

## CLAIM OF RYOKO TAKAYAMA

[No. 146-35-2521. Decided July 6, 1951]

## FINDINGS OF FACT

This claim, in the amount of \$2,225, was received by the Attorney General on April 15, 1949, and alleges loss of personal property through forced sale, destruction, abandonment, including constructive abandonment by involuntary "gift," and repossession by a conditional vendor. All the property involved represented community estate of claimant and her husband, Kazuo Takayama, at the time of alleged loss. Claimant's husband, by whom the claim was originally filed, died on August 8, 1950, intestate and leaving no debts. Thereafter, on September 8, 1950, claimant filed a petition with the field office for leave to intervene.

Claimant and her husband were both born in Japan of Japanese parents. Claimant has at no time since December 7, 1941, gone to Japan and her deceased husband likewise did not go to Japan at any time after that date. On December 7, 1941, also for some time prior thereto, claimant and her husband actually resided at 146 Rivera Street, Los Angeles, California, and they were living at that address when evacuated on May 29, 1942, under military orders pursuant to Executive Order No. 9066, to the Poston Relocation Center. At the time of their evacuation, claimant and her husband owned, as community estate, a considerable amount of household furniture and effects including, *inter alia*, a phonograph, records, books, six framed pictures, and a piano. Because they were not permitted to take this property with them to the relocation center, claimant's husband concluded to dispose of it by sale. He was successful in part, succeeding in sell-

ing all of the parties' household effects except the items specifically referred to above, i. e., the phonograph, records, books, pictures, and piano. At the time of sale, no free market was available to him for disposing of the property he sold at its then fair value, namely, \$388.25, and claimant's husband received only \$115 therefor with resultant loss of \$273.25. As for the unsold items, which he was likewise unable to store, claimant's husband proceeded to destroy the records and books, then fairly worth \$108.33, and to "give away" the phonograph, then fairly worth \$10, the circumstances of both the destruction and "gift" being tantamount to abandonment. Also abandoned were the 6 framed pictures, the then fair value of which was \$2.25. Finally, with respect to the piano, purchased under a conditional bill of sale and then fairly worth \$165, claimant's husband returned the instrument to the conditional vendor in extinguishment of the \$68.30 balance still due thereon, with consequent loss of \$96.70. The several dispositions involved were reasonable in the circumstances and the losses sustained have not been compensated for by insurance or otherwise.

#### REASONS FOR DECISION

The compensability of claimant's losses is clear. See, as to the sale, *Toshi Shimomaye, ante*, p. 1; the destruction, *Kenichi Fujioka, ante*, p. 174; the involuntary "gift," *George Tsuda, ante*, p. 90, and *Kenichi Fujioka, supra*; the abandonment, *Usasuke Charlie Yamamoto, ante*, p. 55, and *Frank Tokuhei Kaku, ante*, p. 29; the repossession, *Akira Hirata, ante*, p. 32; *Hideko Tateoka, ante*, p. 180; and *James Y. Zoriki, ante*, p. 72. Equally clear is claimant's right to intervene and receive payment for the entire community loss involved. As pointed out in *Tokutaro Hata, ante*, p. 21, a claim by a husband for loss of community personal property is made in a managerial capacity, the husband acting not only for himself but also as agent for his wife. *Deering's Civil Code of California* (1949),

§§ 161a, 172. Death having terminated the agency, claimant, as real party in interest principal, obviously has the right to intervene with respect to her original individual interest. Cf. *Tatsuno Takemoto*, ante, p. 247. As for the interest of the demised husband, *Deering's Probate Code of California*, §§ 200, 201, 202, specifically provide for succession by the wife if a decedent husband dies intestate and leaves no debts. *Hatsu Ishige*, ante, p. 66; cf. *Hatsujiro Imai*, ante, p. 61. That this principle is applicable to the descent of claims under the instant Statute, provided that the deriving claimant is jurisdictionally eligible, is now settled. *Fumiyo Kojima*, ante, p. 209. It follows, therefore, that claimant's right to intervene and to receive payment for the entire community property loss involved admits of no dispute.<sup>1</sup>

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<sup>1</sup> It is perhaps germane to note that since claimant's husband died possessed of no real property, nor interest therein nor lien thereon, in California and left an estate valued at less than \$1,000, under Section 630 of the *California Probate Code*, claimant, as successor in interest, may "take" property of decedent directly and without procuring letters of administration. Since the matter is merely one of local procedural and not substantive law, however, it is of passing interest only.