5:7 No. 25294 ABO v. CLARK June 1946

Cons. no. 25296-S

Supplement to Points + Authorities

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

TADAYASU ABO, et al., etc.

Plaintiffs

vs.

TOM CLARK, etc. et al.,

Defendants

No. 25294
Cons. No. 25296-S

MEMORANDUM SUPPLEMENTAL TO POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE

Exhibit No. 2, appended to the "Supplement and Amendment to Complaint", is impertinent and immaterial for the following reasons, in addition to those hitherto set forth:

Not only does the said exhibit comprise evidentiary matter, but it is evidentiary matter which is incompetent as evidence, is irrelevant, and must be excluded if offered at trial. It plainly should not be indirectly insinuated into the record by the device of attaching it as an exhibit to a pleading.

A. It is incompetent on the following grounds:

1. The exhibit comprises hearsay, whether of first, second third, or greater degree of compounded hearsay does not appear from its face. In the circumstances, however, it may properly be deduced that it is not less than third degree.

2. The important feature of the exhibit is, moreover, opinion based on hearsay.

6 Wigmore (3d Ed.) § 1962

3. The exhibit does not come within the official document exception to the hearsay rule. It is in no sense a record of the sort covered by this exception.

United States v. International Harvester Co., 274 U. S. 693, 703.
5 Wigmore on Evidence (3d Ed.) 511 et seq.
20 American Jurisprudence § 1023 et seq.

It is well settled that, even where, unlike the present case, the document submitted under this exception is a proper record kept in the course of duty by an authorized official, it is not admissible to support the opinions or conclusions of the official.

Franklin v. Skelly Oil Co., 141 F. (2d) 568, 572 (C.C.A. 10, 1944)
United States v. Indian Creek Marble Co., 40 F. Supp. 811, 816 (D.C. E.D. Tenn. 1941)
New York Life Ins. Co. v. Miller, 65 App. D. C. 129 (1935)
Birmingham v. Pettit, 21 D. C. Rep. 209 (S. Ct. D. C. 1892)
Moore v. Langdon, 13 D. C. Rep. 127 (S. Ct. D.C. 1882)
Steel v. Johnson, 115 P. (2d) 145, 150 (S. Ct., Washington, 1941)

It is therefore plain that this letter, written to a member of the public by a government official and expressing an opinion on a matter on which he does not claim and is not shown to have any first-hand knowledge whatever, is wholly inadmissible for any purpose.

B. In any event, the exhibit is irrelevant. It does not purport to state that all — or any particular — residents of Tule Lake renounced under duress. It therefore cannot be shown to apply specifically to any subject of the present litigation. Indeed, it does not say specifically that any Tule Lake resident renounced under duress. And if it did, such a statement would constitute nothing more than a conclusion of law even were it clear, as it is not, that the word "duress" was intended to be used in its technical legal sense, the only sense which can have any relevance here.

It is therefore respectfully submitted that Exhibit No. 2 to the "Supplement and Amendment to the Complaint" must be stricken.

Frank J. Hennessy
United States Attorney
Attorney for Respondent.

June 21st, 1946