

## CLAIM OF SHUZO KUMANO

[No. 146-35-3851. Decided January 16, 1951]

## FINDINGS OF FACT

This claim, alleging a loss in the sum of \$1,282.50, was received by the Attorney General on May 16, 1949. It concerns a loss incurred by the forced sale of certain articles of barber shop equipment and household furnishings prior to evacuation; a loss incurred by the sale of two Koch barber shop chairs which took place subsequent to the claimant's return from the relocation center; alleged loss on account of the cost of improvements which claimant had made to rented premises where he lived and conducted a barber shop; a loss incurred as a result of damage to claimant's property due to deterioration while in storage; a loss incurred as a result of expenditures made for drayage and storage expenses at the time of evacuation; and a claim for drayage charges from the place of storage in Marysville, California, to the claimant's home in San Francisco, California. At the time of his evacuation claimant was, and presently is, a married man living with his spouse. All the property herein concerned was acquired by the claimant during his marriage and is therefore community property. Claimant and his wife were born in Hiroshima, Japan, of Japanese parents and at all times hereinafter mentioned are citizens of Japan. At no time since December 7, 1941, has the claimant or his wife gone to Japan and for some time prior thereto claimant and his wife actually resided at 121 C Street, Marysville, California, from which address they were evacuated on July 12, 1942, pursuant to military orders issued under authority of Executive Order 9066, dated February 19, 1942. They were thereafter sent to the Tule Lake Relocation Center at Tule Lake, California.

Faced with his impending evacuation, the claimant sold all of his barber shop equipment, with the exception of the

aforementioned two Koch barber chairs, and certain of his household furnishings for the sum of \$228 although the fair and reasonable value thereof at the time of sale was \$356.50. Certain other of his personal property, having a value of \$250, he packed in two trunks which he stored with the two barber chairs in the cellar of premises owned by a Japanese friend in Marysville, California. In connection therewith, the claimant incurred storage and drayage charges in the sum of \$35. In view of the circumstances existing at the time, the claimant acted reasonably in selling such of his property as he could for the best prices available and in storing the remainder thereof.

While the claimant was in the relocation center, fire broke out in the premises contiguous to that in which the claimant had stored his property. Chemicals and water used in extinguishing the fire seeped into the cellar wherein the claimant's trunks were stored and resulted in the deterioration of the property therein stored to such an extent as to make same wholly worthless. On his discharge from the relocation center, claimant resettled in San Francisco. He removed his property from storage and paid a drayage charge of \$45 for transportation thereof to San Francisco. It was not until then that claimant discovered the damage to the property stored in the trunks. The claimant has not been compensated by insurance or otherwise for any of the aforementioned losses.

#### REASONS FOR DECISION

Losses incurred by the claimant as a result of the forced sale of his barber shop equipment and household furnishings in anticipation of his evacuation are allowable. *Toshi Shimomaye, ante, p. 1.* Reimbursement is also permissible on account of the deterioration suffered by the claimant's property while in storage during his evacuation. *Kazuto Imanaka, ante, p. 35; Kinjiro and Take Nagamine, ante, p. 47.*

No allowance can be made on account of the alleged loss

suffered by reason of the improvements made to the premises wherein the claimant lived and conducted his business. In his affidavit filed in support of his claim, the claimant stated: "I spent a total of approximately \$450 for plumbing, carpentry, light fixtures and linoleum, which expenditures were necessary to make the premises suitable for a barber shop and for family residence." By letter addressed to the claimant's attorney, dated April 11, 1950, additional information was requested as to whether claimant possessed a legally enforceable lease for a definite term and whether the installations were detachable from the realty. The claimant's attorney was informed that this item of the claim would be considered upon the basis of testimony heretofore submitted unless a reply were received within 30 days. No reply was forthcoming and consideration of the alleged loss is therefore limited to the evidence at hand. Pursuant to California law, improvements to premises made by a tenant during the continuance of his term may be removed if the removal can be effected without injury to the premises unless the improvement has become an integral part thereof. *Deering's Civil Code of California* (1949), § 1019. The only conclusion to be drawn from the evidence at hand is that the improvements made by the claimant were of the type which became part of the realty and title thereto accreted to the owner of the premises by operation of law. Cf. *Frank Tokuhei Kaku, ante*, p. 29. Inasmuch as the claimant no longer owned these improvements at the time of his evacuation, his claim for any loss suffered on account thereof cannot be entertained. Any possible loss sustained would be based not upon the value of the installations—which were no longer his property—but upon the value of his leasehold interest, if any, which these improvements presumably enhanced. Any allowance for loss of a leasehold would have to be based on the value of the unexpired term of the lease. According to the statements obtained from the claimant's landlord, the claimant possessed no more than a month to month

lease. There being no unexpired period in the claimant's leasehold, no value can be attached thereto or any loss allowed on account thereof.

On the basis of the claimant's own statements, no allowance can be made on account of the alleged loss resulting from the sale of the two barber shop chairs. According to his affidavit, these items were found to be in good condition when claimant returned from the relocation center in 1945 and were later sold by him only because he had decided that he was too old to reenter the barber business. Moreover, the conditions and circumstances which existed at the time of the claimant's evacuation, resulting in no free market upon which goods could have been sold at prices commensurate with their value, were no longer extant at the time the instant sale occurred. There was then no time limit within which the claimant had to dispose of his goods by sale or abandon same. The claimant's loss, if any, from this transaction resulted from his negligence in not seeking a more favorable trade on what was then a free market and was not a reasonable and natural consequence of his evacuation, as required by the Act.

It has been found as a fact that the property packed into the trunks stored by the claimant had deteriorated to such an extent as to become wholly worthless. After his return from the relocation center and resettlement in San Francisco, claimant arranged for the transportation of these trunks, which were apparently in good condition, to his new home and incurred \$45 in drayage charges for such transportation. He also paid the sum of \$27 for storage charges to the owner of the house wherein he had stored his property. In the claim of *Frank Kiyoshi Oshima*, ante p. 24, it was determined that an expenditure made for storage was reimbursable under the Act since such an expenditure was to be regarded as a loss within the meaning of the Act, because it prevented the loss of the property stored, despite the fact that a valuable service was received for the payment made. Except for the trunks

themselves, such is not the case here. The damage to their contents was so severe as to amount to its total loss and full compensation therefor is hereby awarded; hence, the money paid for its protection cannot be regarded as standing in the place of a loss that otherwise would have occurred. However, this circumstance does not change the result because here the claimant did not receive the protection for which he paid insofar as the contents of the trunks are concerned; hence, the money thus spent was directly lost as a reasonable and natural consequence of his evacuation. The case is thus distinguished from that of *Mary Sogawa, ante*, p. 126, in which there was no failure of consideration.

Also compensable for the same reasons is the amount of the expenditures made for drayage of claimant's property to the place of storage. Cf. *Nizo Okano, ante*, p. 41; *Kinjiro and Take Nagamine, supra*; *Tetsuo Noda, ante*, p. 84. The drayage charges in the sum of \$45 incurred by the claimant for the transportation of his property from Marysville, California, the town where he resided and stored his property at the time of his evacuation, to San Francisco where he resettled after his discharge from Tule Lake would not have been compensable, however, even if the property transported had not been damaged while in storage since such transportation was not merely an incident of its storage and the major portion of the expenses was incurred in connection with claimant's resettlement in a different city. Similarly, since the purpose of the expenditure was to secure the transportation of the trunks and the contents thereof, which service was performed satisfactorily so far as appears, claimant received that for which he contracted and hence sustained no loss within the meaning of the Act. *Mary Sogawa, supra*.

In the circumstances disclosed herein, the claimant husband is the proper person to claim on behalf of the community for loss or damage to the property owned jointly with his wife. *Tokutaro Hata, ante*, p. 21.