

## CLAIM OF HIDEKO TATEOKA

[No. 146-35-5332. Decided March 12, 1951]

## FINDINGS OF FACT

This claim, in the amount of \$200, was received by the Attorney General on June 29, 1949, and involves loss on an automobile purchased by the claimant under a contract of conditional sale. The claim is unusual in two respects. First, the claim form contains no averment as to the amount of loss claimed, this information being supplied at the taking of testimony on August 29, 1950. Secondly, the record reveals a general variance between the case alleged and that proved. Thus, in the claim form, claimant alleges loss in consequence of the repossession of the vehicle by the conditional vendor and breach by the latter of its agreement to reimburse her for the value of her equity. Claimant's evidence, submitted at the aforementioned hearing on August 29, 1950, however, reveals that her loss resulted from the forced sale of her interest in the car prior to the repossession involved.

Claimant was born in California of Japanese parents and has at no time since December 7, 1941, gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 745 South Seaside Avenue, Terminal Island, California. On February 28, 1942, claimant moved from this address to 305 West Second Street, Los Angeles, California, where she was residing when evacuated on April 2, 1942, under military orders pursuant to Executive Order No. 9066, to the Manzanar Relocation Center. At the time of her evacuation, claimant was equitable owner of a 1940 Chevrolet sedan which she had purchased under a contract of conditional sale and on which several payments were still due. Claimant was not

permitted to take the vehicle with her to the relocation center and shortly before her evacuation she proceeded to sell her interest therein for \$350. The agreement of sale provided that 50% of the agreed price, i. e., \$175 be paid claimant forthwith and the remainder on completion of the installment payments due the conditional vendor. Claimant received the initial \$175 but not the remainder, apparently due to the fact that the vehicle was subsequently repossessed by the conditional vendor. At the time of the sale by claimant of her interest, the fair market value of the car was \$730. Claimant still owed \$373 thereon, however, as evidenced by the fact that at the time of repossession there was a balance due of \$283 and claimant's transferee had made payments totaling \$90. The value of claimant's interest at the time of sale, therefore, was \$357. Of this amount, claimant received \$175. Her resultant loss, accordingly, was \$182. The loss has not been compensated for by insurance or otherwise. Claimant was unmarried and sole owner of the equitable interest in the vehicle at the time of loss. Claimant's method of disposition was reasonable in the circumstances.

#### REASONS FOR DECISION

Claimant's loss on sale is allowable. *Toshi Shimomaye*, ante, p. 1; *Akira Hirata*, ante, p. 32. As appears from the findings of fact, the case raises two questions in "pleading," namely, the omission from the claim form of any statement as to the amount of loss claimed and, again, the variance between the case alleged and that proved. With respect to the first, no particular problem is involved. The matter being one of particularity, it is manifest that the defect is not fatal and may be cured by amendment. Cf. *Shigemi Orimoto*, ante, p. 103; *Yasuhei Nagashima*, ante, p. 135; *Tetsuko Kikuchi*, ante, p. 153. As for the variance, not only does the record reveal that the transaction proved is that which claimant originally attempted to set forth, but it is in any event plain that the basis of

claim in both allegation and proof is one and the same, namely, claimant's loss on her automobile. It follows, therefore, that no question of introduction of new subject matter in violation of Section 2 (a) of the Statute is involved and consideration of the claim as proved is proper. See, *Shigemi Orimoto and Yasuhei Nagashima, supra*, together with authorities there cited; cf. *Kiyoji Murai, ante*, p. 45.