

## CLAIM OF ASAKO KISHI

[No. 146-35-3020. Decided October 31, 1950]

## FINDINGS OF FACT

1. This claim, in the amount of \$1,150, was received by the Attorney General on April 26, 1949. It involved the loss of or damage to personal property described as nursery equipment and stock. Claimant was married to Sukeichiro Kishi, but the property involved in this claim was the sole and separate property of claimant, which she acquired with her earnings after marriage which were at that time relinquished to her by her husband, together with all the increment of increase of this property. Sukeichiro Kishi, husband of claimant, filed a claim under the Act with the Attorney General, being claim No. 146-35-3029, but his claim does not involve or include any of the property involved in the instant claim. Claimant was born in Japan on April 26, 1911, of Japanese parents, and her husband, Sukeichiro Kishi, was also born in Japan of Japanese parents. On December 7, 1941, and for some time prior thereto, claimant and her husband actually resided at 1722 Beloit Avenue, West Los Angeles, California, and were living at that address when they were evacuated on April 27, 1942, and sent to Manzanar Relocation Center, Manzanar, California. At no time since December 7, 1941, has claimant or her husband gone to Japan.

2. At the time claimant was evacuated, she operated a nursery on rented land. She was unable to take the nursery equipment and stock with her to the relocation center and just before she was evacuated she sold the nursery stock for the highest prices she could obtain. At that time there was no free market upon which claimant could have disposed of her personal property at its fair and

reasonable value, and she acted reasonably in selling the 5-gallon plants for \$125 and the 1-gallon plants for \$300. The fair value of the property sold was \$1,175, with a resulting loss of \$750.

3. She was unable to sell the nursery equipment and when she was evacuated she abandoned it. She never recovered any of this property. She also abandoned a lath house which she might easily have removed without injury to the land. She had no agreement with the landlord to remove it. The claimant acted reasonably under the circumstances in abandoning the nursery equipment on the premises at the time she was evacuated. The fair value of the property abandoned was \$200, including \$100 for the lath house.

4. The reasonable, fair value of all claimant's property at the time of sale or abandonment was \$1,375. Claimant has not been compensated for her loss by insurance or otherwise.

#### REASONS FOR DECISION

The claimant and her husband were both eligible to claim, but the property claimed for by claimant was her separate property and no part of it is claimed by her husband. Claimant acquired the property with her earnings after marriage which would constitute then the property of the marital community. *Deering's Civil Code of California* (1949), §§ 164, 687. But the husband relinquished to claimant at the time all her then earnings to set up the nursery and the earnings derived from it, which he might properly do under local law, *ibid.*, § 158; and which being done, the property must be held her separate property.

On the facts found in paragraph 2, such as loss on sale is allowable. *Toshi Shimomaye, ante*, p. 1.

On the facts found in paragraph 3, such a loss by abandonment is also allowable. *Frank Tokuhei Kaku, ante*, p. 29. Included in the abandoned property is the lath house, which was a trade fixture easily removable

without injury to the land, and which might have been removed by claimant during her term as tenant. *Security Co. v. Willamette Co.* (1893), 99 Cal. 636, 34 Pac. 321; *Roberts v. Mills*, 56 Cal. App. 556.