

CLAIM OF JINTARO AND YOSHIE
NISHIBAYASHI

[No. 146-35-535. Decided January 15, 1954]

FINDINGS OF FACT

This claim, by husband and wife jointly, alleges loss through sacrifice sale of the stock in trade and equipment of claimant's Oriental costumes and props rental shop located in Hollywood, California. Claimants, both of whom were born in Japan, were evacuated from Los Angeles, California, on April 27, 1942, under military orders issued pursuant to Executive Order No. 9066, dated February 19, 1942. The sale involved took place on January 13, 1942, the escrow agreement preliminary thereto having been executed on January 3, 1942. Claimants' evidence is that they effected the sale on the advice of the manager of their bank and in anticipation of evacuation. The basis of the anticipation was the fact that rumors were then generally prevalent that alien Japanese would be evacuated from the West Coast.¹

¹ See Tr., p. 3: "Q. Could you tell me when you first heard that you might be evacuated from the West Coast? A. There was a great deal of talk and rumors about the time that we sold our business that alien Japanese would be evacuated from the West Coast, and this was soon after the war broke out." Cf. original statement of claim: "The following circumstances and events led and motivated the claimants' to dispose of their business at sacrifice, which they would not have done had they been led otherwise to think: (1) Because the claimants' were alien Japanese, they honestly believed that they would be evacuated at any moment, as rumors were strong in general that the evacuation of aliens was inevitable. (2) This aforementioned belief was reinforced by the fact that banking restrictions had been placed on all alien Japanese residents, and furthermore, alien Japanese engaged in certain businesses (not similar to the claimants') had their licenses revoked or their trade activities curtailed."

REASONS FOR DECISION

The instant case relates to Section 1 of the Statute which provides, in pertinent part, that to be statutorily cognizable a claim must be for property damage or loss:

That is a reasonable and natural consequence of the evacuation or exclusion of such person [the claimant] by the appropriate military commander from a military area * * *.²

That the subject claim does not satisfy this requirement would appear to be clear from the fact that on January 13, 1942, the date of sale, claimants were not residing in a military area and authority for their evacuation or exclusion by a military commander did not even exist. Such authority initially came into being on February 19, 1942, when Executive Order No. 9066, pursuant to which claimants were evacuated, was issued. Again, claimants were unaffected by the existence of that authority until its original exercise on March 2, 1942, when Public Proclamation No. 1 was promulgated, establishing Military Areas Nos. 1 and 2 and announcing the imminence of exclusion from Military Area No. 1. In consequence of this action, claimants became residents of Military Area No. 1 and could for the first time anticipate evacuation "by the appropriate military commander from a military area," as required by the Statute.

In briefs of counsel and the Japanese-American Citizens League as *amicus curiae*, however, the contention is ad-

² It is pertinent to note that the language thus employed in the Statute is derived from Executive Order No. 9066 cited therein, which authorized and directed "the Secretary of War, and the Military Commanders whom he may from time to time designate * * * to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion."

vanced that the instant claim is nevertheless cognizable under the Statute. "The mere fact that Executive Order No. 9066 had not yet been issued," the parties maintain, "would not appear to be a material or relevant fact." The evidence assertedly establishing that the sale was in reasonable anticipation of evacuation, and claimants having in fact been later evacuated under military orders, recovery, it is contended, necessarily must lie. That the contention thus advanced is untenable is, we believe, clear from both the language and legislative history of the Statute.³ As appears above, the Statute specifically provides that a claim must be for property damage or loss that is "a reasonable and natural consequence" of the claimants' evacuation or exclusion by the appropriate military commander from a military area. The meaning of the term "consequence" is scarcely open to dispute. As appears from the authorities, and as is matter of common knowledge, the essence of the term is the concept of causal connection, i. e., the relation of an effect to its cause. See *Webster's New International Dictionary* (2d ed., 1948), p. 568; cf. C. J. S. 982. This being the case, it is manifest that insofar as the express language of the Statute is concerned, causal connection between the loss alleged and action by the Military—in this case, pursuant to Execu-

³ It is appropriate to observe that, as shown by note 1, *ante*, claimants' evidence would appear to warrant the inference that the sale was effected in anticipation of action by a Federal agency pursuant to the Alien Enemy Statutes or the Trading With the Enemy Act. The propriety of the inference is seemingly further indicated by the fact that claimants' son—shown by the record to have had no interest in the business—was made a party to the sale, the proceeds from which were to be deposited to his checking account under the terms of the escrow agreement. In view of these facts, allowances of the claim would appear to be contrary to the policy of Section 2 (b) (2) of the Statute. Determination of this aspect of the case is deemed unnecessary, however, since, for the reasons hereinafter stated in the text, claimants fail to satisfy the requirements of Section 1.

tive Order No. 9066—is indispensable to statutory recognition.⁴

Moreover, that the Statute was so understood and intended by the Congress is plain from its legislative history. Thus, the Krug letter embodied in the House Report on the bill (H. Rept. 732, 80th Cong., 1st sess.) specifically ascribes the origin of the legislation to the fact that:

In 1942, the War Department, acting under Executive Order No. 9066, ordered the exclusion of all persons of Japanese ancestry from the Pacific coast * * *.

Similarly, the letter, incorporated in the Report with the statement that “the obligation of the Government to those who would be redressed by the bill is clearly expressed” therein, states the purpose of the legislation to be the adjudication of claims “for losses arising out of the evacuation or exclusion of such persons by the War Department from the west coast * * *.” Furthermore, in describing the losses to be compensated under the proposed measure, the letter confines itself entirely to losses resulting from the actual effectuation of “the evacuation and exclusion program.” As basis for the recognition of such losses, it states:

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 * * *.

Continued exclusion increased the losses * * *.

⁴ Cf. title of the Statute: “An Act to authorize the Attorney General to adjudicate certain claims *resulting from evacuation* of certain persons of Japanese ancestry *under military orders*.” [Emphasis supplied.]

Significant in this regard is the fact that the testimony of the witnesses appearing before the congressional subcommittees in support of the measure is virtually identical in character. Indeed, this testimony is aptly summarized in the following statements made to the House subcommittee on the bill by the Legislative representative of the *amicus curiae* (JACL Mimeographed Copy of Transcript, p. 55): "Briefly, what happened to property is this: The Government ordered evacuation but made no provisions for safeguarding the property and the property interests of the people involved until it was much too late to be significant."

Further indicative of the congressional intent is the fact that the discussion of the measure on the floor of the House relates entirely to Executive Order No. 9066, pursuant to which the basic movement involved—i. e., the mass removal of persons of Japanese ancestry from the Pacific Coast by the Western Defense Command—was effected. See 93 Cong. Rec. 9871–9873. Particularly apposite in this connection are the following statements made on the floor of the House by the Chairman of the House subcommittee on the bill (*Id.*, 9871):

Mr. Chairman, this bill is rather a simple one * * *.

You will recall that shortly after Pearl Harbor an Executive order was issued requiring the evacuation of persons of Japanese descent from certain areas of the mainland, also in Hawaii. There is no disposition on the part of the committee or any one so far as I know to question the good faith of the people who made that order * * *. Nevertheless, considerable damage was done to these people in their being forcibly removed from their homes and businesses, some to camps and others on farms * * *.

The committee * * * substantially rewrote the bill. We appreciated the fact that war brings a loss to many people * * *.

So we have done the best we could in writing this bill to allow compensation *only for those elements of*

*damage which can be traced directly to the evacuation order * * **. [Emphasis supplied.]⁵

While the measure was not discussed by the Senate, the inference is plain that the latter shared the views expressed in the House. The Senate Report on the bill (S. Rept. 1740, 80th Cong., 2d sess.) incorporates by reference the House Report, stating that "a complete statement of facts and circumstances, as a result of which this legislation was proposed is fully set forth" therein. Again, the transcript of the Senate hearings on the bill clearly reveals that the views of the Senate subcommittee chairman with regard to the measure were identical with those of the chairman of the House subcommittee. Thus, the transcript shows that the Senate subcommittee chairman specially inserted into the record copies of Executive Order No. 9066, the Act of Congress of March 21, 1942,⁶ and Public Proclamation No. 1 in order that "the steps which led to the evacuation of these people"

⁵ Cf. the following statements by Congressman Walter, member of the subcommittee: "This bill in a small way will make whole those people who were the innocent victims of an order that probably should never have been issued * * *. They should certainly be compensated because of the losses they suffered as a direct result of the evacuation." And note, further, the remarks of Congressman Goff: "Mr. Chairman, this Act is made necessary, as has been explained, by the action of not only the War Department but this Congress, in authorizing the evacuation of those of Japanese descent from the Western Defense Command on the Pacific coast. The reason I say that Congress had a part in it is that the method by which the order was enforced was a statute passed by this Congress which provided that it is a misdemeanor to disobey any order issued by a military commander in a defense area. Originally the President issued an Executive order authorizing the War Department or the appropriate military commander to evacuate from critical defense areas persons who were considered potentially dangerous to our national security. Congress shortly thereafter enacted the legislation to which I have referred which had the effect of ratifying the Executive order."

⁶ Public Law 503, 77th Congress, "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones." As appears from note 5, *ante*, the enactment of this Statute was specially stressed on the floor of the House.

might be clearly indicated. Transcript of Senate Judiciary Subcommittee Hearings on H. R. 3999, pp. 62-64, 80-93; cf. 15-16 and note also 11-12, 51.

The foregoing makes it amply clear, we believe, that as appears from the statutory language, the Congress intended the Statute to be restricted in scope and recovery thereunder to be confined to property damage or loss resulting from evacuation or exclusion by the Military. This being the case, it is plain that loss sustained prior to action by the Military cannot come within the statutory purview. This is not to say, of course, that a claimant must be under an actual exclusion order at the time of loss before compensability can lie. As indicated above, action with respect to the basic evacuation movement was commenced by the Military on March 2, 1942, with the promulgation of Public Proclamation No. 1 establishing Military Areas Nos. 1 and 2 and announcing the imminence of exclusion from Military Area No. 1. Accordingly, it follows that losses suffered by residents of Military Area No. 1 in consequence of this announcement are compensable. Such losses having been sustained in anticipation of evacuation under military orders, the causal connection prescribed by the Statute is established. Claimants here, however, make no such showing.

Necessarily, therefore, the claim cannot be considered and must be dismissed. Cf. *Toraō Nakamura, ante*, p. 277.⁷

⁷ It should be noted in passing that in support of the contention that the subject claim is statutorily cognizable, counsel for claimants refers to the fact that Section 1 of the Statute provides for recognition of claims "arising on or after December 7, 1941." It is obvious, however, that, as pointed out in *Toraō Nakamura, text, supra*, this provision must be read in conjunction with the remainder of the section. As appears therefrom, the Statute permits recovery for losses resulting from evacuation or exclusion not only from military areas created under authority of Executive Order No. 9066 but also from military areas in existence on December 7, 1941 (see *Sina Katsuma, ante*, p. 186), and, further, for losses resulting from action taken in Hawaii under Section 67 of the Act of April 30, 1900 (48 U. S. C. 532.) This latter action was, of course, instituted immediately after Pearl Harbor and on December 7, 1941.