

## CLAIM OF SHIGERU HENRY NAKAGAWA

[No. 146-35-2456. Decided October 31, 1950]

## FINDINGS OF FACT

1. This claim, in the amount of \$1,634, was received by the Attorney General on April 13, 1949. It involved the loss through sale of personal property described as a bedroom set, an innerspring mattress, dining room set, rugs, lamps, refrigerator, gas range, kitchen table and chairs, baby furniture, garden tools, radios, phonograph, camera, records, and an automobile; the loss of Japanese books by burning; and the loss in storage of household effects described as heaters, a fan, an electric toaster, waffle iron, iron and ironing board, Wear-ever aluminum set, silverware, chinaware, and kitchen utensils. All the property involved was owned by the community estate of claimant and his wife, Matsuko Nakagawa. Claimant and his wife were both born in Japan of Japanese parents on February 9, 1904, and January 10, 1908, respectively. At no time since December 7, 1941, has claimant or his wife gone to Japan. On December 7, 1941, and for some time prior thereto, claimant actually resided at 330 South State Street, Los Angeles, California, and was living at that address when he and his wife were evacuated on May 16, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to the Santa Anita Assembly Center, Arcadia, California, and from there to the Gila River Relocation Center, Rivers, Arizona.

2. At the time claimant was evacuated, he was allowed to take with him to the Relocation Center only that property which he could carry and, therefore, had to dispose of the above-mentioned things. Because of the great cost

of storing household furniture, storage was not feasible; and he, therefore, sold a portion of his property during the period of approximately two months before his evacuation to various persons for the highest and best prices he could obtain for the same. At that time there prevailed a condition wherein there was no free market upon which claimant could have disposed of his personal property for a fair price, and claimant acted in a reasonable manner in selling a portion of his property under these circumstances for \$300. The fair and reasonable value of the property sold at that time was \$760 with a consequent loss of \$460.

3. The property involved in the claim described above as having been lost in storage has been withdrawn for the reason that, in the event the property had been stolen, he believed that an investigation at this time might reveal the person who took this property; and claimant did not now wish to cause any embarrassment to any person or persons who might have taken these items.

4. Claimant also had in his possession various Japanese books having a total value of \$10. Because of his impending evacuation, he could find no market for these books and he was fearful that he would be punished for having them in his possession. He, therefore, burned them. Except for the \$300 received from the sale of a portion of this property, none of claimant's losses have been compensated for by insurance or otherwise; and the sum of \$460 constitutes the loss which was a reasonable and natural consequence of his evacuation.

#### REASONS FOR DECISION

The claimant and his wife are jurisdictionally eligible to claim, the husband under California law having the control and management of community personal property and being the proper party to claim. *Tokutaro Hata, ante*, p. 21.

On the facts found in paragraph 2, the loss on sale was allowable. *Toshi Shimomaye, ante*, p. 1.

The claim for the loss of property stored was withdrawn, as set out in paragraph 3.

On the facts found, no allowance for loss can be made for the Japanese books burned by the claimant. He destroyed them voluntarily and his alleged motive for doing so, the fear that he might be punished, has no relation to evacuation but springs from the general hysteria among an alien enemy people arising out of the state of war.