CLAIM OF MASAO ANDO

[No. 146–35–3155. Decided September 26, 1950]

FINDINGS OF FACT

This claim alleging a loss in the amount of $724.50 was received by the Attorney General on April 29, 1949. The amount of the claim due to an error in computation, was erroneously stated in the above amount but was later corrected to $424.50 by means of a sworn statement filed by the claimant on June 8, 1950. The claim involves a loss by theft from storage of personal property consisting of miscellaneous carpentry and gardening tools, kitchen equipment and utensils, household furnishings, two bamboo fishing poles and two fishing reels. The claimant was born in Japan of Japanese parents on December 21, 1899. At no time since December 7, 1941, has the claimant gone to Japan and for some time prior thereto actually resided at 187 Throckmorton Avenue, Mill Valley, California, and was living at that address when he was evacuated on May 17, 1942, pursuant to Executive Order No. 9066, dated February 19, 1942. He was thereafter sent to the Granada Relocation Center in Colorado. Faced with his impending evacuation the claimant acted reasonably in storing the aforementioned personal property in the cellar of a house occupied by a Caucasian friend. Adequate precautions were taken against theft in that the room where the property was stored was boarded up and the cellar locked. Some time thereafter the cellar was broken into and the claimant's property stolen. After his return from the Relocation Center the claimant acted diligently in seeking to recover the stolen property but has since been unable to do so and no portion thereof has ever been found. The fair

and reasonable value of the claimant's property at the time of loss was $123.04. None of the aforementioned property was covered by insurance or otherwise compensated for.

The claimant visited Japan in 1929 and while there married. He returned to this country in 1930 alone inasmuch as under the existing Immigration laws he was unable to bring his wife with him. The wife has remained in Japan ever since the marriage and has never come to this country.

REASONS FOR DECISION

The evidence submitted by claimant in his sworn statement has been corroborated in part by investigation. Statements obtained from the claimant's brother-in-law confirmed to some extent the fact that the claimant did own the personal property for the loss of which he is presently claiming. Further, the property owned by the claimant was the type of property which a person in the claimant's station in life might be expected to possess. It was reasonable under the circumstances for the claimant to store his property prior to his evacuation with the intention of repossessing it on his return from the relocation center. Evacuees were permitted to take with them to the assembly centers only such effects as could be readily handcarried and were officially encouraged to take only such articles as would be needed for use in the relocation center (Instructions to Civilian Exclusion Order No. 5, Headquarters Western Defense Command, April 1942). Claimant, faced with the choice of either selling or storing his property, acted reasonably in choosing to store it. It is a recognized fact that the government encouraged and advised evacuees to store their goods and property "in depositories of their own choice" and "on a voluntary basis" (U. S. Department of Interior Pamphlet, *The Wartime Handling of Evacuee Property,* p. 29). Based on the evidence available, a valuation of the claimant's

property at the time of his evacuation in the amount of $123.04 is reasonable. Claimant suffered loss in the said amount and is entitled to receive that sum pursuant to the aforementioned Act as compensation for loss of personal property as a reasonable and natural consequence of the evacuation.

Despite the claimant's statement that all of the property herein concerned was acquired after his marriage, the said property should none the less not be considered as community property. Since the claimant's wife has never come to this country and the claimant has never seen his wife since 1930, the marriage might be considered to exist in name only. Under California law, the spouses may dissolve the community at any time during their marriage and may regard property subsequently acquired as separate property; (*Siberell* v. *Siberell*, 214 Cal. 767, 7 Pac. 2d 1003 (1932)); and any evidence that is generally competent may be admitted to show such dissolution (*Sears* v. *Rule*, 27 Cal. 2d 131, 163 Pac. 2d 442 (1945)). Inasmuch as any property acquired by the claimant's wife was kept in Japan and any property acquired by the claimant since their marriage was kept here, it may reasonably be inferred that an agreement existed between the claimant and his wife whereby any property acquired after marriage was to be regarded as separate property. It follows that the property involved in this claim should not be regarded as community property in which the claimant's spouse has any interest according to the community property laws of the State of California. It therefore is unnecessary to consider the personal ineligibility of the claimant's spouse under Section 2 (b) (1) of the Act nor whether the claimant could recover for the full amount of his loss if the items involved were regarded as community property.