

CLAIM OF GEORGE TSUDA

[No. 146-35-1922. Decided October 30, 1950]

FINDINGS OF FACT

1. This claim, in the amount of \$1,910, was received by the Attorney General on March 25, 1949. It involves the loss of household goods, furniture and fixtures, a 1938 Chevrolet sedan automobile, a 1932 Chevrolet coupe, gardening tools, nursery equipment and supplies. Claimant was born in Gardena, California, on August 12, 1910, of Japanese parents. At no time since December 7, 1941, has claimant gone to Japan. He was unmarried at the time of his evacuation. On December 7, 1941, and for some time before, claimant resided at 2014 Sepulveda Boulevard, West Los Angeles, California. On April 27, 1942, claimant was evacuated from that address in Los Angeles, California, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Manzanar Relocation Center, Manzanar, California. The claimant owned the property mentioned in his claim, with the exception of the 1938 Chevrolet sedan automobile, and he was unable to take the property with him at the time of his evacuation. Approximately 2 days before he was evacuated on April 27, 1942, he made an effort to sell his property and that property which he could not sell, he gave away.

2. Claimant sold his bedroom and dining room sets of furniture, his sofa, chairs and table, his typewriter, and his 1932 Chevrolet coupe, all of which had a fair value at the time of \$220, for \$120, the car being sold at its fair value of \$50, with a resulting total loss of \$100.

3. Claimant gave away his cooking utensils and one of his radios to the Salvation Army, and also gave away his

gas range, his other radio, his phonograph, and his garden tools and accessories under circumstances tantamount to abandonment, which was reasonable in the circumstances. The fair value of these abandoned things at the time was \$149.50.

4. Claimant also left a lath house, 20 by 30 feet, which he had built on land rented for nursery purposes. Claimant abandoned the lath house when evacuated. No evidence appears of his right to remove the house. The fair value of this house at the time was \$50.

5. Claimant destroyed Japanese phonograph records, with a fair value at the time of \$7.50 for the following reason stated in his affidavit (p. 5): "Right after the war started, it was rumored that any persons having in their possession Japanese records would be subject to arrest, so I destroyed all of the records."

6. The total value of claimant's property was \$419.50, and this sum less \$120 received on sale, resulted in a loss of \$299.50. Claimant has not recovered any of the property so given away or abandoned, and has not recovered any part of its value by insurance or otherwise.

REASONS FOR DECISION

The claimant is eligible to claim.

On the facts found in paragraph 2, the loss on sale is allowable. *Toshi Shimomaye, ante*, p. 1. No loss is allowed on the 1938 Chevrolet sedan since the claimant failed wholly to sustain his burden of proof of ownership.

On the facts found in paragraph 3, the loss on abandonment is allowable. *Frank Tokuhei Kaku, ante*, p. 29. "Gifts" which do not partake of the true nature of gifts, where there is an intention to give, an intention to receive, and delivery, but are merely left to the nearest bystander or charitable organization, such as the Salvation Army here, because they cannot be sold readily in the market place, are in every real sense abandoned property. Where the donee is one connected with the donor by ties of blood, friendship or interest, the situation will require scrutiny

and the assumption of abandonment cannot be lightly made, but that was not the situation here.

On the facts found in paragraph 4, the loss on the lath house must also be allowed. Under California law (*Deering's Civil Code of California* (1949), § 1019), a trade fixture which has not become an integral part of the premises may be removed during the continuance of the term. Cf. *Frank Tokuhei Kaku, supra*. The claimant had built for nursery purposes on land which he had leased a small house of lath which obviously from its very nature was removable without injury to the land. In *Security Co. v. Willamette Co.* (1893), 99 Cal. 636, 34 Pac. 321, the Supreme Court of California sustained the right of a lessee to remove a story and a half building laid on posts above sills for use in a lumber yard. See also *Roberts v. Mills*, 56 Cal. App. 556.

On the facts found in paragraph 5, claimant sustained no allowable loss since the reason for his loss had no relation to evacuation but sprang from the general hysteria among an alien people arising out of the state of war.