

CLAIM OF MARY MIYAJI

[No. 146-35-2451. Decided May 5, 1950]

FINDINGS OF FACT

This claim was received by the Attorney General on April 11, 1949, in the amount of \$318, but was decreased by an amending letter, dated November 3, 1949, to \$222. The claim involves the loss of a pair of candlestick holders, an electric clock, costume design book and drafting set, pictures and frames, Japanese books, dining chairs, pillow-cases and sheets, card table, coffee table, candy bowl, and a desk pen set. The claimant was born in San Francisco, California, on August 23, 1913, of Japanese parents. She was domiciled in California in 1942. At no time since December 7, 1941, has claimant gone to Japan. On December 7, 1941, and for some time before, claimant resided at 2915 Guirado Street, Los Angeles, California, and was living at 1029 South Fedora Street in the same city on April 29, 1942, the date of her evacuation to the Santa Anita Assembly Center, California, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942. On October 22, 1942, claimant was sent to Jerome Relocation Center, Arkansas, and later transferred to Colorado River and Granada Relocation Centers. Although claimant was married at the time of her evacuation, all items of property mentioned herein were either acquired by her prior to her marriage or were the subject of an oral agreement between her and her husband that they constituted her separate property. All the aforesaid items, except the candlestick holders, were stolen from the Japanese Methodist Church, Bakersfield, California, where claimant had stored her furniture for safekeeping at the time of her evacuation. Upon returning from the

Relocation Center, she lived with her sister temporarily. The candlestick holders were stolen from her sister's lawn where she had left them overnight with other furniture after reclaiming them from the church, and before she had a reasonable opportunity to store them in her sister's garage. Claimant acted reasonably in storing her belongings because of the conditions existing at the time. No information was available on who the thieves were, and claimant has never recovered any of the property in question. The fair and reasonable market value of the above-mentioned property, other than the candlestick holders, at the time of its loss was \$137.16.

REASONS FOR DECISION

The evidence that the property here involved was claimant's separate property in which her husband had no community property interest consists in her sworn statement as to the dates of acquisition of certain items and that it "has always been agreed between my husband and me that all our household effects belong to me, regardless of whether ordinarily they would be considered community property." There can be no serious question concerning the validity of such an oral agreement under the law of California. *Wren v. Wren*, 100 Cal. 276, 34 P. 775, 776. Also, see and cf. cases collected in *Van Dyke v. Commissioners*, 120 Fed. 945, 946-947; *Roy v. Salisbury*, 21 Cal. 2d 176. This evidence is reinforced by a disclaimer filed by the husband and by the fact that the items in question were not included in an earlier claim filed by him which has not yet been adjudicated (Claim of James N. Miyaji, No. 146-35-2404). Except for the fact that the eligibility of the husband, as a claimant under the Act, has not yet been finally determined (although we are not now aware of any reason why he could not have obtained compensation for the loss of any interest that he might have had in the property here involved), the filing of mutually exclusive claims by husband and wife, in and of

itself, would seem to constitute sufficient evidence that the property mentioned in the claim of the wife was understood by them to have been her separate property. In the present case there appears to have been no reason why either husband or wife should have deemed it expedient to have misrepresented the facts in preparing the claims and the evidence as a whole sufficiently supports the conclusion that the property now in question was the separate property of the present claimant.

Compensation for the loss of the candlestock holders must, in the circumstances, be denied. There is a serious question as to whether damage to or loss of property that occurred after an evacuee had returned from a Relocation Center and exercised dominion over it should be regarded as a "reasonable and natural consequence" of the evacuation within the meaning of Section 1 of the Act. That question need not be answered here because the evidence in this case does not negative the strong possibility that the claimant was guilty of negligence in leaving this property in her sister's yard overnight. Whatever relaxation in the normal standards of due care may have been intended by the Congress with reference to actions taken by evacuees just prior to their departure, in view of the abnormal circumstances then existing, we see no warrant in the Act or its legislative history for relaxing that standard in respect of actions taken by them after their return from the Relocation Centers. While it may be that the claimant could produce additional evidence upon this point, the amount involved is so small that we do not feel justified in returning the case to the field office for that purpose unless the claimant expressly requests that we do so. In order to give the claimant an opportunity to make such a request, preparation of the payment voucher will be postponed until the expiration of 30 days after a copy of this adjudication has been mailed to her, or until this office is in receipt of notification from her that she does not wish to have the case remanded for that purpose, whichever is earlier.

The evidence of claimant's loss consists solely of her sworn statement, but the investigation disclosed no contradictory evidence. It is reasonable to assume that claimant would have owned property of the type claimed, since this constitutes only a reasonable amount of personal belongings. Statements in her affidavit on the cost of this property appear credible, and in all the circumstances the finding of a fair market value of \$137.16 for this property is reasonable.