CLAIM OF SHIGEMI ORIMOTO

[No. 146-35-4558. Decided October 31, 1950]

FINDINGS OF FACT

This claim, in the amount of $283, was received by the Attorney General on June 7, 1949, and concerns personal property loss resulting from forced sale and also from the disappearance of goods placed in the custody of agents of the Government. Claimant was born in Japan of Japanese parents, and has at no time since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 4501 Clement Street, Oakland, California, and was living at that address when evacuated on May 6, 1942, under military orders pursuant to Executive Order No. 9066, to Tanforan Assembly Center, California, and from there to the Central Utah Relocation Center at Topaz, Utah. At the time of his evacuation, claimant was possessed of a 1931 Chevrolet sedan, together with certain household furniture and 80 edible rabbits, none of which items he was permitted to take with him to the relocation center. Shortly before his evacuation, therefore, claimant proceeded to advertise his automobile for sale in a local newspaper, expending $3 for the purpose, and thereafter sold the car together with the other items for the best prices he could obtain. At the time a condition prevailed wherein a free market was not available to the claimant for disposing of his property at its then fair value, namely, $253.70, and claimant received only $112 from its sale with resultant loss, after deduction of the $3 advertising expenditure, of $144.70. Claimant would not have sold his property nor have advertised the automobile for sale but for his evacuation, and his respective acts of selling

and advertising were reasonable in the circumstances; moreover, the advertising expenditure for the sale of the automobile was in reasonable amount. In addition to the property which he sold, claimant was possessed of certain personal effects which he desired, and was permitted, to take with him to the assembly center. On the day of his evacuation, claimant reported with these items at the appointed place of departure for the assembly center, but was advised by the military personnel in charge that his luggage was too bulky for the passenger bus and that part of it would have to be handed over for transportation in the baggage conveyance. Claimant accordingly turned over to the said military authorities certain items having a value of $11.65, all properly tagged and identified, for such transportation. Upon reaching the assembly center, claimant applied for his goods but was informed that they had failed to arrive. Claimant immediately reported the matter to the "Lost and Found Department" at the center but the property could not be found and claimant was never indemnified for its loss. Claimant was married when evacuated and the property involved represented community estate of himself and his wife, Michiko Orimoto. The latter, a person of Japanese ancestry, was evacuated with claimant and has at no time since December 7, 1941, gone to Japan. The losses involved have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant's $144.70 loss on sale is allowable. *Toshi Shimomaye, ante,* p. 1. While the case is routine in its general aspect of loss on sale, the record discloses that it contains matters of special import with respect to two of the items involved in the sale, namely, the 80 edible rabbits and the automobile. In his claim form, claimant states his "Total Claim" to be for $283 and, in addition, lists specific amounts as representing the loss for each of the items involved. In so doing, he gives his loss from

the sale of the rabbits as being $36. Again, with respect to the automobile, he merely states "sold for $40" and makes no mention whatsoever of the advertising expenditure. The evidence establishes that claimant's loss from the sale of the rabbits was not $36, as alleged, but $52. Again, as appears from the findings of fact, the evidence shows that claimant expended $3 for advertising his automobile for sale.

That claimant may recover the full amount of his loss from the sale of the rabbits despite the error in his claim form, since the total loss established does not exceed the total amount claimed, is now settled. *Junichi Frank Sugihara, ante,* p. 87; cf. *Kiyoji Murai, ante,* p. 45. It is true, of course, that Section 2 (a) of the statute imposes a period of limitation for the receipt of claims and provides that all claims not presented within the prescribed period shall be forever barred. It is plain, however, that mere rectification of an error in particularization in nowise offends these provisions so long as there is no departure from the original allegation as to the total loss claimed. As pointed out in *Kioji Murai, supra,* a case concerned with erroneous listing of items and therefore presenting the factual counterpart of the error in amount here involved, such discrepancies between allegation and proof are merely variances in the matter of particularity and do not represent an alteration or modification of the claim itself. That this construction is correct and that such matters are unaffected by provisions relating to limitations, is irrefragable. See authorities cited, *infra.*

While claimant's erroneous listing of the amount of his loss from the sale of the rabbits involves no new problem, the omission from the claim form of any reference to the advertising expenditure in connection with the sale of his automobile does present matter for original determination. Section 2 (a) of the Statute specifically enjoins receipt of new claims after the expiration of eighteen months from the date of statutory enactment. There is

therefore squarely raised the question of whether the unlisted expenditure is barred by limitation, or is merely a particularity variance within the rule of *Kiyoji Murai.* That the problem posed is not particularly formidable is readily apparent from a consideration of the facts and law involved. Since the expenditure was made in connection with the sale of the automobile, it is obvious that, factually, it constituted an integrant part of the loss therefrom. This is plain from the fact that in consequence of his $3 advertising outlay the amount actually realized by claimant from the sale was not $40, as alleged, but only $37. This being the fact, it is patent that the allegation of loss from the sale necessarily includes the incidental loss from the advertising. It follows, therefore, that no problem of introduction of new subject matter is involved, and the case is merely one of correction or amplification of the transaction originally set forth.

That in this situation limitation would offer no obstacle to relating back amendment were claimant proceeding in either the Federal or State courts, admits of no dispute. See Rule 15 of the *Federal Rules of Civil Procedure,* 28 U. S. C. following § 723 (c), together with comment thereon in *Barthel* v. *Stamm,* 145 F. (2d) 487, 490–491, and in *Clark on Code Pleading* (2d ed.), pp. 710–712, 715–716, 718–720, 729–734; cf. *Maty* v. *Grasselli Co.,* 303 U. S. 197; *N. Y. Cent. R. R.* v. *Kinney,* 260 U. S. 340; and *Hardin* v. *Boyd,* 113 U. S. 756; and see, further, *Wood on Limitations* (4th ed.), Vol. II, p. 1527 et seq., including cases cited in footnotes, noting particularly *Southern Railway Co.* v. *Cunningham,* 152 Ala. 147; *Benson* v. *City of Ottumwa,* 143 Iowa 349; and *Connell* v. *Crosby,* 210 Ill. 380. Concededly, the claim form is not a pleading. *Bemis Bros. Bag Co.* v. *United States,* 289 U. S. 28, 34. It is irrefutable, however, that "analogies borrowed from the forms and methods of a lawsuit" have their place of influence in administrative proceedings and "may turn out to be controlling, if differences of end and aim are obscure or indecisive." *Ibid.;* cf. *United States* v. *Memphis Cot-*

ton Oil Co., 288 U. S. 62; and see *United States* v. *Factors and Finance Co.*, 288 U. S. 89; *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73; *United States* v. *Andrews*, 302 U. S. 517. Moreover, it must be remembered that, as pointed out in *George M. Kawaguchi, ante*, p. 14, the first section of the statute, i. e., the enacting clause, specifically provides that the "jurisdiction" conferred is "to determine according to law." In view of these considerations, it is plain that claimant's advertising expenditure is not barred by the provisions of Section 2 (a) of the Act, and the matter is merely one of particularity within the ambit of *Kiyoji Murai*. This being the case, and the expenditure *per se* being statutorily cognizable, *Haruko Itow, ante*, p. 51, compensability necessarily follows.

Claimant's $11.65 loss from the disappearance of the items turned over to the military for transportation offers no problem. Not only does the matter come within the general purview of *Akiko Yagi, ante*, p. 11, but it is expressly covered by the parenthesized portion of Section one of the Statute providing for recovery for "loss of personal property * * * in the custody of the Government or any agent thereof."

In light of the above, claimant is entitled to receive the sum of $156.35 under the aforementioned Act as compensation for loss of personal property as a reasonable and natural consequence of his evacuation. This claim includes all interest of the marital community in the subject property since claimant's wife, likewise statutorily eligible, has not made separate claim. *Tokutaro Hata, ante*, p. 21.

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