that they were examined, or that the bankrupt was unable to procure the attendance of his wife under section 5088 of the Revised Statutes, and that this raises a presumption, which cannot be met as the case stands, arising against the bankrupt under section 5114, already referred to. But there is no rule of law that all the facts touching these orders which might have been shown to the district court should appear of record, and the presumption the appellant suggests is contrary to all experience in the practical administration of justice. Non constat the district court did not know or find that neither the bankrupt nor his wife was duly notified to appear for examination, or that they were unable to appear through sickness or some other misfortune, or that they appeared and the party who applied for the examination did not appear.

It is to be borne in mind that, as this record comes to us, we are not considering what we might or should find on a full presentation of facts, but what the district court might in legal possibility have found. Therefore, all these propositions come back to the considerations which apply to the seventh paragraph of the petition for revision.

The petition is dismissed, with costs.

In re KEARNS, Collector.

(District Court, W. D. Pennsylvania. November 1, 1894.)

OLEOMARGARINE—INSPECTION OF BOOKS OF WHOLESALE DEALER.

A collector of internal revenue has no authority, under section 3173, Rev. St., to require a wholesale dealer in oleomargarine to produce his books for examination and inspection.

This was a petition by E. P. Kearns, collector of internal revenue for the Twenty-Third district of Pennsylvania, praying for an attachment against C. B. Clark for an alleged contempt in failing to comply with a summons issued to him by the collector, and requiring him to produce for inspection the books, etc., used by him as resident manager for the firm of Armour & Co., wholesale dealers in oleomargarine.

Harry Alvin Hall, U. S. Atty.

D. T. Watson and L. B. D. Reese, for defendants.

BUFFINGTON, District Judge. During the years 1893 and 1894, Armour & Co. paid an annual tax to the United States of $480, as wholesale dealers in oleomargarine, and as such made monthly returns to the government of the amounts of their sales, with the names of the purchasers. On October 18, 1894, E. P. Kearns, Esq., collector of internal revenue for the Twenty-Third district of Pennsylvania, being of opinion such returns were false and fraudulent, summoned C. B. Clark, resident manager of said firm, to appear before him to testify "in a certain case arising under the internal revenue laws, depending before me, wherein Armour & Co., wholesale dealers in oleomargarine, who were required as such by law

to render to me certain monthly returns of objects subject to tax, delivered to me returns for the months in the year 1893 and the year 1894, which in my opinion are false and fraudulent," and also to produce "each and every ledger, day book, cash book, blotter, sales book, journal, dray ticket, and other memoranda used by you or in connection with your business as manager for Armour & Co., as wholesale dealers in oleomargarine for and during the years 1893 and 1894, relating to the subject-matter of the said investigation." Clark failed to comply with this order, whereupon the collector presented a petition to the judge of the district court, praying for an attachment against him as for a contempt. To the rule issued thereon, Clark made answer expressly denying that the returns made by Armour & Co. were false and fraudulent, and contending that Armour & Co. have kept all books required by law, and that these are open to the inspection of the revenue officers; that they object to producing their private books, showing rates of sales, as an invasion of private rights; that the collector has no authority "to compel the production of the private books of wholesale dealers in oleomargarine in a proceeding like the one at bar"; that Armour & Co. have paid all their taxes as wholesale dealers, and the taxes on all oleomargarine sold by them have also been paid; that the present proceeding was not to settle or fix any tax against them, but "that he [the collector] and his assistants may search those books to attempt to obtain evidence to be used against third parties in proceedings against them, or some of them, for the sale of oleomargarine in alleged disregard of the acts of congress"; and, lastly, if the allegations of the collector were true, and the returns were false and fraudulent, Armour & Co. would be subject to fine and forfeiture, and, if the collector is given power by act of congress to compel them to produce papers, it is in violation of the fourth amendment to the constitution. The matter was heard on petition and answer, no proofs being submitted. It is not contended that Armour & Co. have not paid all taxes assessed against them, or that they have sold oleomargarine upon which the taxes were not paid, but it is stated at bar by the counsel for the government that the collector suspects the real names of purchasers of oleomargarine from them have not been given by Armour & Co. in their monthly returns, and as a result the government has been unable to collect taxes from persons buying from them, and afterwards retailing it; that the purpose of the returns from wholesalers is to furnish this information; and he asserts the collector's rights to inspect the respondents' business books to ascertain these facts, and the present proceeding is had to compel the production of the books for that purpose.

The question presented is one of grave moment. It is earnestly contended that such an inspection is lawful; that it is necessary for the efficient administration of the revenue service, and the collection by the government of its just dues; that only dishonest men will object to its allowance; that the honest one has nothing to fear from such an examination. But this is begging the entire question. Books and papers are the private and absolute prop-

erty of the owner, or, as Lord Camden said in Entick v. Carrington, 19 How. St. Tr. 1066:

"Papers are the owner's goods and chattels. They are his dearest property, and are so far from enduring a seizure that they will hardly bear an inspection."

In Re Pacific Railway Commission, 32 Fed. 241, Justice Field said:

"Of all the rights of the citizen, few are of greater importance, or more essential to his peace and happiness, than the right of personal security; and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without enjoyment of this right, all others would lose half their value."

So highly was this right to one's papers esteemed that, within certain limits, it was preserved from legislative action in the constitution,—the fourth amendment,—"the right of the people to be secured in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." The exclusive possession of them is reckoned one of the absolute rights of the citizen. Such possession is not to be invaded, save for proper cause; and any individual, public or private, who seeks to invade it, must have the warrant of legal authority for so doing. If no such warrant can be found, the silence of the books is an unanswerable argument against the validity of the claim. Nor should such claim rest upon mere implication or analogies. The absolute rights of the citizen remain absolute until the law, by as absolute and certain provisions, abridges those rights.

Applying these fundamental principles to the case in hand, we may say that the books in question are the private property of the respondents; and no one can take them from their custody, or has a right to inspect them, against their consent, without express warrant of law, and the burden of showing such a right rests on him who claims it. Does such right exist in the collector in the present case? The contention of the government is that by section 3 of the act of 2d August, 1886 (24 Stat. 209), a special tax was imposed on wholesale dealers in oleomargarine; that section 41 of the act of 1st October, 1890, provided for their keeping such books and making such returns as might be prescribed by the commissioner of internal revenue with the approval of the secretary of the treasury; that such regulations were prescribed 12th March, 1891 (Internal Revenue Regulations, ser. 7, No. 9, p. 44), as follows:

"Wholesale dealers in oleomargarine will make monthly returns on form 217, showing in detail the serial numbers of packages and number of pounds of oleomargarine received direct from manufacturers and other wholesale dealers, also the quantity disposed of, with the name and address of each person to whom sold or returned."

It is then contended: That wholesale dealers in oleomargarine, making these returns, are subject to the provisions of section 3173, Rev. St., which provides, in part, as follows:

"And if any person on being notified or required as aforesaid shall neglect or refuse to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any

return, which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person or any other person, having possession, custody or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof."

That sections 3174, 3175, Rev. St., provide for the service of such summons, and for the application for an attachment to the district judge, in case of a refusal by the person summoned to comply, and that the foregoing constitute a warrant for the action of the collector.

The determination of the present case, in our view, involves three questions (for it is to be noted that Armour & Co. do not claim exemption from the production of their books by reason of the fact that they would tend to criminate them), as follows: First. Does section 3173, Rev. St., apply to wholesale dealers in oleomargarine? Second. If so, is the monthly return required of such dealer, viz. one "showing in detail the serial numbers of packages and number of pounds of oleomargarine received direct from manufacturers and other wholesale dealers, also the quantity disposed of, with the name and address of each person to whom sold or returned," such a one as is contemplated by said section, which provides, "Whenever any person who is required to deliver a monthly return or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent or contains an undervaluation or understatement, it shall be lawful," etc.? Third. Do the averments of the petition, with the denials of the answer and the absence of all testimony, afford the satisfactory proof required by section 3175, Rev. St., to warrant the grant of an attachment?

When the act of 30th June, 1864, of which section 3173 is a part, was passed, oleomargarine was not a commercial commodity, or recognized as a subject of possible taxation, if indeed it even existed at that time. It was first made subject to special tax by the act of 2d August, 1886 (24 Stat. 209), which was "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of oleomargarine." This act was not a supplement or amendment to other revenue legislation, but was a distinct and independent one. It created a complete and comprehensive system in itself, and, by its various sections, regulated the taxation, manufacturing, selling at wholesale and retail, the import and export, of oleomargarine; provided for its analysis; and fixed punishments for violation of its provisions. By section 3 thereof, certain general provisions of the revenue system were extended to the new subject of taxation. After enumerating the persons subject to tax it provides:

"And sections 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241 and 3243 of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section and to the persons upon whom they are imposed."

The incorporation of these sections in the oleomargarine law and the omission of section 3173, under which the present proceeding is justified, as indeed also of all the provisions of the act of 30th June, 1864, is highly significant. It is contended that that section is broad and comprehensive in terms, and was meant to apply to all special taxes then existing, or that might thereafter be imposed. Whatever force such contention would have in reference to other laws and other subjects of taxation, it cannot avail when applied to the act of 2d August, 1886. Congress has precluded it by selecting certain special sections, as comprehensive as section 3173, themselves part of the general revenue system, and extending their provisions, and no others, to this new object of taxation. If congress deemed it necessary, to specify such sections of the revenue system, to extend them to oleomargarine, how can its omission to specify and extend section 3173 be considered other than a deliberate declaration that it was not extended? To say otherwise is at variance with the recognized canon of construction, "Expressio unius est exclusio alterius." And that congress recognized the necessity of specifically extending section 3173 to new subjects of taxation imposed by statutes, not supplemental, when it desired to do so, is shown by the amendment of that section by section 34 of the act of 28th August, 1894 (No. 227), so as to cover the income tax imposed by that bill; an amendment, we note, which is here cited by way of illustration only.

After due consideration, we are of opinion that Rev. St. § 3173, does not apply to wholesale dealers in oleomargarine. Such being this case, a discussion of the two other questions is needless, as the present rule must be discharged. And it is so ordered.

In re TOM YUM.

(District Court, N. D. California. November 15, 1894.)

No. 11,109.

ADMISSION OF ALIENS TO UNITED STATES—JURISDICTION OF IMMIGRATION OFFICERS—HABEAS CORPUS.

The provision in the sundry civil appropriation act of August 18, 1894, making the decision of an immigration or customs officer excluding an alien from admission to the United States final, unless reversed on appeal to the secretary of the treasury, does not give that officer final jurisdiction to determine that a person of Chinese descent is not a citizen of the United States, where he claims the right to admission on the ground that he is a citizen; and the question of his citizenship may be determined by the courts on writ of habeas corpus.

This was a motion to quash a writ of habeas corpus.

Chas. A Garter, U. S. Atty., for the motion.
Lyman I. Mowry, opposed.

MORROW, District Judge. This matter comes before me on a motion to quash the writ of habeas corpus issued by this court on

October 11, 1894. The writ was sued out upon the petition of one Tom Sing, on behalf of Tom Yum, a Chinese passenger on the steamer Gaelic, from Hong Kong. It is averred in the petition for the writ that Tom Yum is unlawfully imprisoned, detained, confined, and restrained of his liberty by Capt. Pearne, master of the steamship Gaelic; that it is claimed by said master that said passenger is a subject of the emperor of China, and must not and cannot be allowed to land, under the provisions of the act of congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto; that said passenger does not come within the restrictions of said acts, but, on the contrary, the petitioner alleges that said passenger was a resident of the United States, and departed therefrom, on the steamship Oceanic, on the 17th day of June, 1879; that said passenger is a citizen of the United States, and was born at No. 722 Dupont street, in the city and county of San Francisco, state of California; that he applied to the collector of the port for a landing, but said application was denied; wherefore, the petitioner prays that a writ of habeas corpus may issue in behalf of said Tom Yum, to test the legality of the latter's detention. The writ having issued, the district attorney intervened on behalf of the United States, opposing the discharge of Tom Yum, and filed subsequently the motion to quash the writ, which is the motion now under consideration.

The legal propositions raised by this motion involve the interpretation of a provision contained in the act entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18, 1894 (28 Stat. p. 390). The provision reads as follows:

"In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the secretary of the treasury."

The constitutionality of the provision, so far as it empowers the collector of the port, as the appropriate customs officer, to pass upon the right of an alien to come into this country, is not denied, nor, indeed, is the question open to any doubt. A similar provision is to be found in section 8 of the act of March 3, 1891 (26 Stat. 1085), which excludes from admission into the United States certain classes of aliens, and invests the inspection officers and their assistants with exclusive power to pass upon the right of aliens to enter this country, subject to an appeal to the superintendent of immigration, whose decision is final, unless reviewed by the secretary of the treasury. The validity of this provision was considered by the supreme court in the case of Nishimura Ekiu v. U. S., 142 U. S. 651, 12 Sup. Ct. 336. Mr. Justice Gray, in delivering the opinion of the court in that case, said:

"The supervision of the admission of aliens into the United States may be intrusted by congress either to the department of state, having the general

management of foreign relations, or to the department of the treasury, charged with the enforcement of the laws regulating foreign commerce; and congress has often passed acts forbidding the immigration of particular classes of foreigners, and has committed the execution of these acts to the secretary of the treasury, to collectors of customs, and to inspectors acting under their authority. See, for instance, Act March 3, 1875, c. 141 (18 Stat. 477); Act Aug. 3, 1882, c. 376 (22 Stat. 214); Act Feb. 23, 1887, c. 220 (24 Stat. 414); Act Oct. 19, 1888, c. 1210 (25 Stat. 566),—as well as the various acts for the exclusion of the Chinese. An alien immigrant, prevented from landing by any such officer claiming authority to do so under an act of congress, and thereby restrained of his liberty, is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful. Chew Heong v. U. S., 112 U. S. 536, 5 Sup. Ct. 255; U. S. v. Jung Ah Lung, 124 U. S. 621, 8 Sup. Ct. 663; Wan Shing v. U. S., 140 U. S. 424, 11 Sup. Ct. 729; Lau Ow Bew, Petitioner, 141 U. S. 583, 12 Sup. Ct. 43. And congress may, if it sees fit, as in the statutes in question in U. S. v. Jung Ah Lung, just cited, authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be intrusted by congress to executive officers; and in such a case, as in all others in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine, or controvert the sufficiency of, the evidence on which he acted. Martin v. Mott, 12 Wheat. 19, 31; Railroad Co. v. Stimpson, 14 Pet. 448, 458; Benson v McMahon, 127 U. S. 457, 8 Sup. Ct. 1240; In re Luis Oteiza y Cortes, 136 U. S. 330, 10 Sup. Ct. 1031. It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law. Murray v. Improvement Co., 18 How. 272; Hilton v. Merritt, 110 U. S. 97, 3 Sup. Ct. 548."

In accordance with this doctrine, it is contended by the district attorney that the writ of habeas corpus cannot be resorted to in this case, for the reason that the collector of the port, by virtue of his authority to pass upon the right of an alien to enter this country, is vested with the authority of passing upon the question of nativity and citizenship of a person of Chinese descent, and, that being so, that the only method of review provided for is by an appeal to the secretary of the treasury; in other words, it is claimed that the writ of habeas corpus cannot be availed of to review the decision of the collector in this matter, because the latter is invested with the authority of determining whether a Chinese person seeking admission into the United States is an alien, or a citizen of this country. It is well settled that the writ of habeas corpus cannot be used to review, as upon a writ of error, the decision of a judicial or quasi-judicial tribunal or officer lawfully constituted by law, and acting within the proper confines of his jurisdiction; and, on the other hand, it is equally certain that the writ may be resorted to—in fact, that is one of its great functions—to inquire into the jurisdiction exercised by such tribunal or officer, for the purpose of ascertaining whether such power has been kept within its legal limits, and the proceedings therein have been according to law. The scope of the writ of habeas corpus, in proceedings similar to these, was succinctly and clearly

stated by Mr. Justice Blatchford in Re Luis Oteiza y Cortes, 136 U. S. 330, 10 Sup Ct. 1031, where the supreme court had under consideration the authority of a commissioner in an extradition case. It was sought to have the supreme court of the United States review the decision of the commissioner. The learned justice said:

"A writ of habeas corpus, in a case of extradition, cannot perform the office of a writ of error. If the commissioner has jurisdiction of the subject-matter and of the person of the accused, and the offense charged is within the terms of a treaty of extradition, and the commissioner, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused, for the purpose of extradition, such decision of the commissioner cannot be reviewed by a circuit court or by this court on habeas corpus, either originally or by appeal."

The following authorities are all to the same effect: In re Day, 27 Fed. 678, 681; In re Cummings, 32 Fed. 75; In re Dietze, 40 Fed. 324; In re Vito Rullo, 43 Fed. 62; Benson v. McMahon, 127 U. S. 457, 8 Sup. Ct. 1240; and the case of Nishimura Ekiu v. U. S., supra.

But it will be observed that the provision of the statute in question refers only to cases where aliens are excluded from admission into the United States under any law or treaty, and it is with respect to them that the decision of the appropriate immigration or customs officer, if adverse to their admission, is final, unless reversed on appeal to the secretary of the treasury. If, for instance, the Chinese person is an alien, but applies for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, the determination of this question will rest exclusively with the appropriate immigration or customs officer, and his decision will be final, unless reversed on appeal by the secretary of the treasury. So with respect to aliens, concerning whom questions arise as to whether they have been excluded from admission into the United States under any of the acts relating to immigration; the decision of the immigration or customs officer, in such cases, is made final, subject only to an appeal to the secretary of the treasury. But does it follow that these officers have the exclusive authority of determining the preliminary question whether a person coming into the United States is a citizen or an alien? Had the provision under consideration been as broad in its terms as that contained in the act of September 18, 1888, entitled "An act to prohibit the coming of Chinese laborers to the United States," the contention of the district attorney would have great force. It was there provided, in section 12 (25 Stat. 478):

"That before any Chinese passengers are landed from any such vessel, the collector, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law; and the collector shall in person decide all questions in dispute with regard to the right of any Chinese passenger to enter the United States, and his decision shall be subject to review by the secretary of the treasury, and not otherwise."

This act never went into effect, for the reason that the Chinese government refused to ratify the then pending treaty with the United

States, upon which the force of the act as law depended; but it serves to show that congress had in that act the purpose of conferring upon the collector the authority of deciding all questions in dispute with regard to the right of any Chinese passenger to enter the United States, and this purpose has not been so clearly or definitely expressed in the act under consideration. That the present provision, from the language used, relates to "aliens" only, and has nothing whatever to do with "citizens," is beyond question. But, as before stated, this must not be construed to imply that the collector is divested of all authority over Chinese passengers. On the contrary, he has, under this law, undoubted jurisdiction over aliens; his authority to pass upon their right to enter this country is clear and unmistakable, and his decisions, as to them, conclusive upon the courts. This jurisdiction includes the exclusive right to determine whether a Chinese passenger is a laborer or a merchant, according to the requirements of section 2 of the act of November 3, 1893 (28 Stat. 7), and to pass upon the qualifications of Chinese persons claiming to be diplomatic officers, etc. In short, his authority to examine and determine the qualifications of aliens of the Chinese race to enter the United States is complete, and, subject to an appeal to the secretary of the treasury, is conclusive; and the courts are in duty bound to give full effect to the jurisdiction conferred upon the collector, and his decisions, so far as they concern aliens, will not be disturbed or interfered with. The question is, however, one of an entirely different complexion with regard to citizens, or Chinese passengers claiming to be citizens, of the United States. The latter are not included, either expressly or by implication, in the present act. As to them, the collector is without authority to finally and conclusively pass upon their right to come into this country. Precisely the same question arose in Re Panzara, 51 Fed. 275. In that matter, an application was made by Angelo Panzara and others for a writ of habeas corpus, it being alleged that they were illegally detained by the master of the ship Cheribon. The master produced the petitioners in accordance with the writ, and made return that:

"The above-named persons had been placed in his custody as master of said steamship, and on board thereof, by the direction of the superintendent of immigration of the port of New York, to be sent back to Italy."

To this return the petitioners made answer that they were not alien immigrants, but were residents of the United States, where they had acquired a domicile, and that when returning to their respective homes in the United States, from a voyage to Italy, undertaken by them with the intention of coming back to the United States, they were unlawfully detained, and directed to be sent back to Italy, by the superintendent of immigration. The questions raised involved the interpretation of the term "alien immigrants," and the extent of the jurisdiction of the superintendent of immigration under the act of March 3, 1891, prohibiting the entering of certain classes of aliens, viz. idiots, insane persons, paupers, or persons likely to become a public charge; persons suffering from a loathsome or

a dangerous contagious disease; persons who have been convicted of a felony or other infamous crime, or misdemeanor involving moral turpitude, etc. Judge Benedict, in passing upon the question of the jurisdiction of the superintendent of immigration under the provisions of that act, decided that the power of the federal superintendent of immigration to return passengers who were aliens was confined to "alien immigrants" alone, and did not extend to residents of the United States, who had acquired a domicile therein, and had departed from this country with the intention of returning; nor, the learned judge held, did the jurisdiction of passing upon the right of "alien immigrants" to enter this country include the further power of finally passing upon the question whether a passenger was an "alien immigrant" or a "resident," subject only to an appeal to the secretary of the treasury, as provided by that act. In referring to the jurisdictional character of that question, the judge said:

"The statute conferring power upon the superintendent of immigration to order the return of persons arriving in the United States from foreign countries confines his power to alien immigrants. He has no jurisdiction to direct the return to a foreign country of a person not an alien immigrant. The question whether the petitioner is an alien immigrant is therefore a jurisdictional one, and the finding of the commissioner upon that question is not conclusive upon the courts. That question, when presented to the court by a petition for habeas corpus, must be decided by the court upon the evidence presented to the court in such proceeding."

This statement of the law is peculiarly applicable to the present case, and further citation of authority would seem to be unnecessary. I am of the opinion, therefore, that the collector of the port does not possess the power of finally and conclusively passing upon the jurisdictional question whether a Chinese person is an alien or a citizen, subject only to an appeal to the secretary of the treasury. The determination of the question in the matter now before the court, viz. whether Tom Yum is a citizen, as he claims to be, or is an alien, is the very fact upon which the jurisdiction of the collector depends. If he is an alien, then the collector has undoubted and complete jurisdiction, but, if he is a citizen, the authority vested in him by the provision, in unmistakable terms, does not empower him to finally pass upon the latter's right to come into this country. It is difficult to see, therefore, how his decision upon a fact on which his very jurisdiction rests can be deemed conclusive upon this court. The authority claimed for the collector is certainly not expressly conferred on him by the terms of the provision in question, nor do I think that the language therein used can be susceptible of such an interpretation of his jurisdiction. The motion to quash will therefore be denied.

THE BLAIR CAMERA CO. v. THE EASTMAN CO.

(Circuit Court of Appeals, First Circuit. October 31, 1894.)

No. 105.

This was a suit by The Eastman Company against The Blair Camera Company for infringement of a patent. A decree was rendered for complainant; the circuit court holding that the defendant's apparatus infringes the 3d, 26th, 29th, 30th, 31st, and 32d claims of letters patent No. 317,049, granted to Walker and Eastman, May 5, 1885. 62 Fed. 400. Defendant appeals.

John L. S. Roberts (Causten Browne, of counsel), for appellant.
M. B. Philipp and Chauncey Smith, for appellee.

Before PUTNAM, Circuit Judge, and NELSON and WEBB, District Judges.

PER CURIAM. We fully concur with the reasoning and conclusions of the judge who sat in the circuit court. We refer to the opinion in Shute v. Sewing Mach. Co., 64 Fed. 368, passed down this day, touching modifications of the decree and the order as to costs. The decree below will be modified so as to be expressly limited to the claims specifically passed on by the circuit court, and as thus modified is affirmed. Neither party will recover any costs of appeal.

EDISON ELECTRIC LIGHT CO. et al. v. CITIZENS' ELECTRIC LIGHT, HEAT & POWER CO.

(Circuit Court, E. D. Pennsylvania. June 29, 1894.)

No. 26.

1. PATENTS—INFRINGEMENT BY USER.
   The purchaser of a patented article is not liable as an infringer where he purchased it from one having a legal right to sell it. Adams v. Burke, 17 Wall. 453, and Hobbie v. Jennison, 13 Sup. Ct. 879, 149 U. S. 361, followed.
2. SAME—PRELIMINARY INJUNCTION—DECISION IN ANOTHER CIRCUIT.
   A decision by another circuit court that the person from whom the present defendant purchased the alleged infringing articles had a legal right to sell them is sufficient ground for denying a motion for a preliminary injunction.

This was a bill by the Edison Electric Light Company and others against the Citizens' Electric Light, Heat & Power Company for infringement of letters patent No. 223,898.

Dyer & Seely, C. E. Mitchell, and S. B. Huey, for complainants.
J. L. Steinmetz, for defendant.

DALLAS, Circuit Judge. This is a motion for a preliminary injunction to restrain the defendant from using certain electric lamps in alleged violation of the rights of the complainants, under what is known as the "Edison Patent for Incandescent Lamps." The substantial question is as to the weight which should, upon this application, be accorded to the action of the circuit court for the Northern district of Ohio, on certain motions made in that court for, and to dissolve, preliminary injunctions in suits upon the same patent. In disposing of the motions referred to, Judge Ricks delivered three opinions, which have been discussed at length by counsel and