

## CLAIM OF HARRY S. NAKATA

[No. 146-35-2438. Decided February 7, 1951]

## FINDINGS OF FACT

1. This claim, in the amount of \$864.50, was received by the Attorney General on April 12, 1949. It involves the loss of household furniture, furnishings and appliances, Chevrolet pickup truck, and preevacuation expenses. Claimant and his wife were the owners of all this property at the time of its loss. Claimant was born in California on January 27, 1913, of Japanese parents. Claimant's wife, Tomiko Nakata, was also born in California of Japanese parents. At no time since December 7, 1941, has either claimant or his wife ever gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 221 North Mott Street, Los Angeles, Los Angeles County, California, and was living at 1221½ North Mott Street, Los Angeles, California, when he and his wife were evacuated on April 13, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Santa Anita Assembly Center at Arcadia, California, and thence to the Rohwer Relocation Center in Arkansas. Claimant and his wife renounced their American citizenship in 1945, but removal orders issued in respect of them were later canceled by the Attorney General. At this time they had been transferred to Tule Lake Relocation Center.

2. At the time claimant was evacuated, he was unable to take the above-mentioned property, with the exception of the truck, with him to the relocation center. A few days before his evacuation, he sold all his property, except the truck. He took his truck with him to the Santa Anita Assembly Center and there sold it for \$485

under the supervision of the Federal Reserve Bank. There was no free market available to the claimant and he acted reasonably under the circumstances in selling all his property for \$662 at the time of the respective sales.

3. Claimant spent \$135.29 for clothing for himself, his wife, and children, an electric stove, duffel bags, and bed clothes in preparation for his evacuation.

4. The reasonable fair value of claimant's property at that time was \$1,145.47 which less the sale price of \$662 results in a loss of \$483.47, not compensated for by insurance or otherwise.

#### REASONS FOR DECISION

Claimant and his wife were eligible to claim. The claim includes all interest of the marital community in the subject property since the wife also is eligible to claim but has made no claim; and the husband having the power of management and control of such property under California law, may claim for the whole. *Tokutaro Hata, ante*, p. 21.

Both claimant and his wife were born in the United States and subject to its jurisdiction and were, therefore, American citizens. *United States v. Wong Kim Ark*, 169 U. S. 649 (1897). Under section 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)), claimant and his wife renounced their American citizenship. At the present time there are no removal orders outstanding against the claimant or his wife. The question here presented, therefore, is whether the claimant or his wife is disabled from claiming under the Evacuation Claims Act of July 2, 1948. Clearly they are not. Section 2 (b) (1) of the Act imposes a personal disability solely in respect of persons who after December 7, 1941, were voluntarily or involuntarily deported from the United States to Japan or of aliens who on that day were not actually residing in the United States. The Act extends to any per-

son of Japanese ancestry without regard to his status as an alien, with the exception already stated and others not here pertinent, who sustained damage to or loss of property "that is a reasonable and natural consequence of the evacuation or exclusion of such person" under military orders. Since the claimant and his wife are both otherwise eligible to claim and since no removal orders are now outstanding against them, their present national status is immaterial and does not affect their eligibility to claim under the Act of July 2, 1948, for whether they are either or both American, Japanese, or stateless, they both remain persons of Japanese ancestry, not subject to be involuntarily deported within the meaning of Section 2 (b) (1) of the Act.

On the facts found in paragraph 2, the loss on sale is allowable. *Toshi Shimonmaye, ante*, p. 1. The claimant acted reasonably in refusing, as he claimed he did, an offer of \$725 before he left for the Assembly Center on the ground that he wished to use the car to carry his goods in to the Assembly Center. Cf. *Kinjiro and Take Nagamine, ante*, p. 47, on the factual situation. Many of the Exclusion Orders permitted evacuated persons to drive their own cars to the Assembly Centers, as claimant was permitted to do. Claimant drove his car to the Assembly Center and it was then taken into custody by the bank and sold, as were many other such cars. *Report of Federal Reserve Bank of San Francisco \* \* \* on its Operation in Connection with Evacuation Operations \* \* \* during 1942*, pp 17-18. These vehicles were "promptly appraised by two disinterested appraisers" employed by the bank and "the appraisal was made whether the vehicle was tendered for sale to the Army or for storage" *loc. cit., supra*. Claimant could not reasonably have supposed, had he been aware of what disposition would be made of cars driven to the Assembly Center, that a disinterested appraisal by the fiscal agent of the United States would result in a finding of value less than he might have expected

in the market. In driving the car laden with his goods to the Assembly Center, claimant acted reasonably in the use of his property and not solely for his momentary convenience notwithstanding the fact that he might have sold the car at its fair market value before his departure.

On the facts found in paragraph 3, the amount spent in preparation for evacuation does not constitute a loss within the meaning of the Act. *Mary Sogawa, ante*, p. 126.