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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

WILL CLARK, 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 TO STRIKE

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

20  
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 2. From paragraph III thereof, the concluding sentence thereof  
30 commencing with the words "Respondents deny" on line 16 of page 2,  
31 on the grounds said matter constitutes mere opinions and conclusions  
32



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.

7

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.

25  
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

WILL CLARK, 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,  
6 1721 Mills Tower,  
7 San Francisco, 4, California.  
8 Garfield 1218.

9 Attorney for Plaintiffs.  
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1                    POINTS AND AUTHORITIES IN SUPPORT OF MOTION

2                    1. A motion for judgment on the pleadings is authorized by  
3 Rule 12(c) R.C.P.  
4

5                    2. A motion for judgment on the pleadings lies where the  
6 issues presented by the pleadings are solely questions of law.

7                    17 Hughes Federal Prac. pg. 444, Secs. 20351-20355,  
8                    and cases there cited.

9                    3. Judgment on the pleadings should be granted where the  
10 denials are evasive or bad or do not explicitly traverse the  
11 material allegations of a complaint or involve mere conclusions  
12 of law or are inconsistent with admissions or are vague, indefinite  
13 or uncertain.

14                    See rules, 1 Bancroft Plead. & Prac. pages,  
15                    924, 928, 929, 930 and 936, and cases  
16                    there cited.

17                    4. A mere renunciation of nationality, if constitutional or  
18 valid, does not convert a resident citizen into an alien enemy.  
19 At most it deprives him of political privileges. It leaves his  
20 residence undisturbed and leave him a native of this country.  
21 As such he is not subject to detention or removal under the  
22 provisions of the Alien Enemy Act, Title 50 USCA, sec. 21.

23                    5. The Alien Enemy Act expired when hostilities ceased on  
24 August 10, 1945.  
25

26                    6. The renunciation statute, Title 8 USCA, Sec. 801(1), and  
27 Sections 316.1 to 316.9, inclusive, of the Nationality Regulations  
28 are unconstitutional and void for being repugnant to the provisions  
29 of the 4th, 5th, 6th, 8th, 9th, 13th and 14th Amendments and the  
30 provisions of Sec. 8 of Art. I, Sec. 1 of Art. I, Sec. I of Art.  
31 III, Sec. 3 of Art. I, Subd. 2 of Art. VI of the Constitution and  
32 of the due process clause of the 5th Amendment.



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

8                                Respectfully submitted,

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10                                \_\_\_\_\_  
                                 Wayne M. Collins,

11    Attorney for Plaintiffs.  
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14                                -----  
15  
16

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

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

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

23    Attorneys for Defendants.  
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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

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

16  
17 MOTION FOR SUMMARY JUDGMENT

18 Each plaintiff moves the court for summary judgment in his  
19 favor 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 determination;  
22 (2) the material issues of fact alleged in the amended complaint  
23 are either undenied or admitted in said Answer or are facts the  
24 existence and truth of which the Court has or takes judicial  
25 cognizance, in consequence of which the defendants are barred from  
26 denying the truth of the allegations of fact contained in said  
27 amended complaint and (3) the questions of fact must be resolved  
28 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 hearing thereof,  
31 supporting affidavits to be filed herein, facts of which the Court  
32



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.

6 \_\_\_\_\_  
Wayne M. Collins,  
7 1721 Mills Tower,  
San Francisco, 4, California.  
8 Garfield 1218.

9 Attorney for Plaintiffs.



1                    POINTS AND AUTHORITIES IN SUPPORT OF MOTION

2                    1. A summary judgment in equity is authorized by Rule 56(a)  
3                    R.C.P.  
4

5                    2. There is no genuine issue raised by the Answer as to any  
6                    material fact alleged in the amended complaint and, in consequence,  
7                    plaintiffs are entitled to summary judgment in their favor as a  
8                    matter of law.  
9

10                   3. Inasmuch as the Answer does not controvert any material  
11                   issue of fact and the evidence, as supplied by stipulations of  
12                   fact, admissions, and facts of which the Court takes judicial  
13                   cognizance, reveals that the defendants have not and cannot deny  
14                   the material facts alleged in the amended complaint a summary  
15                   judgment in favor of the plaintiffs is authorized by Rule 56(a)  
16                   and 56(c) R.C.P. and should be granted plaintiffs.  
17

18                   Respectfully submitted,  
19

20                   Wayne M. Collins,  
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22                   Attorney for Plaintiffs.  
23

24                   -----  
25                   Receipt of a copy of the foregoing Motion, Notice thereof,  
26                   and Points and Authorities in support thereof is hereby admitted  
27                   this 14th day of October, 1946.

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

31                   By: Assistant U.S. Attorney.  
32

                 Attorneys for Defendants.



ORIGINAL  
FILED

OCT 16 1946

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

WAYNE M. COLLINS,  
1721 Mills Tower,  
San Francisco, 4, California.  
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.	)	No. 25294-S
	)	
Plaintiffs,	)	Cons. No. 25294-S
-vs-	)	
	)	
TOM CLARK, etc. et al.,	)	
	)	
Defendants.	)	

NOTICE OF HEARING OF MOTIONS

TO DEFENDANTS AND TO HON. TOM C. CLARK, ATTORNEY GENERAL, AND  
HON. FRANK J. HENNESSY, U.S. ATTORNEY, ATTORNEYS FOR DEFENDANTS:

You and each of you will please take notice that on Monday,  
October 28, 1946, at the hour of 10 o'clock A.M. of said day or so  
soon thereafter as counsel can be heard, plaintiffs will move the  
court to grant their motions to strike, for judgment on the plead-  
ings and for summary judgment which heretofore were filed herein,

Dated: October 16, 1946.

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

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

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

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

Attorneys for Defendants.