CLAIM OF TAKAYOSHI HAYASHIDA

[No. 146–35–12900. Decided June 6, 1956]

FINDINGS OF FACT

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While still in the relocation center, claimant, acting through his duly authorized attorney in fact, on November 15, 1944, entered into a lease of the 20-acre farm to one Chin B. Wong, said lease providing that the tenant would receive seventy percent (70%) of the proceeds of all crops grown, harvested, and sold after deduction of certain charges specified in such lease. On June 5, 1945, a severe hail storm occurred in the area in which the farm was located and caused severe damage to the fruit growing upon the orchard situated on such ranch. Thereupon, the tenant, in breach of his lease agreement, abandoned the premises and disappeared. The said lease agreement specified that the tenant would take good care of the farm during the term of the lease which terminated November 15, 1945, and would properly care for the orchard and, upon termination of the lease, would surrender the premises leaving no indebtedness of any kind and would hold the claimant free and harmless from any liability whatsoever. The occurrence of the hail storm afforded the tenant no justification for breaching his lease agreement. On November 15, 1944, the tenant, Chin B. Wong, executed a crop mortgage and marketing agreement with the Nash-De Camp Company, which crop mortgage was duly recorded in the official records of Placer County, California. Pursuant to said crop mortgage, the Nash-De Camp Company advanced certain sums of money to the tenant, the exact amount thereof being unknown. Following the depar-

ture of the tenant, the attorney in fact undertook the operation of the ranch up to the end of the 1945 crop season and harvested the fruit thereon and, in doing so, expended specified sums of money, the exact amount being unknown, but which, together with the monies advanced by the Nash-De Camp Company to the tenant, totaled $1,312.86. The proceeds of the crop harvested by the attorney in fact amounted to only $285.76 and, after crediting such amount to the advances made by the Nash-De Camp Company and to the expenditures made by the attorney in fact, there remained an indebtedness in the amount of $1,025.88. After claimant returned to his property, following his release from the evacuation camp at the end of the 1945 crop season, his attorney in fact, who was also the manager of the Nash-De Camp Company in Placer County, California, advised the claimant that unless he paid the sum of $1,025.88, the Nash-De Camp Company would not remove the crop mortgage from his premises and that a suit would be brought to force collection of the debit balance of $1,025.88. Confronted with such a situation, claimant acted reasonably in paying such sum of $1,025.88 in order to obtain possession of his property free of the cloud of the crop mortgage. Such expenditure by the claimant was occasioned by the fact that his said tenant breached the said lease and failed to surrender the property free and clear of all charges and the situation giving rise to this loss would not have occurred had the claimant been permitted to remain in possession of the premises. Claimant was thus damaged in the sum of $1,025.88.

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REASONS FOR DECISION

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This claim presents the question of whether the expenditure by the claimant of $1,025.88 to free his real property of the cloud of the chattel mortgage constitutes a loss within the meaning of the Act. Not all expendi-

tures by claimants, even if such expenditures would not have been made except for claimant's evacuation, are compensable. The facts and circumstances surrounding each such expenditure must be examined to determine whether it is reimbursable under the Act. There has been no claim adjudicated wherein the facts and circumstances were identical with those in this instance, but a number of adjudicated claims dealt with analogous facts and circumstances. See *Mary Sogawa, ante,* p. 126; *Frank Kiyoshi Oshima, ante,* p. 24; *Kinjiro and Take Nagamine, ante,* p. 78; *Masaki Miyagawa, ante,* p. 242; *Shigeru Richard Horio, ante,* p. 293. Applying to the facts and circumstances of the instant claim all the tests of compensability used in those adjudicated decisions results in the conclusion that the expenditure here is reimbursable under the Act.

When, by reason of his evacuation, claimant was under compulsion to take appropriate steps to preserve and care for his property, he acted reasonably in appointing an attorney in fact to assume control of his property. The lease of the property on November 15, 1944, by the claimant, through his said attorney in fact, to Chin B. Wong was likewise a step reasonably designed to preserve his property. The operation of the farm by such attorney in fact after the breach by Wong was a natural and reasonable consequence flowing from the reasonable act of the claimant in entrusting his property to such attorney in fact. The fact that a hail storm in June 1945 severely damaged the crop and might well have been the motivating factor which caused the tenant to breach his lease and to abandon the premises, did not afford the tenant a justifiable right to breach his lease and abandon such premises. His lease obligated him to remain in possession of the premises until the end of the 1945 crop season and to surrender the premises free and clear of indebtedness or cloud of title. The act which clouded title to the property was that of the tenant in executing the crop mortgage. The failure of the tenant to pay off his obli-

gation and to secure a release of the crop mortgage created the situation which confronted the claimant when he returned to his farm at the end of the 1945 crop season. This situation would not have existed if the tenant had fulfilled his obligations under the lease. It is not necessary to decide whether the claimant could have been legally held responsible to pay Nash-De Camp Company the said $1,025.88. The necessity of clearing title to the property was obvious. Without doing so, claimant would not have been in a position to give marketable title to his property if he decided to sell such property. Nor would he have been in a satisfactory position to finance his own future farming operations if he needed loans to carry on such operations. His choice was to make the expenditure and to free his property of the cloud or to institute legal proceedings on his own to establish his lack of liability for the debt and to secure a court adjudication directing a clearing of the title to his property. Had he taken the latter course, even if he ultimately succeeded, his expenditures in accomplishing such success might well have exceeded $1,025.88 and such costs would clearly have constituted a loss attributable to his evacuation and compensable under the Act. In all probability he would, in any event, have been compelled to reimburse his attorney in fact for the expenditures made by such attorney in fact in operating the farm after its abandonment by the tenant, less such fruit proceeds as were received by such attorney in fact. The expenditure of the said $1,025.88 by the claimant can well be viewed as a loss sustained by him to prevent a greater loss. His real property, which he was protecting, obviously had a value in excess of such sum. He received no wealth or enjoyment and simply got back what was his. Viewed in that manner, the above-cited adjudications constitute authority to justify holding such expenditure to be reimbursable under the Act. Nor is it necessary to consider whether the claimant, after hearing of the abandonment of his premises by the tenant, was under an obligation to return to his property and to con-

tinue operation under his own name. He would still have been faced with the cloud upon his property and of the necessity of causing its removal. That course of action might well have been more expensive than to continue the operation of the farm through his attorney in fact. It is not known whether the claimant could have returned had he wished to do so, but it is unnecessary to consider such matter since claimant's course in permitting his attorney in fact to continue operation of the farm until the end of the 1945 crop season was not an unreasonable nor imprudent act on his part. Accordingly, claimant is entitled to reimbursement of the $1,025.88 expended by him.