

B. C. Chetwood, for the motion.

W. Macfarlane, U. S. Atty., opposed.

LACOMBE, Circuit Judge. The relator, a Chinese person, who was formerly a resident of this country, contends that upon facts which he offers to prove he is entitled to entry. This court cannot, however, go into that question. In the sundry civil appropriation act of August 18, 1894, there is found this paragraph:

"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."

Under the decision of the supreme court in *Fong Yue Ting v. U. S.*, 149 U. S. 698, 13 Sup. Ct. 1016, the power of congress to confide such decision exclusively to executive officers must be accepted by this court. The act itself leaves nothing for this court to inquire into, save only whether relator is an "alien," which is not disputed, and whether the collector has "made a decision." On this latter point, the return, in which he states that he has decided adversely to admission, is conclusive. Even if he had not so decided when the writ was applied for, the signing of such a return is itself a decision. Relator remanded.

In re CHIN YUEN SING.

(Circuit Court, S. D. New York. December 3, 1894.)

IMMIGRATION—POWER OF COURT ON HABEAS CORPUS.

The provision in the sundry civil appropriation act of August 18, 1894, making final the decision of the immigration or customs officials upon the right of an alien to admission to the United States, is not inconsistent with the act of May 5, 1892, providing for a writ of habeas corpus, "which shall be heard and determined promptly," but upon the return to the writ the court can only inquire whether the relator is an alien, and whether the appropriate officer has made a decision.

This was an application for a rehearing of a petition for a writ of habeas corpus by Chin Yuen Sing, a Chinese person, alleging that he was illegally restrained of his liberty by the collector of the port of New York.

B. C. Chetwood, for the motion.

W. Macfarlane, U. S. Atty., opposed.

LACOMBE, Circuit Judge. There is nothing in the brief filed upon reargument which calls for a modification of the ruling heretofore made in this case. It is no doubt true that special laws will not be construed to be repealed by subsequent general laws, unless the intent so to do is expressed or plainly implied. But here there is no difficulty in construing both acts together. The earlier one (of May 5, 1892) providing for a writ of habeas corpus, "which shall be heard and determined promptly, without unnecessary delay," is not repealed; but when the return to the habeas is filed the court is con-

fin'd to an examination of the two questions whether relator is an alien and whether the appropriate immigration or customs officer has decided adversely to his admission. A precisely similar provision is found in the act of March 3, 1891 (chapter 551), concerning immigrants other than Chinese, and which was before the supreme court in Nishimura Ekin's Case, 142 U. S. 660, 12 Sup. Ct. 336. The provision now under discussion, which is found in the appropriation act of 1894 under the subhead "Enforcement of Chinese Exclusion Act," is manifestly intended to conform the practice in the case of Chinese persons to that already established for other aliens. The writ must stand dismissed.

CHEMICAL NAT. BANK OF NEW YORK v. ARMSTRONG.

(Circuit Court of Appeals, Sixth Circuit. February 5, 1895.)

No. 56.

1. NATIONAL BANKS—BORROWING MONEY—POWER OF OFFICERS.

A national bank, whose vice president borrows money in its name of another bank, and appropriates it to his own use, is not liable therefor, unless he was specially authorized to borrow the money, or his act was ratified. 8 C. C. A. 155, 59 Fed. 372, modified to accord with Bank v. Armstrong, 14 Sup. Ct. 572, 152 U. S. 346.

2. SAME—INSOLVENCY—DIVIDENDS—INTEREST.

The receiver of an insolvent bank withdraws his offer to allow part of a claim by filing a pleading in the proceedings denying the liability of the bank on the claim, and the interest on dividends should be allowed the owner of claim as though no such offer had been made.

On rehearing. Modified. For former opinion, see 8 C. C. A. 155, 59 Fed. 372.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

TAFT, Circuit Judge. This case is before the court on two motions for a rehearing. The original opinion of the court filed at the last term is to be found in 16 U. S. App. 465, 8 C. C. A. 155, and 59 Fed. 372. The controversy related to the allowance of a claim for more than \$300,000 in favor of the Chemical National Bank of New York, against David Armstrong, the receiver appointed by the comptroller of the currency to take charge of the assets of the Fidelity National Bank of Cincinnati, and to distribute the same in accordance with law to the persons properly entitled. The claim of the Chemical Bank was based on a loan made by it, as it supposed, to the Fidelity Bank, at the instance of E. L. Harper, the vice president of the Fidelity Bank. The loan was evidenced by a certificate of deposit for the amount of the loan, signed by the cashier of the Fidelity Bank, payable to E. L. Harper, and indorsed by him in blank. It was secured by a large amount of collateral, in the form of commercial paper. The amended answer of Armstrong, in the court below, averred that the alleged loan was made by E. L. Harper without authority, and that the funds obtained were never used by the Fidelity Bank, but were taken by Harper to his own