5:13 No. 25294-S ABO v. Clark Dec., 1946

Cons. no. 25294-S

Objections + Exceptions
Praecipe

78/177
C

Wayne M. Collins,
1721 Mills Tower,
San Francisco, 4, Calif.
GArfield 1218.
Attorney for Plaintiffs.

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

TADAYASU ABO, et al., etc., Plaintiffs, -vs- TOM CLARK, etc. et al., Defendants.	No. 25294-S Cons. No. 25294-S

PRAECIPE

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Please enter the defaults of the defendants, Raymond R. Best, as Project Director, Tule Lake Center, and Dillon S. Myer, as Director of the War Relocation Authority, and each of them, for heretofore having appeared herein but having failed to file herein a responsive pleading to the Complaint or to the Amended Complaint herein.

DATED: December 10th, 1946.

WAYNE M. COLLINS,
1721 Mills Tower,
San Francisco, 4, Calif.
GArfield 1218.

Attorney for Plaintiffs.

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

Dec. 18, 1946

WAYNE M. COLLINS,
1721 Mills Tower,
San Francisco, 4, Calif.
GArfield 1218.
Attorney for Plaintiffs.

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

TADAYASU ABO, et al., etc., Plaintiffs, -vs- TOM CLARK, etc. et al., Defendants.	No. 25294-S (Consolidated No. 25294-S)

OBJECTIONS AND EXCEPTIONS TO AFFIDAVITS OF MERIT FILED BY DEFENDANTS AND MOTION TO STRIKE THE SAME

On November 12, 1946, the defendants filed herein the affidavits of John L. Burling, Charles M. Rothstein, Ollie Collins, Joseph J. Shevlin, Lillian C. Scott and Thomas M. Cooley II, including Exhibit A attached to the latter, said affidavits purporting to be affidavits of merit in opposition to plaintiffs' Motion For Summary Judgment and plaintiffs' Motion For Judgment On The Pleadings filed herein on October 14, 1946, and plaintiffs' Motion To Strike filed herein on October 10, 1946, and also purporting to be affidavits in support of defendants' cross-motion for summary judgment; and on December 5, 1946, defendants filed herein in opposition to plaintiffs' said motions for summary judgment, for judgment on the pleadings and to strike and in support of defendants' cross motion for summary judgment the affidavit of Thomas M. Cooley II to which is attached Exhibits A, B and C and miscellaneous

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

memoranda:

The plaintiffs and each of them hereby objects and excepts to the introduction in evidence herein of each phrase, clause, sentence and paragraph of each of defendants' said affidavits of merits, including the exhibits attached thereto, and to the whole of each of said affidavits and exhibits and objects and excepts to any consideration whatever being given thereto by the court on the pending motions and moves to strike the same for each and all of the following reasons and upon each and all of the following grounds, to-wit:

(Specific Objections)

The same is and are:-

1. Opinions and conclusions of the affiant;
2. Hearsay;
3. A self-serving declara tion;
4. Not part of the res gestae;
5. Not in issue herein;
6. Has no bearing on any issue herein;
7. Too remote to have any bearing on any issue herein;
8. Not the best evidence;
9. Is secondary evidence for the introduction of which no foundation has been laid;
10. Assumes something not in evidence;
11. Not binding on any petitioner herein;
12. Negative pregnant;
13. In conflict with admitted facts;
14. In conflict with facts of public notoriety of the truth of which the court has and takes judicial cognizance;
15. In conflict with the contents of pertinent public records; written instruments and official documents;
16. Attempts to alter or vary the terms of pertinent

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

written instruments, public writing and official communications;

17. Not assertable by affiant who is estopped to assert the same because it is in conflict with facts admitted by the pleadings and with facts of public notoriety, and contrary to pertinent public writings and records and official communications and is an attempt to alter or vary the terms of those writings, records and communications by parole evidence and such are not impeachable by affiant;

18. Not matter observed or heard by affiant and not matter within his personal knowledge;

19. Sham;

20. Evasive;

21. Conjectural;

22. Vague;

23. Indefinite;

24. Uncertain;

25. Ambiguous;

26. Irrelevant;

27. Redundant;

28. Immaterial;

29. Affiant is not qualified to testify as an expert witness on the matter therein contained or to offer an affidavit herein on said matter;

30. No foundation has been laid for affiant to testify as an expert witness on the matter contained in his affidavit;

(General Objection)

And that the same is incompetent, irrelevant and immaterial;

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

(Special Objections To Special Exhibits)

In addition thereto each plaintiff objects and excepts to the introduction in evidence herein and moves to strike each and every word, phrase, clause, sentence, paragraph and page of Exhibit A attached to the affidavit of Thomas M. Cooley II filed herein on November 12, 1946, purporting to be a memorandum of the Japanese Nationality Law as translated by one, Kenzo Takayanagai, and Exhibit B attached thereto and purporting to be a translation of sections of the Nippon Horei Zensho and the Genko Horei Shuran and also each and every word, phrase, clause, sentence, paragraph and page of Exhibit A attached to the affidavit of Thomas M. Cooley II filed herein on December 5, 1946, and purporting to be the affidavit of one, Thomas L. Blakemore, and Exhibit B attached thereto and purporting to be a memorandum prepared by said Thomas L. Blakemore, and Exhibit C attached thereto and purporting to be a deposition of said Thomas L. Blakemore taken in a proceeding in the District Court of the United States for the Southern District of California, Northern Division, in a matter entitled "In the Matter of the Petition of Fumiko Tamura for a Writ of Habeas Corpus", No. 376-Civil therein, and miscellaneous photostat copies of a printed publication in the Japanese language attached thereto and Exhibit D attached thereto, and the whole of each of said affidavits and exhibits on each and all of the aforesaid reasons and grounds and upon the following additional and special grounds, to-wit:-

The same is and are:

a. Opinion and conclusion of such affiant;

b. Hearsay of such affiant;

c. Sham;

d. Evasive;

e. Conjectural;

f. Vague;

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

g. Indefinite;

h. Uncertain;

i. Ambiguous;

j. Incompetent;

k. Irrelevant;

l. Immaterial;

m. Self-serving;

n. Unintelligible;

o. No foundation has been laid for the introduction of the same into evidence;

p. Said such affiant is not qualified as an expert either in ability or proficiency to translate from the Japanese language into English;

q. Said such affiant is not qualified as an expert to testify as to the law or any law of Japan and in particular to the nationality laws of Japan, past or present;

r. Said document and the declarations and purported translations from Japanese to English therein are self-serving;

s. The Japanese law, including the Japanese nationality laws, are not in issue herein and have no application to any issue herein;

t. The law of Japan has no extraterritorial effect and cannot in anywise affect any citizen of the United States or any person residing within the United States;

u. The nationality law of Japan has no extraterritorial jurisdiction or effect over any citizen of the United States or resident of the United States;

v. The nationality law of Japan has no application whatever to any citizen of the United States or to any resident of the United States;

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

w. The said exhibits pertaining to purported laws of Japan are barred by the provisions of Title 8 USCA, sec. 800, and are inadmissible in evidence;

x. The said exhibits pertaining to purported laws of Japan are inconsistent with the grant of citizenship by the 14th Amendment and are contrary to the due process clause of the 5th Amendment and to the sovereignty of the United States and are barred from being introduced into evidence by reason thereof.

(General Objection)

And the same is and are incompetent, irrelevant and immaterial.

The above and foregoing special and general objections to the introduction of said affidavits and their contents in evidence on the pending motions herein and motions to strike the same are hereby submitted.

Respectfully submitted,

_____

Wayne M. Collins,
1721 Mills Tower,
San Francisco, 4, Calif.
GArfield 1218.

Attorney for Plaintiffs.

Receipt of a copy of the above Objections and Exceptions to Affidavits of Merit is hereby admitted this 16th day of December, 1946, for submission to the court on the pending motions for judgment on the pleadings, for summary judgment and to strike and cross-motion for summary judgment.

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

By:_____
Assistant U.S. Attorney.

Attorneys for Defendants.

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218