

CLAIM OF KINJIRO AND TAKE NAGAMINE

[No. 146-35-1785. Decided October 17, 1950]

FINDINGS OF FACT

1. This claim, in the amount of \$1,274.80, was received by the Attorney General on March 22, 1949. The claim involves the loss of clothing of the claimant and his wife, household effects, express and storage charges, damage to two trunks, and loss resulting from the sale of a 1936 Ford automobile and claimants' equity in a 1941 Plymouth automobile. All the property involved was owned by the claimant and his wife, Take Nagamine. Kinjiro Nagamine and his wife were born in Japan of Japanese parents on March 27, 1892, and December 15, 1888, respectively. Both were evacuated on the same day and neither has since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimants resided at 10845 Sunset Boulevard, Los Angeles, California. They were living at 112 South San Pedro Street, Los Angeles, California, on April 28, 1942, when they were evacuated under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Manzanar Relocation Center, Manzanar, California.

2. The claim was jointly filed by the two spouses, neither of whom has filed a separate claim. After the claim was filed, the wife, Take Nagamine, died intestate in July 1949 leaving no issue and no creditors.

3. Claimants were unable to take with them to the Relocation Center the above-mentioned property and, in April 1942, they stored two trunks, two suitcases, and a box containing clothing and household effects in the basement of a friend's house. On their return from the Re-

location Center, claimants discovered that the clothing and household effects had disappeared from the trunks, suitcases, and boxes in which they were stored. Two suitcases and a box had, likewise, disappeared. The fair and reasonable value of the property which had disappeared in storage was \$640.20. In view of conditions existing at the time claimants were evacuated, they acted reasonably in storing their household effects and clothing.

4. Claimants incurred reasonable carriage charges in the amount of \$25 in storing their property. They acted reasonably in doing so.

5. Upon their return from the Relocation Center, the claimants discovered that their two trunks had been damaged, and they expended \$20, a reasonable amount, in repairing them.

6. Claimants paid their friend \$30 for the storage after leaving the Relocation Center and getting employment. Their friend had made no charge and this sum was paid solely because it is the habit of the Japanese to repay such kindness with a token monetary sum.

7. Claimants acted reasonably in selling their equity in the Plymouth car in late February or early March in anticipation of evacuation and in buying a cheaper Ford car to drive to the Relocation Center. The sale of the Plymouth and purchase of the Ford were both made to reduce possible loss, the more expensive Plymouth being sold to prevent the greater loss which would have resulted from the confiscation by the Government, feared by the claimants, of any car they might drive to the Relocation Center. Since evacuation orders expressly prohibited claimants from taking their Ford car with them to the Relocation Center, they, therefore, had to dispose of it. In February 1942, claimants sold their equity in a 1941 Plymouth automobile for \$700; and in April 1942, sold their 1936 Ford automobile for \$150. The fair value of claimants' equity in the Plymouth automobile was \$755; and the fair value of the Ford automobile was \$290. Under the circumstances, claimants acted reasonably, in

the absence of a free market, in selling these cars for the prices received. None of the claimants' losses have been compensated for by insurance or otherwise.

8. The claimants' loss was the difference between the amount found as the fair value of their two cars, \$1,045, and the total amount received from their sale, \$850, which was \$195, plus the express charges incurred by claimant of \$25, plus expenses of \$20 for repair to their trunks, plus \$640.20 for property stored and stolen by an unknown person, all of which was a reasonable and natural consequence of their evacuation, or a total of \$880.20. This claim includes all interest of the marital community in the subject property.

REASONS FOR DECISION

The claimants were both jurisdictionally eligible to claim.

On the facts found in paragraph 2, the surviving husband succeeded to all the personalty. *Deering's Probate Code of California* (1949), §§ 201, 201.5.

On the facts found in paragraph 3, the stored property lost through intervening factors is allowable. *Akiko Yagi, ante*, p. 11.

On the facts found in paragraph 4, the charges for carriage are allowable on the analogy of storage charges allowed in *Frank Kiyoshi Oshima, ante*, p. 24.

On the facts found in paragraph 5, the cost of repairing the trunks is allowable as "a loss to prevent a greater loss." *Frank Kiyoshi Ohima, supra*. The assumption is made on the facts that the cost of repair after claimants' return did not exceed what it would have been at the time of damage and therefore did not represent replacement value on resettlement, a doctrine which has been repudiated as the basis of claim. *George M. Kawaguchi, ante*, p. 14.

On the facts found in paragraph 6, the claimants' friend was a gratuitous bailee and no allowance can be

made for the \$30 afterwards paid him by the claimants as a "token" in accordance with the custom of claimants' people.

The loss by sale on both claimants' cars, bought and sold in succession, is on the facts found in paragraph 7 allowable (*Toshi Shimomaye, ante*, p. 1), on the ground that the first car was sold in anticipation of evacuation with the dominant motive of taking a loss to prevent a greater loss (*Frank Kiyoshi Oshima, supra*), and the second car as the immediate result of evacuation, when no free market was available to claimants.