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No. 25295-S

FURUYA V. CLARK

SEPT./OCT. 1946

Cons. no 25294-S

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

ORIGINAL
FILED

SEP 30 1946

WILLIAM C. CLARK, U. S. DISTRICT JUDGE
SAN FRANCISCO

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

MARY KANAME FURUYA, et al., etc.,)	
)	
Plaintiffs,)	No. 25295-S
)	
-vs-)	Cons. No. 25294-S
)	
TOM CLARK, etc. et al.,)	
)	
Defendants.)	

ORDER APPOINTING GUARDIAN AD LITEM

Good cause appearing therefor it is hereby ordered that the plaintiff, Yukio Kataoka, a mental incompetent, be and he is hereby authorized to appear herein by Harry Uchida as his next of friend and guardian ad litem.

Dated: September 30, 1946.

A. F. St. Sure

UNITED STATES DISTRICT JUDGE.

Receipt of a copy of the above order is hereby admitted
this 30th day of September, 1946.

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

By: _____
Assistant U.S. Attorney.

Attorneys for Defendants.

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

ORIGINAL
FILED

OCT 10 1946

With Clerk, 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 MARY KANAME FURUYA, et al., etc. }

12 Plaintiffs, }

13 -vs- }

14 TOM CLARK, etc., et al., }

15 Defendants. }

No. 25295-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
11 ground it contains mere opinions and conclusions of law.

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

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

19
20 7. From paragraph XVIII thereof, the matter commencing with
21 the words "but assert that the failure" on line 21 of page 7 down
22 to and including the words "on persons who have lost it" on line 24
23 of page 7, on the ground the same is a mere opinion and conclusion
24 of law, and is immaterial, irrelevant and evasive.

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

30
31 9. The whole of the following paragraphs thereof, to-wit,
32 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.

26 _____
27 Wayne M. Collins,
28 1721 Mills Tower,
29 San Francisco, 4, California.
30 Garfield 1218.

31 Attorney for Plaintiffs.

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION

2 1. Rule 12 (f) R.C.P. authorizes the striking of redundant,
3 immaterial and impertinent matter from a pleading.

4
5 2. Immaterial matter may be stricken.

6 17 Hughes Fed. Prac. pg. 469, Sec. 20411, and cases
7 there cited.

8 3. Redundant matter may be stricken.

9 17 Hughes Fed. Prac. pg. 469, Sec. 20411, and cases
10 there cited.

11 4. Impertinent matter may be stricken.

12 17 Hughes Fed. Prac. pg. 470, Sec. 20412, and cases
13 there cited.

14 5. Evidentiary matter may be stricken.

15 17 Hughes Fed. Prac. pg. 471, Sec. 20413, and cases
16 there cited.

17 Respectfully submitted,

18 _____
19 Wayne M. Collins,

20 Attorney for Plaintiffs.

21
22
23 Receipt of a copy of the foregoing Motion to Strike, Points
24 and Authorities in support thereof, and Notice thereof is hereby
25 admitted this 10th day of October, 1946.

26 Tom C. Clark, Attorney General,
27 Frank J. Hennessy, U.S. Attorney,

28 By: _____
29 Assistant U.S. Attorney,

30 Attorneys for Defendants.

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 MARY KANAME FURUYA, et al., etc.)

12 Plaintiffs,)

13 -vs-

14 TOM CLARK, etc., et al.,)

15 Defendants.)

No. 25295-S

Cons. No. 25294-S

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.

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

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

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

17 Respectfully submitted,

18 _____
19 Wayne M. Collins,

20 Attorney for Plaintiffs.
21

22 -----
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 By: _____
31 Assistant U.S. Attorney,

32 Attorneys for Defendants.

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

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With Clerk, 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 MARY KANAME FURUYA, et al., etc. }

12 Plaintiffs, }

13 -vs-

14 TOM CLARK, etc., et al., }

15 Defendants. }

No. 25295-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 plaints 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.
4

5 _____
6 Wayne M. Collins,
7 1721 Mills Tower,
8 San Francisco, 4, California.
9 Garfield 1218.

10 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. III,
31 Sec. 3 of Art. I, Subd. 2 of Art. VI of the Constitution and of
32 the due process clause of the 5th Amendment.

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.

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

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

By: Assistant U.S. Attorney.

Attorneys for Defendants.

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

ORIGINAL
FILED

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

8 MARY KANAME FURUYA, et al., etc.,)
9 Plaintiffs,) No. 25295-S
10 -vs-) Cons. No. 25294-S
11 TOM CLARK, etc., et al.,)
12 Defendants.)

13 NOTICE OF HEARING OF MOTIONS

14
15 TO DEFENDANTS AND TO HON. TOM C. CLARK, ATTORNEY GENERAL, AND
16 HON. FRANK J. HENNESSY, U.S. ATTORNEY, ATTORNEYS FOR DEFENDANTS:

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,
25 1721 Mills Tower,
26 San Francisco, 4, California.
Garfield 1218.
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.
30 FRANK J. HENNESSY, U.S. Attorney,
31 Defendants.

32 By: _____
Assistant U.S. Attorney.

Attorneys for Defendants.