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Cons. no. 25294-G

ABO & FURUYA V. CLARK

April/May 1949

78/177
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District Court of the United States

Northern District of California

Southern Division

FURUYA * ABO

vs.

CLARK

No. 25295-G

NOTICE Cons. No. 25294-G

TO Wayne M. Collins
1701 Mills Tower
San Francisco, Calif.

U. S. Attorney
Post Office Bldg.
Seventh & Mission Sts.
San Francisco, Calif.

YOU ARE HEREBY NOTIFIED that on April 12, 1949
a DECREE & JUDGMENT was entered of record in this office in the above entitled case.

YOU ARE HEREBY NOTIFIED that on
a NOTICE OF APPEAL was filed by
in the above entitled case. A copy of which is enclosed herewith.

C. W. CALBREATH
CLERK, U. S. DISTRICT COURT
ECE

San Francisco
CALIFORNIA

April 13 1949

ORIGINAL
FILED

APR 26 1949

Clerk, U. S. Dist. Court
San Francisco

Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION.

MARY KANAME FURUYA, et al., etc.,

Plaintiffs,

vs.

TOM CLARK, as Attorney General of
the United States, et al.,

Defendants.

No. 25295-G

Cons. No. 25294-G

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the above entitled Court, and to Wayne M. Collins,
Esq., attorney for plaintiffs:

The above named defendants, by their attorneys herein,
hereby designate for inclusion in the transcript of record upon
appeal the complete record and all the proceedings in the action,
pursuant to the provisions of Rule 75(e) of the Federal Rules of
Civil Procedure and Rule 11(1) of the Rules of Practice of the United
States Court of Appeals for the Ninth Circuit.

Dated: April 26, 1949.

H. G. MORISON,
Assistant Attorney General

FRANK J. HENNESSY,
United States Attorney

ENOCH E. ELLISON,
Special Assistant to the Attorney General

PAUL J. GRUMBLY,
Attorney, Department of Justice,

Attorneys for Defendants.

1 Frank J. Hennessy,
2 United States Attorney,
3 Attorney for Defendants.

ORIGINAL
FILED

APR 26 1949

Clerk, U. S. Dist. Court
San Francisco

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8 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, SOUTHERN DIVISION.

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11 MARY KANAME FURUYA, et al., etc.,
12 Plaintiffs,
13 vs.
14 TOM CLARK, as Attorney General of
15 the United States, et al.,
16 Defendants.

No. 25295-G
Cons. No. 25294-G

17 NOTICE OF APPEAL

18 To the United States Court of Appeals for the Ninth Circuit:

19 NOTICE IS HEREBY GIVEN that the above named defendants
20 hereby appeal to the United States Court of Appeals for the Ninth
21 Circuit from the final judgment made and entered in this action on
22 April 12, 1949.

23 Dated: April 26, 1949.

24 H. G. MORISON,
25 Assistant Attorney General

26 FRANK J. HENNESSY,
27 United States Attorney

28 ENOCH E. ELLISON,
29 Special Assistant to the
30 Attorney General

31 PAUL J. GRUMBLY,
32 Attorney, Department of Justice,
Attorneys for Defendants.

1 Frank J. Hennessy,
2 United States Attorney,
3 Attorney for Defendants.

ORIGINAL
FILED

APR 26 1949

Clerk, U. S. Dist. Court
San Francisco

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA,
12 SOUTHERN DIVISION.

13 -----
14 TADAYASU ABO, et al., etc.,

15 Plaintiffs,

16 vs.

17 TOM CLARK, as Attorney General of
18 the United States, et al.,

19 Defendants.

No. 25294-G

Cons. No. 25294-G

20 MARY KANAME FURUYA, et al., etc.,

21 Plaintiffs,

22 vs.

23 TOM CLARK, as Attorney General of
24 the United States, et al.,

25 Defendants.

No. 25295-G

Cons. No. 25294-G

26 NOTICE OF MOTION TO SUSPEND INJUNCTIONS
27 GRANTED IN FINAL JUDGMENTS ENTERED HEREIN
28 APRIL 12, 1949, DURING THE PENDENCY OF
29 APPEALS TAKEN FROM SAID JUDGMENTS TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT ON APRIL 26, 1949.

30 To the above named plaintiffs, and their attorney, Wayne M. Collins,
31 Esq.:

32 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on Monday,
the 2nd day of May, 1949, at the hour of 10:00 o'clock A.M. of said

1 day, or as soon thereafter as counsel can be heard thereon the
2 defendants will bring on the within Motion for hearing and decision
3 before the above entitled Court at the courtroom thereof, Second
4 Floor, Post Office Bldg., Seventh and Mission Streets, San Francisco,
5 California.

6 Dated: April 26, 1949.

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H. G. MORISON,
Assistant Attorney General

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FRANK J. HENNESSY,
United States Attorney

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12

ENOCH E. ELLISON,
Special Assistant to the
13 Attorney General

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15

PAUL J. GRUMBLY,
Attorney, Department of Justice,
16 Attorneys for Defendants.

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22 Receipt of a copy of the above Notice, together with a
23 copy of the Motion, is admitted this 26th day of April, 1949.

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WAYNE M. COLLINS,
Attorney for Plaintiffs.

District Court of the United States

Northern District of California

SOUTHERN Division

ABO

vs.

U. S. A.

KURUYA

vs.

U. S. A.

No. 25294-G

No. 25295-G

NOTICE

TO

WAYNE M. COLLINS, ESQ.
Attorney at Law
1701 Mills Tower
San Francisco, California

~~YOU ARE HEREBY NOTIFIED that on~~
~~a DECREE /// JUDGMENT /// was entered of record in this office in the above entitled case.~~

YOU ARE HEREBY NOTIFIED that on **April 26th, 1949**
a NOTICE OF APPEAL was filed by **Defendant** **in each**
in the above entitled case. A copy of which is enclosed herewith. **in each case.**

C. W. CALBREATH

CLERK, U. S. DISTRICT COURT

San Francisco
CALIFORNIA

April 27th 1949

ORIGINAL
FILED

APR 26 1949

Clerk, U. S. Dist. Court
San Francisco

Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION.

TADAYASU ABO, et al., etc.,

Plaintiffs,

vs.

TOM CLARK, as Attorney General of
the United States, et al.,

Defendants.

No. 25294-G

Cons. No. 25294-G

NOTICE OF APPEAL

To the United States Court of Appeals for the Ninth Circuit:

NOTICE IS HEREBY GIVEN that the above named defendants
hereby appeal to the United States Court of Appeals for the Ninth
Circuit from the final judgment made and entered in this action on
April 12, 1949.

Dated: April 26, 1949.

H. G. Morison
H. G. MORISON,
Assistant Attorney General

Frank J. Hennessy
FRANK J. HENNESSY,
United States Attorney

Enoch E. Ellison
ENOCH E. ELLISON,
Special Assistant to the
Attorney General

Paul J. Grumbly
PAUL J. GRUMBLY,
Attorney, Department of Justice,

Attorneys for Defendants.

April, 1949

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION.

TADAYASU ABO, et al., etc.,

Plaintiffs,

vs.

No. 25294-G

TOM CLARK, as Attorney General of
the United States, et al.,

Cons. No. 25294-G

Defendants.

MARY KANAME FURUYA, et al., etc.,

Plaintiffs,

vs.

No. 25295-G

TOM CLARK, as Attorney General of
the United States, et al.,

Cons. No. 25294-G

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These causes, heretofore consolidated under No. 25294-G, having heretofore been submitted to the Court, sitting without a jury, for decision on the merits of the causes, pursuant to written stipulation entered into between the parties hereto on October 10, 1947, and the order of this Court thereon made on October 13, 1947, pursuant thereto, and this Court thereafter, on April 29, 1948, having rendered and filed its written Opinion on the issues involved and, thereafter, on September 27, 1948, having made and entered its written interlocutory order, judgment and decree in favor of the plaintiffs and against the defendants herein and having provided in said interlocutory order, judgment and decree for the formal Findings of Fact and Conclusions of Law to be prepared and filed herein and judgment thereon to be entered herein, and the time for the presentment of said formal Findings of Fact and Conclusion of Law upon which judgment is to be rendered having arrived, and the Court having

1 duly considered the issues and matters involved herein and being fully
2 advised in the premises now makes its findings of fact and conclusions
3 of law on the issues herein, as follows: --

4 FINDINGS OF FACT

5 1. Plaintiffs and each of them are native born persons of
6 Japanese Ancestry who signed renunciations of their American citizenship
7 pursuant to and subsequent to the enactment of Section 401 of the Nation-
8 ality Act of 1940 as amended by the Act of July 1, 1944 (54 Stat. 1168;
9 8 U.S.C. 801 (1)).

10 2. The vast majority of such plaintiffs so renounced their
11 citizenship while interned and detained at the Tule Lake Relocation
12 Center in Modoc, California.

13 3. Defendant, Tom C. Clark is the Attorney General of the United
14 States and as such is the head of the United States Department of Justice.

15 4. The plaintiffs and each of them by their amended complaint
16 seek a decree rescinding their renunciation of United States nationality
17 and a declaratory judgment that they are still citizens and nationals of
18 the United States.

19 5. The chronology and history of the military and executive
20 orders providing for the removal and relocation of American citizens of
21 Japanese Ancestry, as well as Japanese nationals, is set out in Ex parte
22 Mitsuye Endo 323 US 283, 65 S.Ct. 208, 89 L.Ed. 243 and are incorporated
23 herein by reference.

24 6. The Tule Lake Center, where the vast majority of the plaintiffs
25 were detained was a Center purposed not for relocation but for segregation
26 for the duration of hostilities. In this camp were detained without
27 separation: (a) disloyal alien Japanese; (b) American citizens of Japanese
28 ancestry who were regarded by Executive Officers of the Government as
29 disloyal; and (c) American citizens of Japanese ancestry whose loyalty
30 had not been questioned but who chose to remain at Tule Lake in preference
31 to further removal to a relocation Center or because of reluctance to
32 leave family members.

1 7. The factors existing at Tule Lake Center at the time the
2 renunciations were executed by the plaintiffs and which led to the exe-
3 cution of their renunciations of citizenship were

4 (a) The internal pressure to renounce (by indoctrination of
5 young and threats of violence against recalcitrant internees and their
6 families) exerted by the two pro-Japanese factions at Tule Lake whowere
7 permitted to carry out nationalistic activities.

8 (b) Parental pressure by alien parents on citizen children
9 to prevent family break-up and avoid draft induction.

10 (c) The fear of community hostility on release from such
11 center, leading to resort to renunciation in the belief it would assure
12 further detention.

13 (d) The conviction that the Government would deport them in
14 any event and, unless they renounced, they would be subject to reprisals
15 on arrival in Japan.

16 (e) Mass hysteria, the outgrowth of the combined experience
17 of evacuation, loss of home, isolation from outside communication and con-
18 centration in an enclosed, guarded, over-populated camp with little occu-
19 pation, inadequate and uncomfortable living accommodations, dreary and
20 unhealthful surroundings and climatic conditions, -- producing neuroses
21 built on fear, anxiety, resentment, uncertainty, hopelessness and despair
22 of eventual rehabilitation.

23 8. In accepting the renunciations of the plaintiffs, the Attorney
24 General was fully aware of all the conditions existing at the Tule Lake
25 Center at the time of such renunciations. The Government was fully aware
26 of the coercion by pro-Japanese and by pro-Japanese organizations and the
27 fear, anxiety, hopelessness, and despair of the renunciants. The renun-
28 ciants acted abnormally because of abnormal conditions not of their own
29 making. There was however, no governmental design to entrap the unwill-
30 ing citizens into renouncing, but merely to afford an opportunity to the
31 willing to renounce. Mass renunciations by distraught citizens were not
32 contemplated.

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CONCLUSIONS OF LAW

1. This Court has adequate jurisdiction in equity to right the wrong done to the plaintiffs.

2. Each plaintiff at birth and ever since then, has been and now is a native born national and citizen of the United States of America and domiciled therein.

3. There was a complete lack of constitutional authority for administrative, executive or military officers to detain and imprison American citizens at Tule Lake who were not charged criminally or subject to martial law. The documents of renunciation of American citizenship, having been executed by plaintiffs while thus unconstitutionally imprisoned, were invalid.

4. The formal written renunciations of United States nationality and citizenship executed by the plaintiffs are invalid in the legal and equitable sense for the reason that they were executed under the influence of abnormal conditions not of their own making and as a consequence of a confused state of mind produced by one or more of the various factors set forth in paragraph seven (7) of the Findings of Fact hereinbefore made. Such factors singly or in combination cast the taint of incompetency upon the act of renunciation of citizenship made, under their influence, by American citizens interned without constitutional sanction as were the plaintiffs.

5. All of the plaintiffs are entitled to have their purported renunciations of citizenship canceled and they are further entitled to all of the freedoms, rights, privileges and immunities of United States nationality and citizenship.

6. Judgment is hereby ordered to be entered canceling the purported renunciations of all of the plaintiffs and adjudging that all

1 the plaintiffs and each of them be restored to their full rights as citi-
2 zens of the United States.

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9 Dated this _____ day of April, 1949.

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14 United States District Judge.
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C O P Y

ORIGINAL
FILED

MAY 2- 1949

Clerk, U.S. Dist. Court
San Francisco

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

---oOo---

TADAYASU ABO, et al., etc.,
Plaintiffs,

vs.

TOM CLARK, as Attorney General
of the United States, et al.

Defendants.

No. 25294-G.

ORDER MODIFYING FINAL ORDER, JUDGMENT
AND DECREE.

GOOD CAUSE appearing therefor, the final order, judgment and decree entered herein April 12, 1949, is hereby modified by adding at the end thereof the following:

The restraints imposed upon defendant Secretary of State, his servants, employees and representatives in this decree, shall not affect the exercise of the authority and powers conferred upon him and them pursuant to 8 USC 903 with respect to persons abroad claiming United States nationality or citizenship.

Dated: May 2, 1949.

LOUIS E. GOODMAN

United States District Judge.

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12251

TOM CLARK, AS ATTORNEY GENERAL
OF THE UNITED STATES, ET AL.,

APPELLANTS

vs.

TADAYASU ABO, ET AL., ETC.,

APPELLEES.

Wayne = Please let
me or Paul
O'Brien know
whether you
have any
opposition
to this.
Robert McMillan

Filed
November 29th
1949

PETITION TO SUBSTITUTE SUCCESSOR OF PUBLIC OFFICER
AND SUGGESTION OF MOOTNESS AS TO APPELLANT, TOM CLARK

J. HOWARD McGRATH, Attorney General of the United States, through his undersigned attorney, petitions the Court for an order substituting him as appellant herein in place of TOM CLARK, but only insofar as the judgment of the District Court herein may be construed to apply to him as the present incumbent of the office of Attorney General of the United States. The petitioner requests that the Court take judicial notice that he took office as Attorney General of the United States on September 19, 1949, and now occupies that office. There is clear and substantial need for continuing this appeal insofar as the office of Attorney General of the United States is concerned. Certain of the appellees are named in outstanding removal orders issued and continued in effect by the Attorney General pursuant to the authority conferred upon the President of the United States by the Alien Enemy Act of 1798 (50 U.S.C. § 21, et seq.) and delegated to the Attorney

General by Presidential Proclamations 2526 of December 8, 1941 and 2655 of July 14, 1945. As to these appellees it is conceded that the District Court had jurisdiction under Section 503 of the Nationality Act of 1940, as amended (Title 8, U.S.C. § 903). In all other respects, however, the petitioner, of course, intends to reserve all rights to object to the judgment of the District Court that he would have had if he had been named in the complaint as an original party to this action.

It is respectfully suggested that the Court should take judicial notice of the fact that the appellant, Tom Clark, is no longer the Attorney General of the United States and no longer has any administrative authority over the office of Alien Property. Accordingly, the Court should enter an order vacating the judgment of the District Court and dismissing the cause as to the said Tom Clark and his name should be stricken from the caption of this cause, on the ground that as to him it has become moot.

FRANK J. HENNESSY
United States Attorney

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TOM CLARK, as Attorney General
of the United States, et al.,

Appellants,

vs.

TADAYASU ABO, et al.,

Appellees.

(Endorsed)
Filed DEC 12 1949
Paul P. O'Brien,
Clerk.

No. 12251

TOM CLARK, as Attorney General
of the United States, et al.,

Appellants,

vs.

MARY KANAME FURUYA, et al., etc.,

Appellees.

No. 12252

IRVING F. WIXON, District Director,
Immigration and Naturalization
Service,

Appellant,

vs.

TADAYASU ABO, et al., etc.,

Appellees.

No. 12195

IRVING F. WIXON, District Director,
Immigration and Naturalization Service,

Appellant,

vs.

MARY KANAME FURUYA, et al., etc.,

Appellees.

No. 12196

ORDER EXTENDING TIME FOR ABOVE
NAMED APPELLANTS TO FILE BRIEFS.

Upon application of H. G. Morison, Assistant Attorney General, and Frank J. Hennessy, United States Attorney for the Northern District of California, attorneys for the above named appellants, and good cause appearing therefor, IT IS HEREBY ORDERED that said appellants have, and they are hereby given, to and including January 16, 1950, within which to serve and file their briefs in the above entitled causes.

Dated: This 12th day of December, 1949.

(S.) William Denman

William Denman,
Chief Judge, United States Court of
Appeals for the Ninth Circuit.

No extension of time previously
obtained by stipulation or order.

H. G. Morison

H. G. MORISON,
Assistant Attorney General

Frank J. Hennessy

FRANK J. HENNESSY,
United States Attorney,

Attorneys for Appellants.