

## CLAIM OF KIYOJI MURAI

[No. 146-35-1030. Decided September 28, 1950]

## FINDINGS OF FACT

This claim, in the amount of \$1,121, was received by the Attorney General on March 4, 1949. It involves loss through sale of personal property consisting of household furniture and effects used in claimant's combination rooming and boarding house, gardening tools and equipment, and a 1927 Ford pickup truck. All of the property involved was owned as community estate by claimant and his wife, Toyo Murai. Claimant and his wife were both born in Japan of Japanese parents and have at no time since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 1431 North Cahuenga Boulevard, Hollywood, California, and were living at that address when evacuated on April 29, 1942, under military orders pursuant to Executive Order No. 9066, to the Santa Anita Assembly Center, Arcadia, California, and thence to the Heart Mountain Relocation Center, Heart Mountain, Wyoming. At the time claimant was evacuated, he was unable to take the above-mentioned property with him to the Relocation Center and, shortly before his evacuation, therefore, he proceeded to sell it for the best prices he could obtain. Claimant would not have sold the property but for his evacuation. At the time of the sale, there prevailed a condition wherein there was not a free market upon which claimant could have disposed of his property at its fair value, and claimant acted reasonably in selling in the circumstances. The fair and reasonable value of claimant's property at the time of sale was \$647.50, of which amount claimant re-

ceived \$295 as proceeds from the sale. His resultant loss, therefore, was \$352.50. The loss has not been compensated for by insurance or otherwise.

#### REASONS FOR DECISION

Claimant's evidence of loss consists of his sworn statements together with several supporting documents, including the original bill of sale for his rooming house furniture and effects, a copy of the original conditional sales contract and invoice for the purchase of one of the major items involved, and the affidavit of his daughter verifying his ownership and disposal of the property. The investigation has revealed nothing contradictory of this material and, to the contrary, confirms it in substantial part. In this connection, it is pertinent to point out that the itemization in claimant's evidence of the rooming house furniture varies to some extent from the description given in the original statement of claim and includes certain items not listed therein. The record discloses, however, that at the time of taking testimony claimant had before him the original bill of sale itemizing in detail the furniture and furnishings in each of the nineteen rooms involved and that this document was not available to him at the time he made out his claim form, the latter being prepared entirely from memory. Since there were 19 rooms involved and, except for certain standard items, the contents of the rooms differed in several cases, claimant's inability to achieve greater specificity in the claim form is readily understandable. Moreover, it is significant to note that while the claim form, drawn on broad general lines on the basis of unrefreshed recollection, gives the loss from the sale as \$1,030, the loss claimed at the time of taking testimony and on the basis of the bill of sale specifically recording the items involved was not in excess of this amount but, in fact, considerably less, being only \$437.25. In view of these facts and since the evidence offered indisputably relates to the identical

transaction claimed, the variance being solely in the matter of particularity, consideration of the claim on the basis of the facts disclosed by claimant's evidence is proper.

A valuation of the subject property as of the time of sale in the amount of \$647.50 is reasonable. Of this amount, claimant received \$295 as proceeds from its sale, leaving an uncompensated balance of \$352.50. Since claimant had no free market and acted reasonably in selling in the circumstances, he is entitled to receive this sum under the above-mentioned Act as compensation for loss of personal property as a reasonable and natural consequence of his evacuation. *Toshi Shimomaye, ante*, p. 1. This claim includes all interest of the marital community in the subject property since claimant's wife has not made separate claim, although eligible to do so. *Tokutaro Hata, ante*, p. 21.