5:24 No. 25295 FURUYA V. CLARK June/July 1946

Cons. no. 25295-5

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

ORIGINAL
FILED
JUN 21 1945
WM. CLERK U. S. DIST. COURT
SAN FRANCISCO

TADAYASU ABO, et al., etc.	)	
	)	
Plaintiffs	)	
	)	
vs.	)	No. 25295
	)	Cons. No. 25295-S
	)	
TOM CLARK, etc. et al.,	)	
	)	
Defendants	)	

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 forthe

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 Adendment to the Complaint" must be stricken.

Frank J. Hennessy
United States Attorney
Attorney for Respondent.

June 21st, 1946

ORIGINAL
FILED
JUL 27 1946
Wm. 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

MARY KANAME FURUYA, et al., etc.,
Plaintiffs,
-vs-
TOM CLARK, etc., et al.,
Defendants.

No. 25295
Cons. 25294-S

STIPULATION AND ORDER EXTENDING TIME

It is hereby stipulated between the parties hereto that the time within which the plaintiffs may amend their complaint herein shall be extended to and including the 19 day of August, 1946.

Dated: July 26, 1946.

Wayne M. Collins,
Attorney for Plaintiffs.

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

By: _____
Assistant U.S. Attorney,
Attorneys for Defendants.

SO ORDERED:

July 27, 1946.

A. F. St. Sure

UNITED STATES DISTRICT JUDGE.

WAYNE M. COLLINS
ATTORNEY AT LAW
1721 MILLS TOWER
SAN FRANCISCO
GARFIELD 1218

Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY KANAME FURUYA, et al., etc., Plaintiffs, vs. TOM CLARK, as Attorney General of the United States; FRANK J. HENNESSY, as United States Attorney for the Northern District of California, and, as such, the head of the United States Department of Justice in said District, et al., etc., Defendants.	No. 25295-S

MOTION TO STRIKE

Defendants move to strike from the amended complaint filed herein certain redundant, immaterial and impertinent matters identified below, pursuant to Rules 8(e) and 12(f) of the Federal Rules of Civil Procedure:

All of the matters and allegations set forth in Paragraph VII of said amended complaint, beginning with line 30, page 17, to and including line 10, page 19; on the ground that said allegations and matters comprise evidentiary matter; are impertinent, immaterial and redundant; and, as a result of their inclusion in it, the allegations of said amended complaint are not simple, concise, and

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direct, as required by said Federal Rules.

That said matter constituted Exhibit No. 2, appended to the "Supplement and Amendment to Complaint" filed herein and ordered stricken by this Court on July 10, 1946.

For these reasons, said Paragraph VII, and the whole thereof, of said amended complaint should be, and defendants move that same be, stricken.

Respectfully submitted,

Frank J. Hennessy

Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

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

Defendants refer to and hereby adopt the points and authorities in support of motion to strike, and memorandum supplemental to points and authorities in support of motion to strike filed by defendants in support of their motion to strike from the complaint and amendment and supplement thereto, which motion to strike was granted by the Court on July 10, 1946.

The order of the Court of July 10, 1946, granting the motion to strike, has become the law of the case and thus requires that the matter contained in said Paragraph VII of the amended complaint be stricken.

Respectfully submitted,

Frank J. Hennessy

Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

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