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No. 25295-S

Dec. 1946

Cons. no. 25294-S

Objections + Exceptions

78/177

c



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

ORIGINAL  
FILED

DEC 14 1946

RECEIVED, U. S. DIST. COURT  
SAN FRANCISCO

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

P R A E C I P E

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.



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

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8 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 MARY KANAME FURUYA, et al., etc., )  
11 Plaintiffs, )

No. 25295-S

12 -vs-

(Consolidated No. 25294-S)

13 TOM CLARK, etc., et al., )  
14 Defendants. )  
15 -----

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

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



1 memoranda;

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

11 (Specific Objections)

12 The same is and are:-

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



1 written instruments, public writing and official  
2 communications;

3 17. Not assertable by affiant who is estopped to assert  
4 the same because it is in conflict with facts ad-  
5 mitted by the pleadings and with facts of public  
6 notoriety, and contrary to pertinent public writings  
7 and records and official communications and is an  
8 attempt to alter or vary the terms of those writings,  
9 records and communications by parole evidence and such  
10 are not impeachable by affiant;

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

13 19. Sham;

14 20. Evasive;

15 21. Conjectural;

16 22. Vague;

17 23. Indefinite;

18 24. Uncertain;

19 25. Ambiguous;

20 26. Irrelevant;

21 27. Redundant;

22 28. Immaterial;

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

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

29 (General Objection)

30 And that the same is incompetent, irrelevant and immaterial;  
31  
32



1 (Special Objections to Special Exhibits)

2 In addition thereto each plaintiff objects and excepts to  
3 the introduction in evidence herein and moves to strike each and  
4 every word, phrase, clause, sentence, paragraph and page of  
5 Exhibit A attached to the affidavit of Thomas M. Cooley II filed  
6 herein on November 12, 1946, purporting to be a memorandum of the  
7 Japanese Nationality Law as translated by one, Kenzo Takayanagai,  
8 and Exhibit B attached thereto and purporting to be a translation  
9 of sections of the Nippon Horei Zensho and the Genke Horei Shuran,  
10 and also each and every word, phrase, clause, sentence, paragraph  
11 and page of Exhibit A attached to the affidavit of Thomas M.  
12 Cooley II filed herein on December 5, 1946, and purporting to be  
13 the affidavit of one, Thomas L. Blakemore, and Exhibit B attached  
14 thereto and purporting to be a memorandum prepared by said  
15 Thomas L. Blakemore, and Exhibit C attached thereto and purport-  
16 ing to be a deposition of said Thomas L. Blakemore taken in a  
17 proceeding in the District Court of the United States for the  
18 Southern District of California, Northern Division, in a matter  
19 entitled "In the Matter of the Petition of Fumiko Tamura for a  
20 Writ of Habeas Corpus", No. 376-Civil therein, and miscellaneous  
21 photostat copies of a printed publication in the Japanese lan-  
22 guage attached thereto and Exhibit D attached thereto, and the  
23 whole of each of said affidavits and exhibits on each and all of  
24 the aforesaid reasons and grounds and upon the following addi-  
25 tional and special grounds, to-wit:

26 The same is and are:-

- 27 a. Opinion and conclusion of such affiant;  
28 b. Hearsay of such affiant;  
29 c. Sham;  
30 d. Evasive;  
31 e. Conjectural;  
32 f. Vague;



- 1 g. Indefinite;  
2 h. Uncertain;  
3 i. Ambiguous;  
4 j. Incompetent;  
5 k. Irrelevant;  
6 l. Immaterial;  
7 m. Self-serving;  
8 n. Unintelligible;  
9 o. No foundation has been laid for the introduction of  
10 the same into evidence;  
11 p. Said such affiant is not qualified as an expert  
12 either in ability or proficiency to translate from  
13 the Japanese language into English;  
14 q. Said such affiant is not qualified as an expert to  
15 testify as to the law or any law of Japan and in  
16 particular to the nationality laws of Japan, past  
17 or present;  
18 r. Said document and the declarations and purported  
19 translations from Japanese to English therein are  
20 self-serving;  
21 s. The Japanese law, including the Japanese nationality  
22 laws, are not in issue herein and have no application  
23 to any issue herein;  
24 t. The law of Japan has no extraterritorial effect and  
25 cannot in anywise affect any citizen of the United  
26 States or any person residing within the United States;  
27 u. The nationality law of Japan has no extraterritorial  
28 jurisdiction or effect over any citizen of the United  
29 States or resident of the United States;  
30 v. The nationality law of Japan has no application  
31 whatever to any citizen of the United States or to  
32 any resident of the United States;



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

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

10 (General Objection)

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

12  
13 The above and foregoing special and general objections to the  
14 introduction of said affidavits and their contents in evidence on  
15 the pending motions herein and motions to strike the same are here-  
16 by submitted.

17 Respectfully submitted,

18  
19  
20 Wayne M. Collins,  
21 1721 Mills Tower,  
22 San Francisco, 4, Calif.  
23 Garfield 1218.

24 Attorney for Plaintiffs.

25 Receipt of a copy of the above Objections and Exceptions to  
26 Affidavits of Merit is hereby admitted this 18th day of December,  
27 1946, for submission to the court on the pending motions for judg-  
28 ment on the pleadings, for summary judgment and to strike and  
29 cross-motion for summary judgment.

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

32 By Assistant U.S. Attorney.  
Attorneys for Defendants.