CLAIM OF FUMIYO KOJIMA

[No. 146–35–2309. Decided May 29, 1951]

FINDINGS OF FACT

This claim, alleging a loss in the sum of $1,037, was received by the Attorney General on April 8, 1949. It involves a loss on sale of a 1931 Buick sedan, miscellaneous household furnishing, furniture, and kitchen utensils. Claim is also made for 100 Japanese records destroyed by the claimant prior to her evacuation, funds expended in preparation for evacuation, and expenses allegedly incurred for resettlement subsequent to claimant's return from the evacuation center. At her informal hearing on June 13, 1950, the claimant requested that her claim be amended so as to increase the amount thereof by $10, representing a loss due to breakage of dishes in shipment between the relocation center and Los Angeles, California. Claimant and her husband, Eijiro Kojima, were both born in Japan of Japanese parents. On December 7, 1941, claimant and her husband resided at 815-B La Paloma Street, Wilmington, California, and were living at that address when they were evacuated on April 4, 1942, pursuant to military orders issued under authority of Executive Order No. 9066, dated February 19, 1942. They were sent to the Santa Anita Assembly Center and thereafter to the Jerome Relocation Center, Jerome, Arkansas. At no time since December 7, 1941, has the claimant or her husband gone to Japan. All of the property herein concerned was the community property of the claimant and her husband. However, claimant's husband died intestate in 1943, while in the relocation center, leaving no debts and an estate valued at less than $1,000. Unable to take the above-mentioned property with her to the reloca-

tion center, claimant sold most of such property for the sum of $140 although the fair and reasonable value thereof at the time of sale was $325. Inasmuch as there did not then exist a free market, claimant acted reasonably in selling the property for the aforementioned sum. On the day of her evacuation, claimant and her family drove to the Santa Anita Assembly Center in the Buick sedan hereinbefore referred to. Faced with the alternative of turning the automobile over to the Federal Reserve Bank for open storage or selling it to the U. S. Army, she elected to sell the automobile to the Army and she received therefor $30 although the fair and reasonable value thereof at the time of sale was $120.

In preparation for her evacuation and life in the evacuation center, the claimant purchased luggage and articles of clothing, expending therefor the sum of $125. Upon release from the relocation center and return to California, claimant alleges that she spent the sum of $400 for the support of herself and her children before she was able to locate a job. None of the aforementioned alleged losses have been compensated for by insurance or otherwise.

REASONS FOR DECISION

The losses sustained on sale of the Buick sedan and household furnishings are compensable under the Act. *Toshi Shimomaye, ante,* p. 1. Had the claimant's husband lived, he, or she acting as his agent, could have made demand for and have received compensation due on account of such losses of their community property because both would have met the eligibility requirements of the Act. *Tokutaro Hata, ante,* p. 21; *Toshiko Usui, ante,* p. 112. It is, of course, true that a right conferred by or under the authority of a Federal law must be regarded as personal to the beneficiary to the extent necessary to carry out the legislative policy. *Emerson* v. *Hall,* 13 Pet. 409, 413. Hence, in the case of community property, if, for reasons hereinafter to be explained, only one of the spouses was

personally eligible to claim, the right to compensation would have to be regarded as having been conferred upon him alone to the extent of his undivided half interest in the property that was lost. Cf. *Wissner* v. *Wissner,* 338 U. S. 655. However, where, as here, the right to compensation is given for a community property loss and no provision of the Federal statute renders either spouse ineligible to claim, it may be assumed, in the light of considerations to follow, that such right occupies the same position with reference to State law that was occupied by the property that it replaced. See *Seaboard Air Line* v. *Kenney,* 240 U. S. 493, 494. Cf. *Wissner* v. *Wissner, supra.* In accordance with the California statute (*Deering's Probate Code of California* (1941), §§ 201–202), claimant succeeded to her husband's interest in their community property upon his death. *Hatsu Ishige, ante,* p. 66. Accordingly, if the right of claim is to be treated as if it had been community property *in esse,* there can be no doubt that it became her separate property at that time. *Williams* v. *Heard,* 140 U. S. 529.

This brings us to the question of whether or not the right of claim may be considered as having been a community asset at the time of the husband's death since he died prior to the enactment of the Statute. Obviously, no right existed that could have been legally recognized prior to such enactment. See *Emerson* v. *Hall, supra.* However, in affording the remedy, the Congress gave legislative recognition to a moral obligation, the nature and extent of which depend entirely upon such recognition in so far as the administration of the Act is concerned. *United States* v. *Realty Co.,* 163 U. S. 427, 444; *Pope* v. *United States,* 323 U. S. 1, 9–10. Accordingly, preexistence of the right to compensation for purposes of inheritance is a question of legislative intent which, in the absence of express statutory language, must be solved with reference to the legislative purpose. See, e. g., *Price* v. *Forest,* 173 U. S. 410, 428; *Blagge* v. *Balch,* 162 U. S. 439, 459, 460. This truth, if not always articulated, seems

always to have been sensed and observed. Thus, where it was clear that a legislative grant was intended to be paid to heirs on account of a moral obligation deemed to have been owed an ancestor, it was early held that the cognizable legal right was not to be regarded as having become an asset of the ancestor subject to the claims of his creditors. *Emerson* v. *Hall, supra;* cf. *Wissner* v. *Wissner, supra.* But, in absence of evidence of contrary legislative intention, it has been assumed, in other situations, that "in ascertaining who are to take" the right "though not a part of the estate of the original sufferers, may be treated as if it were, for the purposes of identification merely." *Blagge* v. *Balch, supra,* 464; cf. *Williams* v. *Heard, supra.*

The present Statute expressly provides that "the Attorney General shall have jurisdiction to determine according to law any claim by a person * * * against the United States arising on or after December 7, 1941,[1] * * * for damage to or loss of * * * property * * * that is a * * * consequence of the evacuation or exclusion of such person * * * from a military area * * *." (Sec. 1.) The natural import of this language is either that the claims had, or that they should now be regarded as having had, substantive existence prior to the enactment of the Statute affording the remedy. For our purpose it does not matter which inference is the correct one, for either could result in the recognition of derivative claims under the principles mentioned above.

On the other hand, other provisions lay down qualifications of eligibility that must be met by the person by or in whose behalf the claim is prosecuted,[2] provisions which

[1] This reference to a "claim * * * against the United States arising on or after December 7, 1941," more aptly defines legally cognizable rights (cf. *U. S. Constitution,* Art. III; 28 U. S. C. § 1331; *Tennessee* v. *Davis,* 100 U. S. 257, 264) than it does a mere feeling that may have arisen in the minds of the evacuees that they should be compensated for losses that occurred to them by reason of their evacuation (cf. *Prigg* v. *Pennsylvania,* 16 Pet. 539, 615).

[2] For example, Section 2 (b) (1) directs the Attorney General not to consider any claim by or on behalf of any person who was voluntarily

might lead to the conclusion that the right conferred was intended to be strictly personal to the evacuee who originally sustained the loss and which, in any event, would disregard the laws of the states relative to inheritance. Cf. *Emerson* v. *Hall, supra.* For this reason, resort must be had to exterior evidence of the legislative purpose. See, e. g., *Price* v. *Forest, supra,* 428.

Much of the discussion of the legislative history of the Act that is set forth in the case of *Mary Sogawa, ante,* p. 126, is apposite here. In that case it was said:

> It is thus clear, that, at least so far as the committee was concerned, the moral obligation of the people of the United States was merely that they should alleviate to some extent the disproportionate financial burden that the Government's war measures had thrust upon the claimants. The measure was viewed much in the same light as if veterans of the armed forces had been its beneficiaries.

And again:

> The foregoing discussion of the legislative history of the Evacuation Claims Act makes it clear, we believe, that it was intended to be an Act of bounty in the same sense that a statute providing benefits for veterans could so be characterized.

Although this view has been severely criticized by the Japanese-American Citizens League, *amicus curiae,* which has favored us with a brief in this case, we continue to believe that these statements constitute an accurate description of the moral obligation recognized by the enactment of the Evacuation Claims Act. However, we do not regard them as hostile to the instant claimant. If her husband had merely been called into military service, the

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or involuntarily deported to Japan after December 7, 1941, or by or on behalf of any alien who was not, on that date, actually residing in the United States. The policy of this provision expressly applies and obviously was intended to apply to the actual claimant whether or not it was he or his ancestor that suffered the loss at the time that it occurred.

losses here involved need not have occurred because she could have remained at home to take care of the property. Here, however, both he and she were called upon to evacuate their homes in the interest of national defense. Hence, the property was lost.

There is persuasive evidence in the legislative history that it was only by reason of the fact that extraordinary losses of this character occurred to evacuees that the measure received the approval of the Congress. For example, it was said (93 Cong. Rec. at 872) in explanation of action taken by the House committee:

> The committee also substantially rewrote the bill. We appreciated the fact that the war brings a loss to many people. A young man, for example, who enlists or is drafted, who is running a small business and has to turn the key in the door, goes away; when he comes back he finds that he has lost several years out of his life, a loss for which no compensation can ever be made.
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> So we have done the best we could in writing this bill to allow compensation only to those elements of damage which can be traced directly to the Evacuation order. [Cf. House Rept. No. 732, to accompany H. R. 3999, 80th Cong., 1st sess., p. 3.]

Many if not most of the losses, that were made compensable, occurred in circumstances which, in the light of the testimony given before committees of the Congress, "we must suppose were not overlooked by Congress when it passed the Act"; losses which meant that the ability of the head of the family to provide for it both during his life and after his death "was to that extent diminished"; losses which normally might have been avoided if other members of the family had been left behind. See and cf., *Price* v. *Forest, supra,* 428. In these circumstances, we cannot lightly suppose that the Congress intended that the family should be deprived of compensation merely because the member, who happened to have legal ownership of the property at the time of its loss, happened also to die before and not after the Act was passed. The loss to

the family members, who would have inherited the property if it had been preserved, obviously is no less attributable to their evacuation and exclusion in one case than in the other. Section 1 of the Act, in providing the remedy, makes no express reference to property ownership but merely authorizes determination "according to law" of "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." [Emphasis supplied.] Thus, so far as the literal language of the section is concerned, surviving members of such an excluded family group are personally eligible to invoke the remedy, provided, of course, that the ancestor could have invoked it if he had lived; that they normally would have inherited the property if it had not been lost; and that the conditions of Section 2 of the Act (cf., e. g., *Kumahichi Taketomi, ante,* p. 162) are fully satisfied.

Accordingly, we hold that, since the present claimant would have inherited her husband's interest in the property that was lost by sale if it had not been lost, she must be regarded as having inherited his interest in the claim for such loss and, since both she and he meet all requirements of eligibility laid down by the Statute, she is entitled to an award equal to the entire loss that was suffered by them jointly in selling the property at less than its true value.

No allowance can be made on account of the records destroyed by the claimant just prior to her evacuation since such records were destroyed by the claimant, as stated in her affidavit in support of her claim, because of her fear of punishment by reason of the possession thereof. *Shigeru Henry Nakagawa, ante,* p. 93. Nor can any allowance be made on account of the dishes which were destroyed in transit. This item was not included in claimant's original Form CL. 1 and represents an entirely new cause of action. *Yasuhei Nagashima, ante,* p. 135.

Claimant's request for reimbursement on account of her preevacuation and resettlement expenses must also be disallowed. *Mary Sogawa, ante,* p. 126.