

## CLAIM OF AKIKO YAGI

[No. 146-35-2098. Decided June 26, 1950]

## FINDINGS OF FACT

This claim, in the amount of \$567, was received by the Attorney General on March 31, 1949. Claimant was born in California on December 9, 1924, of Japanese parents. At no time since December 7, 1941, has claimant gone to Japan. The claim involves the loss of personal property described as two kimono sets, gowns, violin, record collection, silk umbrella, Japanese slippers and toy collection, of which claimant was the owner at the time of their loss. On December 7, 1941, and for some time prior thereto, claimant actually resided at Route 2, Box 427-A, Lancaster, Los Angeles County, California, and was living at that address when she was evacuated on May 25, 1942, under military orders, pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Colorado River Relocation Center at Poston, Arizona. Claimant when evacuated was unmarried and at that time bore the name of Akiko Nishimoto. At the time claimant was evacuated, she was unable to take the above-mentioned property with her to the Relocation Center, for the reason that the evacuated persons were strictly limited in the size and number of packages which they might take with them. Claimant was evacuated under Exclusion Order No. 84, dated May 19, 1942. It and all other exclusion orders of Lieutenant General DeWitt, Commanding General, Western Defense Command and Fourth Army, contained detailed instructions which must be observed by the evacuated persons. They were required to carry with them on departure for the Reception Center bedding and linens, toilet articles, extra clothing and "essential personal effects for each member of the family." It was required that these things be securely packed, tied and marked, and that "The size and number

of packages is limited to that which can be carried by the individual or family group." It was further stated that "No personal items and no household goods will be shipped to the Reception Center." Claimant, therefore, packed and locked the above belongings which she could not take with her in a trunk and stored the trunk in the ranch house of her brother, Ben Nishimoto, on Route 2, Box 427-A, Lancaster, California; an act reasonable in all the circumstances. During 1942 and 1943, Nishimoto, claimant's brother, let his ranch to one Walter C. Griffin, and in 1943 to A. C. Steele. The latter lessee discovered the theft on taking possession. During the period of evacuation, a person or persons unknown to claimant came to the ranch house and by force removed the possessions of claimant, resulting in a total loss of all claimant's property. Claimant has never recovered any of this property and was not reimbursed for her losses by insurance or otherwise. The fair and reasonable value of claimant's property at the time of her evacuation was \$265.25.

#### REASONS FOR DECISION

It has been found as a fact that claimant could not take with her to the Relocation Center the property claimed because of military regulations. The pertinent parts of the Exclusion Order have been quoted in part in the Findings, and it is apparent from them that kimono sets, violins, phonograph records, silk umbrellas and toy collections were not things which could be taken to the Relocation Center. Kimono sets were used for ceremonial occasions and not everyday dress, and other trumpery, however precious to the owner, was not the sort of thing needed or wanted in a Relocation Center. Claimant was left the alternatives of sale on an unfree market or storage, and chose the latter.

The only other question is that of the relation of evacuation to loss. The proximate cause of claimant's loss was obviously the act of theft, and it becomes necessary

to inquire whether the loss of property, such as that here involved, through the acts of thieves or intervening tortfeasors, was intended by Congress to be allowable under the Act. There can be no doubt on this score, for aside from the less authoritative statements on this head which appear in the hearings of the bill before Congress, there is a clear pronouncement in House Report No. 732 (80th Cong., 1st sess.) on the bill, the force of which cannot be gainsaid. The report quotes with approval a letter by the Secretary of the Interior, J. A. Krug, of March 17, 1947, to the Speaker of the House in which Secretary Krug says at page 3:

On the other hand, there are numerous instances in which intervening factors immediately causing the loss, such as arson, theft, mortgage foreclosure, loss of goods while in Government possession, or breach of trust, should not affect recovery, because the situation giving rise to the loss would not have occurred had the owners been permitted to remain in possession.

It follows that the loss from theft was the "reasonable and natural consequence of the evacuation or exclusion of such person." If claimant had not been evacuated, she would not have had to store the goods in question, and in storing them in a trunk in her brother's ranch house it has been found as a fact that in all the circumstances she acted reasonably.

The evidence of claimant's loss consists of her sworn statement and is corroborated in part by investigation and in part by statements and letters from persons who either vouched for her ownership of the articles lost or who stated that the articles were stored as alleged and later removed by persons unknown. The original cost of the articles lost appears to be in line with prevailing market prices at the time of purchase. Such a loss in the circumstances is allowable. Claimant is entitled to reimbursement in the amount of \$265.25, under the above-mentioned Act as compensation for loss of or damage to personal property as a reasonable and natural consequence of her evacuation.