

## CLAIM OF KUMAHICHI TAKETOMI

[No. 146-35-7282. Decided January 31, 1951]

## FINDINGS OF FACT

This claim, in the amount of \$530, was received by the Attorney General on August 17, 1949, and is for loss of personal property through forced sale and destruction in storage. Claimant was born in Japan of Japanese parents. On December 7, 1941, and for some time prior thereto, claimant actually resided at Rural Route 2, Box 450, Delano, California, and was living at this same address when evacuated on May 10, 1942, under military orders pursuant to Executive Order No. 9066, to the Assembly Center at Fresno, California, and from there to the Rohwer Relocation Center. At the time of his evacuation, claimant, then unmarried, was possessed of a 1930 Chevrolet coupe together with a sewing machine and miscellaneous other personalty, none of which items he could take with him to the relocation center. Shortly before his evacuation, therefore, claimant sold the automobile and sewing machine for the best prices he could obtain. Because no free market was then available to him for disposing of his property at its fair and reasonable value, claimant received only \$25 for the automobile and \$3 for the sewing machine. In addition to selling the automobile and sewing machine, claimant stored the remainder of his goods in the attic of a friend's home. While claimant was at the relocation center, the premises burnt down and all of claimant's stored property was destroyed. Claimant had no insurance on any of the items and has never been indemnified for their loss. Claimant would not have sold nor stored his property but for his evacuation, and his acts of sale and storage were reasonable in

the circumstances. The fair and reasonable value of claimant's property at the time of loss was \$167.50. Of this amount, claimant received the sum of \$28 as proceeds from the sale of the automobile and sewing machine. His loss, therefore, was \$139.50. The loss has not been compensated for by insurance or otherwise.

Following his release from the relocation center, claimant returned to Los Angeles where he resided until December 22, 1949. On the latter date, claimant sailed from the United States to Japan to establish a permanent residence in the latter country. Claimant's departure was of his own accord and at his own expense and without any element or implication whatsoever of Government removal.

#### REASONS FOR DECISION

Claimant's loss on sale is allowable. *Toshi Shimomaye, ante*, p. 1. Claimant's loss through destruction in storage is likewise allowable. *Kazuto Imanaka, ante*, p. 35. While these matters are now elementary, the case is, nevertheless, not routine. As appears from the findings of fact, claimant has returned to Japan for the purpose of residing permanently in the latter country. Section 2 (b) (1) of the Statute provides, in part:

The Attorney General shall not consider any claim—  
 (1) by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan \* \* \*.<sup>1</sup>

In view of the use of the phrase "was voluntarily or involuntarily deported," the question of the effect upon the claim of claimant's departure for Japan inevitably arises.

That claimant does not come within the "was volun-

<sup>1</sup> The section in its entirety provides:

"The Attorney General shall not consider any claim (1) by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan or by and on behalf of any alien who on December 7, 1941, was not actually residing in the United States."

tarily or involuntarily deported" provision of Section 2 (b) (1) is readily demonstrable. As appears from the authorities, the meaning of the term "deported" is fixed and certain and admits of no dispute. Simply stated, "deported" means transported or removed out of the country by the Government. See *Webster's New International Dictionary* (2d ed), p. 702; *Black's Law Dictionary* (3d ed), p. 558; *Fong Yue Ting v. United States*, 149 U. S. 698, 709; *Yonejiro Nakasuji v. Seager*, 73 F. (2d) 37, 39; cf. *Bugajewitz v. Adams*, 228 U. S. 585; *United States v. Curran*, 16 F. (2d) 958. Inasmuch as claimant was not transported or removed from the country by the Government, but left at his own expense and without any element whatsoever of Government removal involved in his departure, it is plain that it cannot be said he "was \* \* \* deported," voluntarily or otherwise. Equally clear is the fact that he is unaffected by the qualifying phrase of the Statute, i. e., the words "voluntarily or involuntarily." That this phrase cannot have been intended to derogate generally from the basic meaning of the term "was \* \* \* deported" is, of course, implicit in the very use of the latter term. Obviously, had derogation from the meaning of the term "was \* \* \* deported" been the legislative intent, the Congress would never have used the term, particularly in view of its fixed and universally accepted meaning. Since the Congress, however, saw fit to use "was \* \* \* deported," even to the extent of resorting to such complex language as "was voluntarily or involuntarily deported," the conclusion that it intended to adhere to the basic meaning of "was \* \* \* deported" becomes inescapable. Necessarily, therefore, the qualifying words "voluntarily or involuntarily" cannot affect the instant claimant, but only those to whom they are *literally* applicable, in other words, individuals transported or removed from the country by the Government of their own choice, "voluntarily," or through compulsion, "involuntarily."

That this construction is correct is conclusively shown by the Statute's legislative history. Thus, the Krug letter incorporated in the House Report on the bill (House Report No. 732, 80th Cong., 1st sess.) states:

Among the types of claims excluded by the bill from consideration \* \* \* are claims of persons who were voluntarily or involuntarily deported to Japan after December 7, 1941 \* \* \*. Several hundred evacuees voluntarily repatriated to Japan during the war. Since termination of hostilities approximately 7,500 persons, most of them evacuees, have at Government expense voluntarily gone to Japan, chiefly from internment camps and the Tule Lake segregation center. In addition, the Department of Justice has determined who among the aliens (including persons who renounced their American citizenship) should be deported to Japan \* \* \*. I do not believe that those repatriates and deportees have any moral claim upon this Government \* \* \*.<sup>2</sup>

Viewed in the context of the foregoing, the propriety of the construction of the phrase "was voluntarily or involuntarily deported" in terms of its literal meaning becomes indisputable. As appears from the Krug letter, the "voluntarily or involuntarily deported" persons contemplated by the Statute fall into three groups—wartime repatriates, voluntary Government transportees, and involuntary or compulsory removees, all three of whom were transported or removed from the country through special Government action. Clearly, therefore, the phrase "was voluntarily

<sup>2</sup> In view of the issue involved, it is pertinent to point out that the wartime repatriates thus referred to are the individuals sent to Japan by the State Department in exchange for American citizens. Similarly, with respect to the postwar Government transportees, it should be observed that the exodus was effected through the Immigration and Naturalization Service who provided them rail transportation to the ports of embarkation, Seattle, Washington, and Portland, Oregon, where they boarded U. S. Army transports which carried them to Japan. The Immigration and Naturalization Service paid the War Department for the use of its transports and bore all expenses involved.

or involuntarily deported” is intended to mean precisely what it literally connotes; namely, voluntarily or involuntarily transported or removed from the country by the Government. Moreover, it is significant to note that not only does this construction accord with the legislative history, but it likewise eliminates any suggestion of ambiguity and reveals the statutory language to be entirely apt for the particular situation involved.

In summary, then, since the phrase “was voluntarily or involuntarily deported” must be construed literally, it is clear that claimant cannot come within its purview since he was not transported or removed from the United States to Japan by the Government, but went at his own expense and free from any element whatsoever of Government removal.

While the foregoing is, of course, decisive, it is apposite to note one further fact disclosed by the legislative history. As originally passed by the House, the provisions of Section 2 (b) (1) varied substantially from those ultimately enacted, the section reading:

The Attorney General shall not consider any claim—  
 (1) by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan *or who is otherwise resident in a foreign country.* [Emphasis supplied.]

In its original form, therefore, the section contained language specifically applicable to the situation here involved, and barring recovery therein. As revealed by the transcript of the Senate Judiciary Subcommittee Hearings, the last portion of the section in its original form, i. e., the words italicized above, was a matter of considerable concern to the Subcommittee, and it inquired of certain of the witnesses appearing before it as to their interpretation of the words “or who is otherwise resident in a foreign country.” Transcript of Senate Judiciary Subcommittee Hearing on H. R. 3999, pp. 66–67, 114–115. Among those thus questioned was former Attorney General Francis J. Biddle, who stated that “the only thing”

he "could think of" was that it apparently was considered "the bill should be limited to our own inhabitants, our own residents."<sup>3</sup> Following the receipt of this testimony, the Senate Judiciary Committee reported the bill to the Senate with the recommendation that Section 2 (b) (1) be amended so that the words "or who is otherwise resident in a foreign country" be struck therefrom and the provision "or by and on behalf of any alien who on December 7, 1941, was not actually residing in the United States" be inserted in lieu thereof. Senate Report No. 1740, 80th Congress, 2d session. As it appears from the Congressional Record, the recommendation was accepted by the Senate who agreed to the amendment. 94 Cong. Rec. 8748. Thereafter, the amended bill was returned to the House, where the Senate amendment was concurred in. 94 Cong. Rec., 9234. Thus, in addition to the plain meaning of the term "deported," we have the further fact of legislative history revealing a decisive expression of Congressional intent with respect to the very issue here presented.

In light of the above, it is clear that claimant's return to Japan does not affect his right to recover under the Statute, and that the claim may properly be considered.

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<sup>3</sup>The specific question propounded to former Attorney General Biddle and his complete answer thereto were as follows (Hearings Tr. 66-67):

"Senator COOPER. \* \* \* There is a section on page 3, Section 2, subsection (b) (1), which reads as follows: 'The Attorney General shall not consider any claim—(1) by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan, or who is otherwise resident in that [sic] foreign country.' I can understand the first part. If a person is deported, I can understand the reason why he should not consider any claim on account of that person, but I do not understand that section, 'Or who is otherwise resident in a foreign country.' I wonder if you had given that consideration.

"Mr. BIDDLE. I don't know what was in the mind of the draftsman. It may be it was considered the bill should be limited to our own inhabitants, our own residents, one of those not perhaps unreasonable limitations. That would be the only thing I could think of.

"Senator COOPER. We will inquire into that."