

PRECEDENT ADJUDICATIONS
OF THE
ATTORNEY GENERAL OF THE UNITED STATES

CLAIM OF TOSHI SHIMOMAYE

[No. 146-35-270. Decided April 14, 1950]

FINDINGS OF FACT

This claim, in the amount of \$449.90, was received by the Attorney General on January 18, 1949. The claim involved the loss of a bedroom set, an electric sewing machine, a radio, 3 figurines, a chinaware closet cabinet, an electric stove, a lamp, a bamboo screen, a card table and 4 chairs, a desk, a fur coat, 2 singing canaries and 2 bird cages. The claimant was born in Spokane, Washington, on March 10, 1915, of Japanese parents. On December 7, 1941, and for sometime previously, claimant actually resided at 112 North San Pedro Street, Los Angeles, and was living at 2609 East First Street, Los Angeles, when she was evacuated on May 29, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Poston Relocation Center, Arizona. Claimant had been married to George Kato but was divorced from him and was evacuated under the name of Katsumura, and while in the Relocation Center married Shimomaye. At no time since December 7, 1941, has claimant gone to Japan. At the time claimant was evacuated, she was unable to take the above-mentioned property with her to the Relocation Center, and she sold all the property to the highest bidders she could find. Claimant would not have sold this property but for her evacua-

tion. At that time there prevailed a condition wherein a free market was not available on which claimant could have disposed of her property at a reasonable value, and claimant acted reasonably in selling the items involved at the prices which she obtained for them. The fair and reasonable value of the claimant's property at the time of her loss was \$591.75, of which claimant received the sum of \$287 as proceeds from the sale of the property.

REASONS FOR DECISION

The evidence of claimant's loss consists of her sworn statements, plus the statements of persons with knowledge concerning the claimant's acquisition and disposal of the property involved in her claim. A valuation of claimant's property as of the time of the loss in the amount of \$591.75 is reasonable. Of this amount, claimant received \$287 as proceeds from the sale of the property which resulted in a net loss to claimant of \$304.75.

The only question in issue is whether sales made in the circumstances here present constitute a "loss of real or personal property" within the meaning of the enacting clause of the Act. There can be little doubt on this head when resort is had to the legislative history of the Act. The House Committee in its Report on the bill (80th Cong., 1st sess., House Report No. 732) states that "The obligation of the Government to those who would be redressed by the bill is clearly expressed in the following letter of recommendation from the Secretary of the Interior." The letter of J. A. Krug, Secretary of the Interior, of March 17, 1947, enclosing a draft of proposed legislation, follows, and in setting out the nature of the losses sustained through evacuation, it says:

The evacuation orders gave the persons affected desperately little time in which to settle their affairs. The governmental safeguards that were designed to prevent undue loss in these circumstances were somewhat tardily instituted, were not at once effectively

publicized among the evacuees, and were never entirely successful. Merchants had to dispose of their stocks and businesses at sacrifice prices. In a setting of confusion and hysteria, many evacuees sold personal possessions for a small fraction of their value. A large number had to accept totally inadequate arrangements for protection and management of property. Valuable leasehold interests had to be abandoned.

The above quotation, in addition to various statements of a much less authoritative nature in the hearings, would seem to put at rest any doubt that the loss of the difference between what might have been obtained in a free market between a willing buyer and a willing seller, with neither under the compulsion which was present here, and what was obtained in the only market here available to the claimant was a loss allowable under the Act. Although it may be assumed that there was no coercion imposed by law or by the will of another on the claimant to part with her goods by sale, it is equally obvious that the circumstances themselves constituted such coercion. That is a necessary inference to be drawn from the finding that "at that time there prevailed a condition wherein a free market was not available on which claimant could have disposed of her property at a reasonable value." It would be a strict and unrealistic construction of the Act to hold that the phrase "loss of real or personal property" comprehends only losses of tangible property or of incorporeal property rights. Such a construction would not carry out the intent of Congress. The Act requires that the loss be the "reasonable and natural consequence of the evacuation or exclusion of such person," and the necessary chain of causation between the evacuation and such a loss is clear. The circumstances of haste, hysteria and confusion present in such an evacuation of a whole people is fully attested by facts known to all, of which judicial notice may be taken. See *Hirabayashi v. United States*, 320 U. S. 81; *Korematsu v. United States*, 323 U. S. 214; *Acheson v. Murakami*, 176

Fed. (2d) 953. Sale was in many instances the best recourse which the person about to be evacuated had. Such was the case here.

The loss on sale was on the facts shown allowable, therefore, under the Act. But each case must rest on its own facts; and all that is here decided, or can be decided, is that a loss on a sale in such circumstances as those here present is allowable. A standard of due diligence is to be expected of the evacuated persons, as appears clearly from Mr. Krug's letter above mentioned (see House Report, p. 3), and only where a finding has been made, as here, that the claimant acted reasonably in the circumstances, coupled with the finding of no free market, can the loss on sale be properly attributed to the evacuation.