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No. 25294-S

ABO v. CLARK

Oct., 1946

Cons. no 25294-S  
motion to strike

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

ORIGINAL  
FILED

OCT 10 1946

WILD CLERK, U. S. DIST. COURT  
San Francisco

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

11 TADAYASU ABO, et al., etc. )  
12 Plaintiffs, ) No. 25294-S  
13 -vs- ) Cons. No. 25294-S  
14 TOM CLARK, etc. et al., )  
15 Defendants. )

16 -----  
17 MOTION TO STRIKE

18 Each plaintiff moves the court to strike the following  
19 matter from the Answer herein, as follows:

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21 1. From paragraph III thereof, the assertion on page 2 line 11,  
22 commencing with the words "Respondents assert" down to and includ-  
23 ing the words and figures "thereunder (10 F.R. 12189)" on line 16  
24 of page 2, on the grounds the said matter is in irreconcilable  
25 conflict and inconsistent with the admission of the nativity, resi-  
26 dence, domicile and presence in the United States of each plaintiff  
27 is an erroneous opinion and conclusion of law, is irrelevant and  
28 is sham, frivolous and evasive.

29  
30 2. From paragraph III thereof, the concluding sentence thereof  
31 commencing with the words "Respondents deny" on line 16 of page 2,  
32 on the grounds said matter constitutes mere opinions and conclusions

1 of law, is negative pregnant, and is sham, frivolous and evasive.

2  
3 3. From paragraph IV thereof, the phrase commencing with the  
4 words "acting lawfully" on line 1 of page 3 down to and including  
5 the words "cited above" on line 3 of said page, on the ground the  
6 same is mere opinion and conclusion of law.

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8 4. From paragraph V thereof, the matter commencing with the  
9 words "as required by statute" on line 13 of page 3 down to and  
10 including the word "effective" on line 15 of said page, on the ground  
11 it contains mere opinions and conclusions of law.

12  
13 5. From paragraph XI thereof, the matter commencing with the  
14 words "and assert that neither" on line 27 of page 4 down to and  
15 including the words "or to any duress" on line 29 of said page, on  
16 the ground the same is in conflict and inconsistent with matters  
17 of fact of which the court has and takes judicial cognizance.

18  
19 6. The whole of paragraph XIV thereof, for being an erroneous  
20 opinion and conclusion of law and as being evasive.

21  
22 7. From paragraph XVIII thereof, the matter commencing with  
23 the words "but assert that the failure" on line 21 of page 7 down to  
24 and including the words "on persons who have lost it" on line 24 of  
25 page 7, on the ground the same is a mere opinion and conclusion of  
26 law, and is immaterial, irrelevant and evasive.

27  
28 8. The whole of paragraph XXI thereof, except subsection  
29 "Second" on the grounds it does not constitute either a special  
30 or an affirmative defense, contains mere opinions and conclusions  
31 of law, relates to evidentiary matter, is redundant, immaterial,  
32 irrelevant, sham and evasive.

33  
34 9. The whole of the following paragraphs thereof, to-wit,  
35 paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII,

1 XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, and the whole of said  
2 Answer on the grounds the denials and admissions therein do not  
3 explicitly traverse the material allegations of the amended com-  
4 plaint; that the denials therein involve conclusions of law; that  
5 the denials therein are of matters of fact of which the defendants  
6 are presumed to have and have actual knowledge and, consequently,  
7 cannot be heard to deny; that the matters and things alleged in the  
8 amended complaint are matters of fact of which the court has judi-  
9 cial knowledge or takes judicial cognizance and, in consequence,  
10 are matters of fact that cannot be denied by defendants; that the  
11 admissions in said answer are inconsistent with the denials therein;  
12 that the denials therein are inconsistent with the admission there-  
13 in; that the denials therein are inconsistent with facts of which  
14 the court takes judicial cognizance; that the denials are vague,  
15 indefinite, uncertain and evasive; that the admissions therein are  
16 indefinite, uncertain and evasive; that the denials and admissions  
17 and assertions therein and the whole of answer are sham, false,  
18 frivolous, impertinent and evasive.

19 This motion is made upon the amended complaint, the answer  
20 thereto, this motion and notice of this motion.

21 WHEREFORE, each plaintiff prays this motion to strike be  
22 granted; that leave to amend the answer be denied; that each  
23 plaintiff have the relief prayed for in the amended complaint.

24 Dated: October 10, 1946.

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26 \_\_\_\_\_  
Wayne M. Collins,  
1721 Mills Tower,  
27 San Francisco, 4, California.  
GARfield 1218.

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

ORIGINAL  
FILED

OCT 14 1946

WILLIAMS, U. S. DIST. COURT  
SAN FRANCISCO

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

11 TADAYASU ABO, et al., etc. )  
12 Plaintiffs, )  
13 -vs- )  
14 TOM CLARK, etc. et al., )  
15 Defendants. )

No. 25294-S

Cons. No. 25294-S

16 -----  
17 MOTION FOR JUDGMENT ON THE PLEADINGS

18 Each plaintiff moves the court for judgment on the pleadings  
19 herein as prayed for in the amended complaint herein.

20 This motion is made upon the grounds that: (1) the defendants'  
21 Answer does not present any material issue of fact for determina-  
22 tion; (2) the material issues of fact alleged in the amended com-  
23 plaint are either undenied or admitted in said Answer or are facts  
24 the existence and truth of which the Court has or takes judicial  
25 cognizance, in consequence of which the defendants are barred  
26 from denying the truth of the allegations of fact contained in  
27 said amended complaint and (3) questions only of law are involved  
28 and these must be resolved in favor of plaintiffs.

29 This motion is made and based upon the amended complaint,  
30 the answer thereto, this motion and notice of the hearings  
31 thereof, facts of which the Court takes judicial cognizance and  
32

1 stipulations of fact into which the parties will enter on the  
2 submission of said motion to this Court for adjudication.

3 Dated: October 14, 1946.

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Wayne M. Collins,  
1721 Mills Tower,  
San Francisco, 4, California.  
GARfield 1218.

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Attorney for Plaintiffs.

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7. The Court takes judicial cognizance of the mass evacuation of the plaintiffs in 1942 and of their subsequent and continued long detention simply because of their type of ancestry and that said imprisonment and duress, coupled with the duress, undue influence, coercion and mistreatment to which they were subjected in their imprisonment, caused the purported renunciations of nationality.

Respectfully submitted,

\_\_\_\_\_  
Wayne M. Collins,  
Attorney for Plaintiffs.

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Receipt of a copy of the foregoing Motion, Notice thereof and Points and Authorities in Support thereof are hereby admitted this 14<sup>th</sup> day of October, 1946.

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

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

Attorneys for Defendants.

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1721 Mills Tower,  
San Francisco, 4, California,  
Garfield 1218,  
Attorney for Plaintiffs.

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OCT 14 1946

WILLIAM C. 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.	)	
	)	No. 25294-S
Plaintiffs,	)	
	)	Cons. No. 25294-S
-vs-	)	
TOM CLARK, etc. et al.,	)	
	)	
Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

Each plaintiff moves the court for summary judgment in his favor as prayed for in the amended complaint herein.

This motion is made upon the grounds that: (1) the defendants' Answer does not present any material issue of fact for determination; (2) the material issues of fact alleged in the amended complaint are either undenied or admitted in said Answer or are facts the existence and truth of which the Court has or takes judicial cognizance, in consequence of which the defendants are barred from denying the truth of the allegations of fact contained in said amended complaint and (3) the questions of fact must be resolved in favor of plaintiffs.

This motion is made and based upon the amended complaint, the answer thereto, this motion and notice of the hearing thereof, supporting affidavits to be filed herein, facts of which the Court

1 takes judicial cognizance and stipulations of fact into which the  
2 parties will enter on the submission of said motion to this Court  
3 for adjudication.

4 Dated: October 14, 1946.

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Wayne M. Collins,  
1721 Mills Tower,  
San Francisco, 4, California.  
Garfield 1218.

Attorney for Plaintiffs.



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3 Attorney for Plaintiffs.  
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OCT 16 1946

With Clerk, U. S. Dist. Court  
San Francisco

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

13 NOTICE OF HEARING OF MOTIONS

14 TO DEFENDANTS AND TO HON. TOM C. CLARK, ATTORNEY GENERAL, AND  
15 HON. FRANK J. HENNESSY, U.S. ATTORNEY, ATTORNEYS FOR DEFENDANTS:  
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17 You and each of you will please take notice that on Monday,  
18 October 28, 1946, at the hour of 10 o'clock A.M. of said day or so  
19 soon thereafter as counsel can be heard, plaintiffs will move the  
20 court to grant their motions to strike, for judgment on the plead-  
21 ings and for summary judgment which heretofore were filed herein,  
22

Dated: October 16, 1946.

23 \_\_\_\_\_  
24 Wayne M. Collins,  
1721 Mills Tower,  
25 San Francisco, 4, California.  
GARfield 1218.  
26 Attorney for Plaintiffs.

27 Receipt of a copy of the above notice is hereby admitted this  
28 16th day of October, 1946.

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

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

32 Attorneys for Defendants.