CLAIM OF SINA KATSUMA

[No. 146–35–987. Decided March 30, 1951]

FINDINGS OF FACT

This claim, alleging a loss in the sum of $449, was received by the Attorney General on March 2, 1949. It involves a loss incurred by reason of the theft from storage of claimant's household furnishings. The claimant was born in Japan of Japanese parents on January 22, 1878. On December 7, 1941, and for some time prior thereto, she resided at 109½ Harris Place, Terminal Island, California, from which address she removed on February 26, 1942, in accordance with military orders issued under authority of Executive Order No. 8972. Pursuant to Executive Order No. 8953, dated November 27, 1941, the Los Angeles-Long Beach areas, which included Terminal Island, was declared a defensive sea area and placed under the jurisdiction of the United States Navy. On April 4, 1942, the claimant was evacuated from 621 East Rosecrans Avenue, Los Angeles, California, pursuant to military orders issued under authority of Executive Order No. 9066, dated February 19, 1942. At no time since December 7, 1941, has the claimant gone to Japan. At the time of her departure from Terminal Island, the claimant acted reasonably in arranging for the storage of her furnishings, which had a fair and reasonable value of $94.50, in the home of a friend. On her release from the relocation center to which she had been sent, claimant found that her property had disappeared from the place of storage and she has since been unable to locate same. Claimant's loss has not been compensated for by insurance or otherwise.

Losses due to theft from storage, as described herein, have previously been held to be allowable. *Akiko Yagi ante,* p. 11.

The question herewith presented is whether a resident of Terminal Island, compelled to depart therefrom in accordance with orders issued by the Naval Commander having jurisdiction of the Island, has been evacuated or excluded from a military area by a military commander as required by the Act. Executive Order No. 8953, dated November 27, 1941, stated: "* * * the following-described area is hereby established for purposes of national defense as a defensive sea area to be known as the 'Los Angeles-Long Beach Harbor Naval Defensive Sea Area.'" Terminal Island is in the Los Angeles-Long Beach area described in the aforementioned Executive Order and is part of the Los Angeles-Long Beach Harbor which was designated as a naval defensive area.

Executive Order No. 8972 stated: "* * * I hereby authorize and direct * * * the Secretary of the Navy whenever he deems such action to be necessary or desirable to establish and maintain military guards and patrols and to take other appropriate measures to protect from injury or destruction national defense material * * *."

Acting under authority of this Executive Order, Admiral Holmes, the Commandant of the 11th Naval District, ordered the exclusion of all persons of Japanese ancestry, both aliens and United States citizens, from Terminal Island. The following excerpt from a memorandum signed by Admiral Holmes substantiates the fact that the exclusion of Japanese persons from the Island was carried out pursuant to his orders: "At 20:45 24 February I telephoned Captain Coffman, Commandant Naval Operating Base, San Pedro, and directed him to remove all residents of Terminal Island out by midnight 27 February 1942."

The language of Section 1 of the Act pertinent to the present inquiry is as follows:

> The Attorney General shall have jurisdiction to determine according to law any claim by a person * * * arising on or after December 7, 1941, * * * for damage to or loss of * * * property * * * that is a * * * consequence of the evacuation or exclusion of such person by the appropriate military commander from a military area in Arizona, California, Oregon, or Washington; or from the Territory of Alaska, or the Territory of Hawaii, under authority of Executive Order Numbered 9066, dated February 19, 1942 (3 CFR, Cum. Supp., 1092), section 67 of the Act of April 30, 1900 (48 U. S. C. 532), or Executive Order Numbered 9489, dated October 18, 1944 (3 CFR, 1944 Supp., 45). [Emphasis supplied.]

The Japanese-American Citizens League, which has favored us with its views, correctly points out that all language preceding the semicolon can be interpreted to apply to persons evacuated from Arizona, California, Oregon, and Washington without modifications by anything following the semicolon. In other words, under this suggested reading, for purposes of adjudication of claims by persons evacuated from any of the States mentioned, it is as if the first sentence of Section 1 ended with the semicolon.

The legislative history of the Act tends to support that view. The relevant language of the bills (S. 2127; H. R. 6780) which were introduced in the 79th Congress on behalf of these claimants was identical with the language of the bills (H. R. 2768; H. R. 3999) introduced in the 80th Congress with the exception that the above-mentioned semicolon did not appear in the former but did appear in the latter. No explanation is given as to why this change was made but there would appear to have been no reason for making the change if it was intended that the coverage of the Act be so restricted as to preclude the allowance of such claims as the instant one. It is inferable therefore that the semicolon was inserted for the deliberate purpose of preventing the restrictive interpretation that the words

might have been given in its absence. It is clear, in any event, that important witnesses who appeared before the committee of the Congress in support of the measure believed that it would afford relief to Terminal Island evacuees for cases of members of that group, because of their extreme hardship, were cited on several occasions to emphasize the moral right of evacuees generally to the relief in question. So far as we have been able to discover, there was no reason why the Congress should have intended to discriminate against persons evacuated from Terminal Island. Accordingly we hold, as to such persons, that the first sentence of Section 1 of the Act must be read as if it ended with the semicolon therein.

This brings us to the related question of whether or not the language preceding the semicolon is sufficiently comprehensive to include Terminal Island evacuees. Regardless of our conviction that every moral consideration that prompted the Congress to create a legal obligation to persons evacuated pursuant to Executive Order No. 9066 applies *a fortiori* to persons evacuated from Terminal Island and our virtual certainty that there was no consciousness of intention to exclude them, it is clear that we may not enlarge the jurisdiction, expressly given the Attorney General in the Act creating the legal right, either by interpolation or by assigning improbable import to the language of the Act. The problem in that regard that is presented here arises from the feeling that the original draftsment of the measure employed the word "military" in relation to the term "area" and "commander" with a view primarily to describing the general evacuations which occurred in "military areas" established by the Army, pursuant to exclusion orders issued by an army officer. This is a feeling, however, that comes from a careful study of the relevant documents and it is not likely that the legislators would have been aware of the problem or would have intended to distinguish between the Army and the Navy in a matter of this sort. Modern-day usage of the word "military" generally encompasses all segments of the

Armed Forces. Modern dictionaries connote such a meaning thereto (*Funk & Wagnalls New College Dictionary* 1947) and the Congress has used the word in recent legislation to include therein all components of our Armed Forces. (*Soldiers' and Sailors' Relief Act of 1940,* 54 Stat. 1179; *National Security Act of 1947,* 61 Stat. 499, as amended by the *National Security Act Amendments of 1949,* 63 Stat. 579.) Hence, this area, entrance and egress to which was controlled by the Navy, may properly be regarded as having been a "military area" within meaning of those words as used in the Act. By like token, the naval commandant who ordered the evacuation of Terminal Island was a "military commander." Cf. *Vermilya-Brown Co.* v. *Connell,* 335 U. S. 377, 386–388.

It therefore follows that the claimant was excluded from Terminal Island, a military area by virtue of Executive Order No. 8953, by a military commander acting under authority of Executive Order No. 8972, and claimant is therefore jurisdictionally eligible to claim under the Act.