

CLAIM OF KOFUSA KASHIWAGI

[No. 146-35-5338. Decided July 6, 1951]

FINDINGS OF FACT

1. This claim, alleging a loss in the amount of \$407.50, was received by the Attorney General on June 29, 1949. The claim relates to the loss sustained through sale of a 1936 Chevrolet master sedan, an ice-shaving machine, and 50 pullets; and the disappearance of household effects, one scale, farm implements, 30 pullets, and a chicken coop left at her residence. All the items involved represented community property of claimant and her husband, Fukumatsu Kashiwagi. Both claimant and her husband were born in Japan of Japanese parents and have at no time since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimant resided at P. O. Box 514, Penryn, California, and was evacuated from that address on May 14, 1942, under military orders pursuant to Executive Order No. 9066, and sent to Arboga Assembly Center, Marysville, California, and subsequently to Tule Lake Relocation Center, California. Claimant's husband in September 1941 was sent to Weimar Sanitarium, Weimar, California, for pulmonary tuberculosis and was allowed to remain there during the war. He was never evacuated.

2. Claimant, in anticipation of her evacuation and with consent of her husband, sold the car, ice machine, and 50 pullets for \$365. She acted reasonably in doing so since no free market was then available to her.

3. She left the rest of the property, except the chickens and coop, locked in the house which she and her husband rented. This was reasonable in the circumstances since there was no time to sell. The 30 chickens which she had

not been able to sell were left in the coop in the yard and she acted reasonably in leaving them. On her return to Penryn from the relocation center, claimant went to her former residence but found that the property which she had left there was missing and she has never recovered any of it.

4. The fair and reasonable value of all the property involved in the claim was \$574 which less the \$365 received on sale results in a total loss of \$209 not compensated for by insurance or otherwise.

REASONS FOR DECISION

The claimant is eligible to claim for her community property interest and also for her husband's interest, as his agent, since this is permitted under California law, *Toshiko Usui, ante*, p. 112; and since claimant's husband signed a release at Weimar on June 20, 1950, ratifying and confirming his wife's action in filing a claim, and has himself filed no claim. This is true in respect of the husband only if he would have been eligible himself to claim. Whether he is eligible is the only real question raised. Claimant's husband, Fukumatsu Kashiwagi, was admitted to Weimar Sanitarium, Weimar, California, on September 10, 1941, in an advanced state of pulmonary tuberculosis and still remained there at the time the claim was considered in the field. Claimant's address was P. O. Box 514, Penryn, California, and she was evacuated from her home, a rented house on a farm, at this place under Civilian Exclusion Order No. 47, issued May 7, 1942, and requiring her to leave by noon of May 14, 1942. This order covered territory in Military Area No. 1. Her husband would have been evacuated under the same order, it may be assumed, had he then been at Penryn or from Weimar, where he then was, under Civilian Exclusion Order No. 102, issued June 30, 1942, and requiring departure by noon of July 13, 1942, had his health permitted. Criminal sanctions created by the Act of Congress of March 21, 1942, guaranteed obedience to these orders. As

stated, however, her husband at no time was evacuated pursuant to either Civilian Exclusion Order. He remained at Weimar throughout the critical period and only in March 1947 requested and received a pass to travel to Penryn.

The Attorney General is authorized, by Section 1 of the Act, to determine according to law "any claim by a person of Japanese ancestry * * * for damage to or loss of * * * property that is a * * * consequence of the evacuation or exclusion of *such* person from a military area." [Emphasis supplied.]

The first problem thus posed is whether the evacuation or exclusion of a physically incapacitated person can be regarded as action resulting in property damage or loss within the coverage of the Act. We think that it can. In the case of *Fumiyo Kojima, ante*, p. 209, it was pointed out that there must have been an awareness on the part of the legislators that many if not most of the losses, that were made allowable under the Act, occurred as a consequence of the evacuation of entire families. In that case the husband had died prior to the enactment of the Act and the question was whether or not his widow could claim for the whole of the community property lost. It was held that she could on the ground that Congress could not have intended that the surviving members of the family, who would have inherited the property had it not been lost, should be deprived of the benefits of the Act merely because the member having legal ownership died prior to and not after its enactment. Nor is it lightly to be supposed that Congress would have intended to withhold compensation merely because legal ownership happened to be in a member of the family who, because of infancy or, as here, illness, happened to be in a position where he could not personally care for the property at the time of his evacuation. It is, of course, impossible to know what the situation would have been but for the evacuation of the entire family. But when infants and other persons without legal capacity are deprived of

the services and care of their families, their interests are usually safeguarded in some fashion by the community. Where such persons are unable to make provision for themselves, it is common practice, for example, for guardians to be appointed by the courts. It would be unrealistic, therefore, to suppose that if such a person had been personally excepted from the operation of the exclusion orders, the loss, nonetheless, necessarily would have occurred.

The second question is whether or not the husband in this case was evacuated or excluded "from a military area" within the meaning of Section 1 of the Act. There would seem to be no doubt that he was so excluded. This would have been true even if he had remained within the boundaries of Military Area No. 1; as much so as in the case of persons who were evacuated from places in Military Area No. 2 in California and sent to the Tule Lake Relocation Center or to Manzanar Relocation Center. While both these centers were within the boundaries of Military Area No. 2, neither was a part of that military area. Each was a sort of island or enclave to which the exclusion orders obviously did not apply. A person who was detained in the Tule Lake or Manzanar Center was as much evacuated from Military Area No. 2 as if he had been sent to a center outside the State of California. The same is true of persons who were confined to hospitals. They were confined within the grounds of the hospitals and were not permitted to return to their homes or to go anywhere else without having first obtained the same kind of clearance that would have been necessary in the case of evacuated persons who sought to leave the two California Relocation Centers.

According to statements made to the Department's attorney in charge of the case by Dr. Thorne, Superintendent of the Sanitarium, claimant's husband was confined in a county institution, but all expenses for care and treatment of him and other patients of Japanese ancestry were paid by the Federal Government from July 12, 1942, to

July 1, 1945. It will be observed that the Government assumed its obligation to him as of the time he would have been evacuated from the Weimar area had he been physically able to go and that it continued to perform this obligation for a reasonable period after the time when such persons were released from the relocation centers. The Superintendent was of the opinion that Kashiwagi might physically have stood the journey to Penryn had it been necessary, but stated that the hospital would not have permitted him to leave without first obtaining the approval of the War Relocation Authority. General DeWitt's *Final Report Japanese Evacuation from the West Coast 1942* indicates that a few persons were deferred and those in need of it put in hospitals (p. 94) and this statement is amplified later in the Report in respect of cases like that of claimant's husband as follows (pp. 124, 125):

Many persons suffering from pulmonary tuberculosis and already in public or private sanitoriums were found. These cases were deferred from evacuation and were transferred, if their physical condition permitted, to the most easily available and best public tuberculosis sanitorium in the community, where they were hospitalized at government expense * * *. Short-term illnesses already hospitalized, when a unit area was evacuated, were usually allowed to remain in hospitals at their own expense. Long-term illnesses and illnesses occurring during the registration and processing period were placed in public hospitals at Federal expense. If hospitalization was available, every case unable to be evacuated for any medical reason was admitted to a hospital.

All persons deferred from evacuation for medical reasons remained under the direct supervision of physicians of the United States Public Health Service during the period of deferment * * *. Cases of long-term illnesses and those requiring special medical care, such as pulmonary tuberculosis and insanity, were allowed to remain in institutions.

No evacuee, deferred for medical reasons, was later transferred to an Assembly Center until such transfer was recommended by the supervising United States Public Health Service physician.

It must be held, therefore, that a person of Japanese ancestry who was so confined to hospital at the time of the evacuation of his family was as effectively excluded from the military area as any member of his family who was sent to a Relocation Center.

On the facts found in paragraph 2, the loss on sale is allowable. *Toshi Shimomaye, ante*, p. 1. The loss includes that sustained on sale of the Chevrolet 1936 sedan, the purchase of which was made by claimant's son, Hiroshi Kashiwagi, in April 1942 with money supplied by the claimant. The car's title was registered in the son's name and the car was sold on May 9, 1942, for the nominal owner by the automobile company from which he had bought it and the money paid to the son who thereupon transferred it to the claimant (Tr., pp. 6-7; Claimant's Exhibits Nos. 1 and 2). The car was bought for voluntary evacuation but was not used for the purpose (Tr., p. 6, Exhibit No. 1). Even if voluntary evacuation had been impossible, use of the car for travel to the Assembly Center would have been proper under the applicable Exclusion Order No. 47 (Article 6 of its Instructions). Purchase of the car in the circumstances was, therefore, reasonable. *Kinjiro and Take Nagamine, ante*, p. 78. The claimant, mother of the nominal owner, was the real party in interest since she supplied the money for purchase of the car and took the proceeds of sale. The facts do not indicate any intention to make a gift to her son. Since the claimant was an alien and the son American-born, this fact would no doubt account for title being taken in his name, a custom common among the alien Japanese. Moreover, it was he who drove the car which supplies a further reason for the claimant's action. The claimant, however, was the proper party, as the bene-

ficial owner, to claim for the loss. Cf. *James Y. Zoriki, ante*, p. 72.

On the facts found in paragraph 3, the loss is allowable. Claimant locked certain things up in the farmhouse which she had rented and never recovered them. A few other things she deposited with her landlord and she did recover these (Tr., pp. 13-14), but her act in leaving the other stuff was in the circumstances reasonable. There is no evidence that claimant paid any rent for her house while at the relocation center and, in any event, the house was occupied by several families in the interval and the property disappeared. It is not material whether the loss be considered as arising from intervening factors, in which case it would be allowable, *Akiko Yagi, ante*, p. 11; or whether claimant's leaving the property was tantamount to abandonment, which would also give rise to an allowable loss, *Frank Tokuhei Kaku, ante*, p. 29; for the result is the same. Undoubtedly, from the very nature of the things themselves, the chickens were abandoned as was also the coop left in the yard.