 million feet standing timber (excluding felled and bucked wood) @ $4.00/M		$216,000.00
ITEM II	2½ million board feet felled and bucked @ $6.50	$16,250	
DEEP BAY	Add 700,000 board feet @$3.50 for wood cold-decked	2,450	18,700.00
PROPERTY			43,225.00
	5,569 acres of logged off lands		
			$277,925.00

The value of felled and bucked wood is a reduction from the claim submitted.

Item 2 was sold in the aggregate at $40,000.

Hence, a claim is being made for

$277,925.00 minus $40,000.00

which equals $237,925.00

The sale of item 2 included booming grounds, foreshore lease, dumping pier, 40 buildings, etc. and of course, included in all over 7,000 acres of land. The Commissioner recommended the following:

17 million board feet minus 14 million for which volume property was sold, or 3 million shortage @$2.50 which equals		$ 7,500.00
Value of 2½ millioh feet of felled and bucked wood @ $5.00 equals	$12,500.00	
Minus value allotted by appraiser	4,500.00	8,000.00
Logged-off Lands 5,500 acres @ $1.50		8,250.00
40 Camp Buildings		1,000.00
WHICH goes without saying is unreasonably LOW.		$24,750.00

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ITEM III

DEEP BAY RAILWAY

Item 3 deals with the logging railway.

The Commissioner has misinterpreted aspects of the railway pertaining to condition and conversion to truck hauling. It was definitely the claimant's intention to continue the use of his railway which at the time of evacuation was in good condition.

The claim is based on the hauling of the timber of the Deep Bay Property only, and no other timber, and the calculations are:-

56,520 M board feet @ 50¢/M which is $28,260.00

Subsequent to the Japanese evacuation, the railway was scrapped and the purchasers of the Deep Bay Property received the road-bed without payment so the claim is the full $28,260.00.

The Commissioner awarded only $1,000.

If it is ruled that the value of the railway to the purchaser and not to the claimant is the criterion, then the claim reduces to 4½ miles @ $2600./mile which is $11,700.00.

$421,000 VS ONLY $44,000

Collectively then, the claim for the three items is as follows:

Item 1	$ 154,500.00
Item 2	237,925.00
Item 3	28,260.00
TOTAL	$ 420,685.00

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The Commissioner has awarded for:

Item 1	$ 18,000.00
Item 2	24,750.00
Item 3	1,000.00
TOTAL	$ 43,750.00

This brief has attempted to indicate that the evidence definitely substantiates this claim, and that the compensation awarded is unjustly small.

All of it is submitted with the greatest respect to the Commissioner and to all readers.

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A P P E N D I X A

COMMISSIONER BIRD'S REPORT

BLOCK 195 and DEEP BAY AREA TIMBER VOLUMES

by SPECIES EXPRESSED IN PERCENTAGE

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A P P E N D I X B

BLOCK 195 and DEEP BAY AREA TIMBER VOLUMES

by SPECIES EXPRESSED IN PERCENTAGE

Percent within Fir Species	No. 1	No. 2	No. 3
	21	68	26

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BREAKDOWN BY SPECIES OF TIMBER VOLUME ON BLOCK 195 AND DEEP BAY PROPERTY IN PERCENT OF TOTAL

	Percent within Fir Species									
	No. 1	No. 2	No. 3	Total	Fir	Cedar	Hemlock	Balsam	Others	Total
BLOCK 195 (& BK. 403)										
Actual Cut to June 1950	11	63	26	100	38	12	30	17	3	100
Schultz Cruise (Ex. 15)					40	12	33	14	1	100
Smith (Bk.195) (Ex. 36)					59	11	21	7	2	100
Smith (Bk. 403) (P.795)					44	9	28	16	3	100
Sheehan (Bk.195) (Ex. 5)					62	14	17	6	1	100
DEEP BAY PROPERTY										
Actual Cut to June 1950	9	62	29	100	53	21	16	8	2	100
Schultz Cruise - Standing timber only at Nov. 1948 (Ex. 61)					33	13	42	8	4	100
Smith (Ex. 45)					74	12	10		4	100

N. B. Hemlock and Balsam on Block 195 is 28 percent as compared with 44 percent on Block 403. Schultz's percentages are of little value for the Deep Bay Property because it represents only the timber standing on Nov. 1948.

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APPENDIX C

ACTUAL CUT BLOCK 195 TO

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ACTUAL CUT DEEP BAY AREA TO

JUNE 1950