

CLAIM OF TATSUNO TAKEMOTO

[No. 146-35-366. Decided June 29, 1951]

FINDINGS OF FACT

This claim, in the amount of \$2,457, was received by the Attorney General on January 28, 1949, and alleges personal property loss through forced sale, theft from storage, expenditures for transportation, and an agent's misappropriation of funds. All the property involved represented the community estate of claimant and her deceased husband, Kaichi Takemoto, at the time of alleged loss. Claimant's husband died on November 2, 1947, intestate, leaving no debts and an estate valued at less than \$1,000. The claim was originally filed by claimant's son, Isamu S. Takemoto, acting as claimant's agent and in her behalf. On December 14, 1950, however, claimant filed a petition with the field office requesting that the claim be amended and that she be substituted for her son as party-claimant. The petition was accompanied by a withdrawal and release from the son conditioned upon recognition of his mother as party-claimant and payment to her of any award made herein.

Claimant and her deceased husband, Kaichi Takemoto, were both born in Japan of Japanese parents. Claimant has at no time since December 7, 1941, gone to Japan. Her deceased husband likewise at no time during the period from December 7, 1941, to the date of his death, November 2, 1947, went to Japan. On December 7, 1941, and for some time prior thereto, claimant and her husband actually resided at 17016 Denker Avenue, Gardena, California. They continued to reside at this address until March 29, 1942, when, in anticipation of an order of exclusion, they voluntarily departed from Gardena and

migrated to Alamosa, Colorado. At the time of their departure, claimant and her husband owned their own home, together with a considerable amount of household furniture and effects, two trucks, farm machinery, clothing, tools, and miscellany. Claimant and her husband concluded to sell the trucks, store their farm machinery, and rent their home. Moreover, in anticipation of renting their home and as a precaution against damage to or loss of their household effects during their absence, they further concluded to take the latter with them to Colorado. Shortly before their departure, therefore, claimant's husband sold the trucks for the highest and best prices he could obtain. Because no free market was available to him for disposing of the vehicles at their then fair value, namely, \$380, claimant's husband received only \$65 from their sale with resultant loss of \$315. Thereafter, claimant's husband stored the farm machinery in a vacant barn and the clothing, tools, and miscellany, which the moving van he had engaged to take the parties' household effects to Colorado could not accommodate, in a small room of their home. While claimant and her husband were in Colorado, both the farm equipment, the then fair value of which was \$300, and the items stored in the house, then fairly worth \$202.28, were stolen. Claimant has never recovered any of the items despite diligent inquiry and search. In addition to selling the trucks and storing the farm machinery and "leftovers," claimant's husband expended \$132 for transporting the parties' household goods to Colorado. The several dispositions involved were reasonable in the circumstances and the losses sustained have not been compensated for by insurance or otherwise.

Besides the foregoing, claimant also alleges loss through misappropriation by her rental agent of moneys received from the renting of her home while she was in Colorado. The sole evidence adduced in support of this item of claim, however, is the following hearsay fragment: "After we were in Colorado he [the rental agent] wrote and said

he rented the house for \$15 a month. When I returned from Colorado, friends told me that * * * [he] rented the house for \$30 and sent us \$15 and kept \$15." Moreover, the report of investigation discloses the agent asserts that the sole rental he received was \$15 per month. In this state of the record, claimant's allegation is not established.

REASONS FOR DECISION

Compensability of the losses involved—other than the claim for misappropriated rentals, which has not been established—is clear. See *Toshi Shimamaye, ante*, p. 1, as to the sale; *Akiko Yagi, ante*, p. 11; for the thefts from storage; and *Yaemon Matsumoto, ante*, p. 197, relative to the transportation charges. Equally clear is the fact that claimant and her deceased husband qualify as "evacuees" under the Statute. The concluding sentence of Section 1, i. e., the enacting clause, specifically provides: "As used herein 'evacuation' shall include voluntary departure from a military area prior to but in anticipation of an order of exclusion therefrom." Claimant's right to reimbursement for the entire community property loss involved is likewise clear. *Fumiyo Kojima, ante*, p. 209. Similarly clear is claimant's right to substitution for her son as party-claimant. As stated in *Taro Kenneth Takahashi, ante*, p. 183, "Claims may be filed by duly authorized agents on behalf of claimants otherwise jurisdictionally eligible." The act of an agent being that of his principal, the right of the real party in interest to be substituted as party-claimant and to receive direct payment of an award necessarily follows.