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No. 25294-S

ABO v. CLARK

Jan. 29, 1947

Cons. no. 25294-S

Objection & Exceptions to evidence...

78/177

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1 WAYNE M. COLLINS,  
2 1721 Mills Tower,  
3 San Francisco, 4, Calif,  
4 Garfield 1218.  
5 Attorney for Plaintiffs.

ORIGINAL  
FILED

JAN 29 1947

WILL CLARK, U. S. DIST. COURT  
SAN FRANCISCO

8 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 TADAYASU ABO, et al., etc., )  
11 Plaintiffs, )  
12 -vs- )  
13 TOM CLARK, etc. et al., )  
14 Defendants. )  
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No. 25294-S

Cons. No. 25294-S

15 OBJECTION AND EXCEPTIONS TO EVIDENCE, MOTION  
16 TO STRIKE SAME, AND MOTION TO SUPPRESS  
17 EVIDENCE ILLEGALLY OBTAINED  
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18 I

19 The plaintiffs, and each of them, hereby object and except  
20 to the introduction in evidence herein of the affidavit of  
21 Thomas M. Cooley, II, dated Jan. 9, 1947, and annexed to the sup-  
22 plemental brief of defendants filed herein on Jan. 27, 1947, and  
23 to the affidavit of Rosalie Hankey dated Jan. 8, 1947, and filed  
24 herein on Jan. 23, 1947, to each and every part thereof, and object  
25 and except to any consideration and weight whatever being thereto  
26 by the court on the pending motions of plaintiffs for summary  
27 judgment, for judgment on the pleadings and to strike, and move to-  
28 strike the same for each and all of the following reasons and upon  
29 each and all of the following grounds, to-wit:  
30

31 The same does not constitute the best evidence but is second-  
32 ary evidence for which no foundation whatever has been laid; the



1 same constitutes self-serving declarations; the same is composed  
2 of opinions and conclusions of the affiant and is hearsay; the  
3 same is vague, indefinite and uncertain; the same has no bearing  
4 on any issue herein; the same is an attempt to alter or vary the  
5 terms of written instruments by parole evidence; the same is in  
6 conflict with admitted facts and with facts which the defendants  
7 are estopped to deny and with facts of which the court takes judi-  
8 cial cognizance; the same relates to matters neither seen nor heard  
9 by nor within the personal knowledge of affiant; the same has no  
10 bearing upon any material issue involved herein; the same is not  
11 binding upon the plaintiffs or any of them; the same is sham;  
12 the same is vague, indefinite, uncertain and ambiguous; and the  
13 same is incompetent, irrelevant and immaterial;

14  
15 II

16 And plaintiffs and each of them object, except to and move  
17 to strike the affidavit of Thomas M. Cooley, II, dated January 6,  
18 1947, filed herein on Jan. 9, 1947, and copy thereof annexed to  
19 the supplemental brief for defendants containing a letter signed  
20 by O. P. Echols with an attached letter signed by J. M. Ebbitt,  
21 for each and all of the reasons and upon each and all of the  
22 grounds specified in paragraph No. I hereinabove and also upon  
23 the further ground that no opportunity, privilege or right of  
24 subjecting said J. M. Ebbitt, the signer of said attached letter  
25 dated 25 November 1946 addressed to the Adjutant General, to  
26 cross-examination on the matter therein contained exists or can be  
27 had by virtue of the fact that he is outside the jurisdiction of  
28 this court and country and is in Japan, to-wit conquered territory  
29 now under the dominion and control of the Allied Powers and  
30 General Douglas MacArthur and, therefore, cannot be subpoenaed or  
31 produced by plaintiffs for cross-examination on his qualifications  
32 as an expert in the Japanese language or as an expert on Japanese



1 law or the purported statements of law contained therein; and upon  
2 the further grounds that the law of Japan has no extraterritorial  
3 effect and cannot affect any citizen of the United States or any  
4 resident of the United States; that said affidavit and its contents  
5 are barred by the provisions of Title 8 USCA, sec. 800, and are  
6 inconsistent with the grant of citizenship by the 14th Amendment  
7 and hence inadmissible in evidence.

8  
9 III

10 (Motion To Suppress)

11 And plaintiffs and each of them move the court to suppress  
12 and to strike the affidavit of Thomas M. Cooley, II, mentioned  
13 in paragraph I hereinabove upon the additional ground that the  
14 same purports to be a summary of purported statements made by  
15 certain plaintiffs and other persons which said statements were  
16 exacted and obtained from them illegally and unlawfully through the  
17 instrumentality of duress, coercion, undue influence and fraud  
18 exerted upon them and the duress in which they, at the time thereof,  
19 were held by the defendants and agents of the government and  
20 sundry pressure groups of persons operating in the concentration  
21 camps where they were falsely and illegally imprisoned by the  
22 government and its agents, all in violation of the provisions  
23 against illegal search and seizure guaranteed by the 4th Amendment,  
24 the due process clause of the 5th Amendment and the provision of  
25 the 5th Amendment against compelling any plaintiff to <sup>be</sup> a witness  
26 against himself.

27 Attention is directed to the fact that at the time said  
28 purported statements are purported to have been made each plaintiff  
29 was a citizen of the United States who had been falsely arrested  
30 and then and there was illegally held in a concentration camp,  
31 subject to the duress complained of in the amended complaint herein,  
32 for an unspecified crime without any charge or charges having been



1 filed against him and without any hearing having been accorded  
2 him as provided for by the 6th Amendment and the due process  
3 clause of the 5th and said statements so exacted from plaintiffs  
4 were not voluntary but were coerced and the said statements were  
5 and are false and inadmissible by reason thereof.

6 The above and foregoing objections and exceptions to the  
7 introduction of said affidavits and their contents in evidence  
8 on the pending motions herein and motion to strike and to suppress  
9 are herewith submitted.

10 Respectfully submitted,

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12  
13 Wayne M. Collins,  
14 1721 Mills Tower,  
San Francisco, 4, Calif.

15 Attorney for Plaintiffs.

16  
17  
18 Receipt of a copy of the above Objections and Exceptions  
19 To Evidence, Motion To Strike and To Suppress is hereby admitted  
20 this \_\_\_\_ day of January, 1947, for submission to the court on  
21 the pending motions for judgment on the pleadings, for summary  
22 judgment and to strike.

23 TOM C. CLARK, Attorney General.  
24 FRANK J. HENNESSY, U.S. Attorney.

25 By: \_\_\_\_\_  
Assistant U.S. Attorney.

26 Attorneys for Defendants.