# CLAIM OF JULIUS DOWN

[No. 146–35–3593. Decided February 26, 1953]

## FINDINGS OF FACT

This claim, in the amount of $412, was received by the Attorney General on May 9, 1949, and alleges loss of personal property through forced sale, voluntary gift, involuntary "gift," and theft from storage. All the property involved represented community estate of claimant and his wife, Eunice Pearl Down, at the time of alleged loss. Claimant, a citizen of Japan, was born in Yokohama, Japan, on October 28, 1922, of parents likewise born in Yokohama and citizens of Japan but of Eurasian descent, each being three-fourths European and one-fourth Japanese. Claimant's wife, nee Eunice Pearl Bailey, was born in McAllister, Oklahoma, on September 4, 1923, of Causasian parents. Neither claimant nor his wife has gone to Japan at any time since December 7, 1941. On the latter date, also for several months before and after, claimant and his wife actually resided at 721½ North Madison Avenue, Los Angeles, California, at which address their daughter, Juliette Eleanor Down, was born on January 11, 1942. After the daughter's birth and shortly before their evacuation, the family moved to 449 North Virgil Avenue, Los Angeles, the home of claimant's parents. They were living at this address when evacuated, together with claimant's parents, on May 10, 1942, under military orders pursuant to Executive Order No. 9066, to the Pomona Assembly Center and from there, later, to the Heart Mountain Relocation Center where their son, Martin Cordell Down, was born on June 30, 1943.

At the time of his evacuation, claimant possessed a 1935 Ford sedan, combination radio-phonograph from which

the shortwave receiving apparatus had been removed and on which he still owed a balance of $65, a small table radio without shortwave band, baby bed with mattress, bathinette, a "Taylor Tot," 2 end tables, dishes and kitchenware, ironing board, drying racks and kindred household miscellany, some silverware, and a Pomeranian dog. Because no storage facilities were available to him, claimant concluded to sell all of the foregoing items with the exception of the silverware, which he took with him to the relocation center, and the Pomeranian dog. Rather than sell the dog to a stranger, claimant presented it to the children of a neighbor who were fond of the dog and who, he felt, would take good care of it. Claimant's efforts at sale were partially successful and he succeeded in selling the automobile and radio-phonograph. No free market being available to him at the time, claimant received only $127 for the automobile, then fairly worth $265, and but $17 for the radio-phonograph, the then fair value of which was $125. His resultant loss, therefore, after deduction of the $65 balance due on the radio-phonograph, was $181. Claimant's act of sale was reasonable in the circumstances. Claimant was unable to sell the remaining items, the then fair value of which was $113.95, and accordingly gave them away to neighbors and friends, the circumstances of the "gifts" being tantamount to abandonment. This action was likewise reasonable.

Claimant remained at the relocation center until November 22, 1943, when he was granted leave to relocate in Chicago. His family continued on at the relocation center, however, remaining until January 24, 1944, when claimant's wife was granted leave to return to Los Angeles. At the time of the wife's departure from the relocation center, WRA crated her personal belongings, including the aforementioned silverware, and shipped them to her place of residence in Los Angeles. Following her return to Los Angeles, claimant's wife was forced to take temporary quarters in a boarding house where she and the chil-

dren lived pending reunion with claimant and reestablishment of their home. Because her lodgings could not accommodate her household belongings, claimant's wife stored the crate containing the latter in a shed adjoining the building. The shed was unsafe for storage, being exposed to theft, but claimant's wife had no knowledge of this fact and her action was in any event reasonable since no other facilities were available to her. While the crate was so stored, it was broken into and claimant's silverware, then fairly worth $20, was stolen. Claimant has never recovered his silverware despite diligent inquiry and search.

The losses involved have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant's losses through forced sale and involuntary "gift" are compensable. *Toshi Shimomaye, ante,* p. 1; *Akira Hirata, ante,* p. 32; *George Tsuda, ante,* p. 90; *Kenichi Fujioka, ante,* p. 174. With respect to the claim of loss from the gift of the dog, the sole evidence offered in support of the allegation is: "I tried to sell all the * * * items, except * * * the dog"; further, "I couldn't take the dog to the relocation center * * * so, rather than sell it to a stranger, I gave it to the children of a neighbor who were fond of the dog and I felt they would take good care of it." Since this evidence does not exclude, as a reasonable inference, the possibility that claimant could have sold the dog for its then fair value and thus have avoided loss from its disposition, it is clear that the allegation is not established. It follows, therefore, that this portion of the claim must be denied. Cf. *Nizo Okano, ante,* p. 41; *Yoshiharu S. Katagihara, ante,* p. 99; see, also, *Kinjiro and Take Nagamine, ante,* p. 78. As for the silverware, the loss, insofar as it relates to claimant's half-interest therein, is compensable. *Akiko Yagi, ante,* p. 11. While the facts here differ somewhat from those in the *Yagi* case, the principle of the latter

is nevertheless applicable since the situation giving rise to the loss—namely, the storage of claimant's property in an unsafe place by an agent during his enforced absence—would not have arisen but for claimant's evacuation. With regard to claimant's wife's half-interest in the silverware, the question presented is, of course, "causation"; more specifically, whether the loss involved was a reasonably foreseeable consequence of her evacuation "in the usual, ordinary, and experienced course of events; a result * * * which might reasonably have been anticipated or expected." *Seiji Bando, ante,* p. 68; cf. *Noboru Sumi, ante,* p. 225. Since it obviously was to have been anticipated that evacuees would have difficulty in caring for their property during the resettlement period and be forced to resort to makeshift arrangements such as those here involved with resultant loss, it is plain that the question posed must be answered in the affirmative. It follows, therefore, that the loss of claimant's wife's half-interest in the silverware is likewise compensable. Cf. *Fusataro Isozaki, ante,* p. 193.

"Compensability" being thus resolved, there remains for consideration the real issue in the case—"eligibility," a matter which must be determined separately with respect to both claimant and his wife since community property is involved. See *Fumiyo Kojima, ante,* p. 209; *Ryoko Takayama, ante,* p. 263; cf. *Tokutaro Hata, ante,* p. 21. The precise nature of the question presented is, of course, clear. Section 1 of the Statute specifically provides that a claim, to be statutorily cognizable, must be by "a person of Japanese ancestry." As appears from the findings of fact, claimant is Japanese of the quarter-blood only and his wife is of Caucasian descent. Despite these facts, both were evacuated. Plainly, then, a problem in statutory construction is posed.

That claimant—an individual of "mixed-blood," to use the terminology of the Western Defense Command (*Final Report, infra,* pp. 145–147)—qualifies as "a person of Japanese ancestry" under the Statute is irrefragable.

As appears from General DeWitt's *Final Report Japanese Evacuation from the West Coast 1942* (GPO 1943), the meaning of the term "Japanese ancestry" as used in the Exclusion Orders is clear and admits of no dispute. Thus, the "Glossary of Terms" contained in the *Report* states (p. 514): "Japanese Ancestry—Any person who has a Japanese ancestor *regardless of degree,* is considered a person of Japanese ancestry." [Emphasis supplied.] The *Report* also reveals the effect of this definition. "Included among the evacuees," it states (p. 145), "were persons who were only part Japanese, some with as little as *one-sixteenth Japanese blood;* others who, prior to evacuation, were unaware of their Japanese ancestry * * *." Since in the evacuation lexicon, then, Japanese lineage in any degree whatsoever sufficed to make an individual "a person of Japanese ancestry," it is clear that claimant comes within this category. It is true, of course, that on July 8, 1942—approximately 2 months after claimant's entry into the Assembly Center—Western Defense Command instituted a program permitting "mixed-blood" individuals to apply for exemption from evacuation and for permission to return to the evacuated zone.[1] Exemptions were restricted, however,

[1] The program—known as the "mixed-marriage policy" and applicable to both "mixed-marriage families" (miscegenate unions with progeny) and "mixed-blood individuals" (persons 50% or less Japanese)—was adopted because of the difficulties created in the Assembly Centers by the cultural conflicts between the Japanese and miscegenate groups, the non-Japanese members of which were Caucasian, Chinese, Filipino, Korean, Eskimo, ects. Cf. *Final Report*, p. 145. Under its terms, "mixed-marriage families" and "mixed-blood individuals" were classified under different categories. Thus, families in which the head of the household (father, mother of children by a Japanese father who had died or was separated from the family, or foster parent) was a Caucasian citizen of the United States, also families in which the head of the household was a "mixed-blood individual" who was a citizen of the United States and in which the family background had been Caucasian, were made eligible for exemption from evacuation and return to the evacuated areas. Similarly, "mixed-blood individuals" without families, i. e., adults and emancipated chil-

insofar as here pertinent, to: "Mixed-blood (one-half Japanese or less) individuals, citizens of the United States or of friendly nations, whose backgrounds have been Caucasian." *Final Report, supra,* p. 145. Since claimant was a citizen of Japan, it is plain that not only was he required to go to the Assembly Center but, futher, he clearly was ineligible for exemption from evacuation. Irrefutably, therefore, claimant was "a person of Japanese ancestry" within the Military's construction of the term. Since the statutory phrase is modeled upon the Military's usage under the evacuation program, it follows that claimant meet the "Japanese ancestry" requirement of the Statute.

While claimant's "Japanese ancestry," then offers no difficulty, the problem presented with respect to his wife—non-Japanese member of a "mixed-marriage family," i. e., a miscegenate union with progeny—obviously is of different character. Since, as already seen, claimant's wife was of Caucasian descent and had no Japanese ancestor, it is clear that she does not come within the Western Defense Command's definition of the term "Japanese ancestry." Nor, for that matter, does she come within the Military's definition of the term "evacuee." This is apparent from the fact that the *Final Report, supra* (p. 513), specifically defines "evacuee" as: "A person of Japanese ancestry excluded from Military Area No. 1 and the California portion of Military Area No. 2, by proclamation of the Commanding General Western Defense Command." The fact re-

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dren, who were citizens of the United States and had Caucasian backgrounds were likewise made eligible for release from the Assembly Centers and return to their home. All other "mixed-marriage families" and "mixed-blood individuals" were sent to Relocation Centers to be relocated in the discretion of WRA. Cf. *op. cit., loc. cit.* The original policy was enlarged on August 19, 1942, to include among the groups eligible for residence in the evacuated areas families in which the head of the household was a citizen of a friendly nation (Filipino, Chinese, Mexican, etc.), and it was later further amplified by additional amendments. Cf. *Final Report,* pp. 145–146.

mains, however, that claimant's wife, like claimant, was evacuated. Indeed, and as appears from the findings of fact, she was confined at the Relocation Center for an even longer period then claimant himself. Moreover, that her evacuation was real in every respect and that her status was identical with that of any other evacuee is conclusively shown by the WRA records. Thus, the latter reveal that her right to leave the Center for any purpose whatsoever, even to obtain medical treatment and hospitalization for her baby, was restricted and required the issuance of a special travel permit. The WRA file likewise reveals that like any other evacuee she had to file an Application for Leave Clearance and that such application had to be approved by the FBI and the various military intelligence agencies before she could become eligible for leave. Again, following the approval and allowance of her clearance application, a matter entailing considerable delay, like any other evacuee she had to file an Application for Indefinite Leave. The WRA file further discloses that after the granting of indefinite leave and her return to Los Angeles she still continued under WRA supervision and had to report any change of address.[2] Obviously, these facts establish "evacuee" status

[2] As appears from the *Final Report*, pp. 241–242, the restrictions imposed upon evacuees at Relocation Centers stemmed directly from Executive Order No. 9066, implemented by Public Proclamation No. 8 with respect to the six War Relocation Centers established in the Western Defense Command area and by Public Proclamation WD: 1 of the Secretary of War with respect to the four Relocation Centers outside the Western Defense Command. Violation of the restrictions subjected the residents of the centers to the penalties imposed by the Act of March 21, 1942 (Public Law 503, 77th Cong.). Since the restrictions were of general application, claimant's wife was subject to the penalties provided by law for any violation the same as any other evacuee. Also, in this connection, and as further evidence of claimant's wife's position, it is pertinent to point out that both the Joint Board and the Office of the Provost Marshal General expressly conditioned their approval of her application for leave clearance with the proviso: "This individual may not be employed in plants and facilities important to the war effort." The reason assigned was the fact that her husband was of Eurasian ancestry and a Japanese citizen.

and, by necessary implication, recognition by the Military of a form of "constructive" Japanese ancestry.

The matter has still further and even more compelling aspects, however. As appears from the findings of fact, claimant and his family, i. e., his wife and child, were evacuated on May 10, 1942. Under the policy then in force, the sole exemptions permissible under the Exclusion Orders were those specified in paragraphs (e) and (f) of Public Proclamation No. 5, namely, cases involving patients confined in hospitals or elsewhere too ill to be moved without danger to life, inmates of orphanages, and the totally deaf, dumb, or blind. Except for these three specific groups, all persons possessed of Japanese blood, irrespective of age or lineal degree, were subject to the Exclusion Orders.[3] As for the problem presented by children of "mixed-marriage families," the solution adopted was extension to the non-Japanese parent of an "election" to accompany his or her part-Japanese child into the Assembly Center,[4] or else be separated from him.[5]

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[3] As to the reasons for the exclusion *en masse*—i. e., total removal of the entire Japanese community—see *Final Report*, pp. 7–19, 105–106, 146, and *WRA—A Story of Human Conservation*, pp. 7–14, 111, 126–131, 180. As appears from these sources, the uprooting of the entire community was due to several factors, including not only military necessity but also the further considerations of protection against vigilantism and prevention of local incidents. As for the treatment of the three exempted classes, see *Kofusa Kashiwagi*, *ante*, p. 270.

[4] The extension of the "election" was due to the fact that the basic principle applied in the execution of the evacuation plan was the preservation of the family unit. As stated in the *Final Report* (p. 77): "The Army was faced with the problem of designing a new type of civilian evacuation which would accomplish the mission in a truly American way * * *. In certain foreign countries the evacuation of the civilian population had proceeded as follows: First, dangerous adult males and females—those suspected of subversive activities—were removed to internment camps; and second, all other males of military age were sent to special labor camps. Women and children were often separated from the remainder of the family. This method removes the normal economic support of the family and forces it to dissipate its resources. This in turn creates a community problem of dependency, and disrupts the entire organization of the family." Cf. *id.*, p. 94. To avoid such social dislocation, the evacuation was

See footnote 5 on p. 316.

In view of the nature of the "election," it is patent that the term represents a mere euphemism and that in actual fact there was no choice. Obviously, the compulsive force of the blood tie would inevitably prescribe avoidance of separation of parent and child and compel the non-Japanese parent to undergo evacuation. The effect, therefore, was precisely as if the Exclusion Order was directed against the parent himself. Moreover, the matter has a further aspect arising out of the manner in which the so-called "election" was effected. Before a non-Japanese parent could be permitted to enter an Assembly Center with his or her part-Japanese child, such parent was required to execute a special form known as WDC Form PM–7 and entitled "Request and Waiver of Non-Excluded Person." By the terms of this form, the applicant requested leave to accompany the members of his or her family through all stages of the evacuation "in all respects as if he or she were a person of Japanese ancestry," agreed to conform to all rules, regulations, and orders "in all respects as if I were a person of Japanese ancestry," and waived the right to leave the Assembly and Relocation Centers except upon written authorization from the Military or WRA. The import of these provisions is obvious. In the eyes of the Military, a non-Japanese parent who

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conducted entirely in terms of "family" and with total emphasis on preservation of the family unit. Thus, the Exclusion Orders and accompanying Instructions both explicitly stressed the family aspect, requiring "a responsible manner of each family" to report at the Civil Control Station a few days before evacuation for instructions. *Id.*, pp. 97–100. Registration was on a family basis, special Social Data Registration Forms being prepared for the family as a whole. *Id.*, 118–122, 353–354. Evacuees were assigned family numbers. *Ibid.*

[5] Where a non-Japanese mother was unable to accompany her part-Japanese child, the child was sent to the Assembly Center with its Japanese father or other adult relatives of Japanese ancestry. In the event there was no father or adult Japanese relative, the policy apparently was to take the child and place it in an institution such as the Salvation Army Japanese Home in San Francisco or the Southern California Japanese Children's Home in Los Angeles, the institution serving as the equivalent of an Assembly Center, and later transfer it to the Children's Center at Manzanar, California.

executed the form and entered an assembly center with his part-Japanese child became, for purposes evacuation, "a person of Japanese ancestry."

The significance of the foregoing with respect to the issue here presented is readily apparent. The rule, as we understand it, is that statutory language designating the recipients of rights of claim against the United States, substantially conferred by the Statute on account of past Government action, must be strictly construed against the beneficiaries of the Act,[6] an exception being made where, taken alone, it seems to fail quite to cover the entire class clearly within its intended coverage. In the latter event, the language may be construed as descriptive of the entire intended class, irrespective of its customary meaning. *United States* v. *Northwestern Express Company,* 164 U. S. 686. Compare *Buchanan* v. *Patterson,* 190 U. S. 353; *Silver* v. *Ladd,* 74 U. S. (7 Wall.) 219; *Ramsey* v. *Tacoma Land Company,* 196 U. S. 360, 362.[7] This being the case, the right of claimant's wife to compensation under the

[6] See e. g., *Klamath Indians* v. *United States,* 296 U. S. 244, 250. Because of the sovereign immunity of the United States from suit, the same rule applies to limit the jurisdiction of courts to entertain actions against the United States, even where a right of action would plainly exist against an individual. See *United States* v. *Sherwood,* 312 U. S. 584, and cases there cited. As pointed out in the adjudication of the claim of *Mary Sogawa, ante,* p. 126, the Congress, in prescribing that the claim in question be determined "according to law" imposed a "duty upon the Attorney General" to apply the same rules of interpretation that a Federal court would apply in like circumstances.

[7] It is unnecessary to decide whether or not the instant claim may be analogized to a suit for just compensation for the taking of private property for public use. Cf. *George M. Kawaguchi, ante,* p. 14. It is appropriate to note, however, that were it to be so analogized, the constitutional or statutory duty to pay just compensation would require liberal construction in order to accomplish that end. *Becker Steel Co.* v. *Cummings,* 296 U. S. 74; cf. *Behn, Meyer & Co.* v. *Miller,* 266 U. S. 457. Similarly, where the Government has seized property as a matter of right and, by force of the Constitution or a statute, has assumed a role similar to that of a trustee with respect to the proceeds, a statute giving a right to claim such proceeds is usually deemed "highly remedial and should be liberally construed to effect the purpose of Congress and to give remedy in all cases intended to be cov-

instant Statute is scarcely open to doubt. Plainly, she was one of "the victims of the forced relocation," the "approximately 120,000 persons involved in the relocation move." (H. Rept. 732, 80th Cong., 1st sess., pp. 4, 5.) As pointed out in the case of *Fumiyo Kojima, ubi supra,* the Congress was aware that the usual loss made compensable by the Act resulted from the evacuation of the entire family in the sense that it could have been avoided if any member had been permitted to remain behind to care for the property. Had claimant's wife had a real choice, therefore, undoubtedly the case would be different. Because she did not have such choice, however, and was forced by the order excluding her part-Japanese child to accept quasi-Japanese ancestry status and become a "victim of the forced relocation," she comes within the scope of intended statutory coverage and clearly qualifies as a beneficiary under the Statute. As already seen, the statutory use of the term "Japanese ancestry" is predicated upon that of the Military in its effectuation of the evacuation program.[8] As likewise seen, in the eyes of the Mil-

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ered." *Miller* v. *Robertson,* 266 U. S. 243, 248. Accord, *United States* v. *Padelford,* 9 Wall. 531; *United States* v. *Anderson,* 9 Wall. 56. In view of the availability of the long-established exception mentioned in the text, however, it is unnecessary to determine whether these cases are applicable under the Evacuation Claims Act. Nor is there need, in light of the exception, to consider the effect of other relatively recent decisions which seem to indicate a disposition on the part of the Supreme Court to relax the general rule of strict construction, at least to the extent that it rests upon the doctrine of sovereign immunity. See, e. g., *Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U. S. 381; *Canadian Aviator, Ltd.* v. *United States,* 324 U. S. 215; *American Stevedores, Inc.* v. *Porello,* 330 U. S. 446; *United States* v. *Aetna Surety Co.,* 338 U. S. 366. Cf. *Johansen* v. *United States,* 343 U. S. 427, and note, also, *Sutherland on Statutory Construction,* 3d ed. (Horack), Vol. 3, p. 134 *et seq.*

[8] The term is, of course, intended to reach the evacuated family units and to discharge the moral obligation owed them by the United States because of "the disproportionate financial burden that the Government's war measures had thrust upon [them]." *Fumiyo Kojima,* text, *supra.* It is manifest that there is no valid distinction between the instant case and others upon moral grounds and, if the problem had been raised, it is not likely that diverse local laws as to

itary, claimant's wife, by executing the prescribed "Re quest and Waiver" form and entering the Assembly Center with her part-Japanese child, became, for purposes of evacuation and continued exclusion, "a person of Japanese ancestry," a status she was unable voluntarily to change once it was assumed. Necessarily, therefore, claimant's wife qualifies as an excluded "person of Japanese ancestry" within the intendment of the Statute.

Claimant and his wife both being jurisdictionally eligible, and the husband having control and management of the community personalty under California law and being proper party claimant therefor, this claim binds the entire interest of the marital community in the subject property. *Tokutaro Hata, ubi supra.*

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the nature and division of property owned within such family groups would have been intended to control the amount of compensation payable in such cases where, as here, the policy implications of the proscriptions of Section 2 (b) of the Act are in no way involved. Cf. *Vermilya-Brown Co.* v. *Connell,* 335 U. S. 377, 388.