relying upon it, yet it must, for the present purpose, be accepted as made in good faith, and, being so accepted, it is, I think, sufficient to entitle the defendant to insist upon the proof which he demands. The rule of court was not intended to fix upon a party the admission of a fact which he does not remember, and therefore asks shall be proved, even though he acknowledges its existence to be possible. The other matters set up in defense need not be now considered. Judgment for want of sufficient affidavit of defense denied.

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## LEFAVOUR v. WHITMAN SHOE CO.

(Circuit Court, S. D. New York. December 31, 1894.)

CONTEMPT—INTERFERENCE WITH SHERIFF'S POSSESSION OF ATTACHED PROPERTY.

Plaintiff had been an agent for defendant, conducting business in his own name, and selling goods, on credit, to sundry persons. He commenced an action by attachment, in a state court, against defendant, and caused the attachment to be levied upon the debts due from the persons to whom such goods were sold. The cause was removed to the federal court, and the attached property transferred from the sheriff to the marshal. While the debts were thus in the hands of the sheriff and marshal, plaintiff proceeded to collect the same, and received the proceeds. *Held*, that such conduct was a contempt of court.

Prior to October 30, 1893, plaintiff, Herbert Lefavour, conducted business on his own account at 96 Duane street, New York City. On that day he made a contract with defendant, the Whitman Shoe Company, of Boston, Mass., under which he thereafter conducted business at the same place as its agent, but under his own name; all goods, assets, book accounts, etc., of the business becoming the property of the Whitman Shoe Company. In August, 1894, the Whitman Shoe Company assigned all its property, including the business at 96 Duane street, New York, to William H. Daniels, for the benefit of its creditors. October 31, 1894, Lefavour commenced this action against the Whitman Shoe Company in the supreme court of New York, and caused an attachment to be issued and levied upon the property at 96 Duane street, including the book accounts.

November 10, 1894, the cause was removed to the United States circuit court, and on November 16th, pursuant to an order of that court, the attached property was delivered by the sheriff to the United States marshal. On November 20th an order was made directing the marshal to deliver the attached property to William H. Daniels, who had claimed the same, as assignee, the sureties upon the indemnity bond on such claim having failed to justify, and, under said order, the books, containing the accounts, with persons to whom goods had been sold, were delivered to Daniels. After the levy of the attachment, and both prior and subsequent to November 20th, the plaintiff Lefavour, with the assistance of Abraham A. Joseph, an attorney, collected a number of the book accounts outstanding at the time of the attachment, in some cases by solicitation, and in others by the threat or use of legal process. The defendant and Daniels now move to punish plaintiff and Joseph for contempt in collecting such accounts, alleging that such collection was misconduct by which a right and remedy of defendant and of Daniels was defeated, impaired, impeded, and prejudiced.

Abram Kling, for complainant.
George H. Adams, for defendant.

LACOMBE, Circuit Judge. Joseph denies under oath that he was aware of the facts, which were manifestly within the knowledge of the plaintiff. He may be given the benefit of the doubt, and as to him the motion is denied. The writ of attachment commanded the sheriff to attach and safely keep so much of the property within the county, which the defendant had or might have at any time before final judgment in the action, as will satisfy plaintiff's demand. In obedience to such writ, the sheriff, by his deputy, presented himself at the premises No. 98 Duane street, where the business of the defendant was conducted, and, serving the notice required by law, attached all personal property there found, including "all books of account, vouchers, and papers relating to the property, debts, credits, and effects of said defendant." Lefavour appears to have been present on this occasion, and to have himself pointed out to the sheriff the property, books, papers, etc., levied upon. It is no doubt true that the sheriff did not give to the several individuals and firms who were indebted to defendant the notice required by the New York Code, which, if served, would have made them liable should they thereafter pay such debts to any one except the sheriff or his proper representative. So far as the defendant was concerned, however, or any one claiming through the defendant with full knowledge of all the facts, levy was complete when the books and papers were taken into the custody of the sheriff, and the defendant's representative notified thereof. It appears that subsequent to the levy defendant has collected some of the money due to the defendant, enumerated in its books, and which he perfectly well knew was included within the writ and notice; and this money he collected as the representative and former business manager of the defendant. In so doing he has acted in disobedience of the writ, which ordered that the property should be safely kept by the sheriff. The removal of the cause to this court makes it the vindicator of the writ which, by section 4 of the judiciary act of 1875, is declared after removal to hold the goods or estate attached or sequestered to abide final judgment in this court. As to debts due to the defendant, therefore, which were collected by Lefavour prior to November 20, 1894, he seems to be plainly in contempt. As to like debts collected by him after November 20, 1894, the case is not so plain, and he may be given the benefit of the doubt. Proceedings to punish for contempt, however, are personal, and there is nothing to show that Lafavour has been served personally with notice of this application. Plaintiff may therefore take an order to show cause directed to Herbert Lefavour, requiring him to appear personally before this court on Saturday, January 5, 1895, at 11 o'clock in the forenoon, and there and then show cause why he should not be committed for 10 days as a punishment for his contempt of this court.

## UNITED STATES ex rel. GOLDSTEIN v. ROGERS.

## SAME v. AMERICAN STEAMSHIP CO.

(Circuit Court, E. D. Pennsylvania. January 22, 1895.)

Nos. 562 and 563.

1. IMMIGRATION—POWER OF COURTS TO REVIEW ORDERS FOR DEPORTATION.
   The federal courts have no power to pass upon the acts of the commissioners of immigration when in the exercise of the right of excluding an alien upon the ground that said alien would, because of poverty and lack of opportunity to obtain employment, become a charge upon the civil authorities.
2. SAME—AUTHORITY TO DETERMINE QUESTION OF EXCLUSION.
   Congress has the right to vest in certain officers, exclusive of the courts, the federal authority to determine whether a person, not a citizen or inhabitant of the United States, shall be excluded from admission to this country.

These were petitions for a writ of habeas corpus filed by Bernard Blum against John J. S. Rogers, commissioner of immigration for the port of Philadelphia, and by the same relator against the International Navigation Company.

The petitions averred that the relator, Bernard Blum, was an uncle of Israel Goldstein, a native of Poland; that the said Goldstein was unlawfully detained on board one of the steamships of said company upon the order of said Rogers. The answer of the International Navigation Company set forth that the said Goldstein had been an immigrant on board the steamship Kensington, and that by order of the said commissioner he was about to be deported in another vessel of the same company. The answer of the commissioner set forth that the said Goldstein, upon arrival at the said port, having been examined, had been found to have but $4.25 upon his person, was a tailor by trade, and was bound for New York City; that in the opinion of the commissioner, which opinion had been affirmed on appeal by the bureau of immigration at Washington, the said Goldstein was likely to become a charge upon the public, for three reasons: First, owing to the small amount of his property; second, owing to the congested condition of the tailoring trade in New York City; third, owing to the nonliability of his said uncle, the relator, to support him. Therefore it had seemed advisable to order his deportation as a pauper immigrant.

Charles Hoffman, for relator.
Ellery P. Ingham, U. S. Atty., for Rogers.

DALLAS, Circuit Judge. I have considered, in the light of the arguments of counsel and the cases cited by them, the objections and traverse filed yesterday to the returns upon these writs. It is, I think, desirable that a decision should be promptly made, and therefore I will not postpone it by awaiting opportunity to reduce my views to writing. I am clearly of opinion that congress has, without exceeding its constitutional power, vested in certain officers, exclusive of the courts, the final authority to determine whether a person, not a citizen or inhabitant of the United States, shall be excluded from admission to this country. Israel Goldstein is, admittedly, an alien. Therefore the jurisdiction which has been exercised in his case was rightfully assumed, and the proceedings which ensued are not subject to review by this court upon habeas corpus or otherwise. The writs of habeas corpus are, for this reason, discharged.

## In re CHIN YUEN SING.

(Circuit Court, S. D. New York. December 27, 1894.)

IMMIGRATION—BAIL ON APPEAL FROM DENIAL OF WRIT OF HABEAS CORPUS.

The court being prohibited from admitting to bail an applicant for a writ of habeas corpus, who is a Chinese immigrant seeking release from detention by the collector of customs, while the application is being considered in the first instance, it would be a manifestly improper exercise of discretion to admit such applicant to bail, pending an appeal from a denial of the writ, whether the court is prohibited from so doing or not.

Application to release on bail, pending appeal from a decision of this court dismissing the writ. The relator is a Chinese immigrant. The collector of the port decided against his right to land, and detained him under the statutes.

B. C. Chetwood, for the motion.
W. Macfarlane, U. S. Atty., opposed.

LACOMBE, Circuit Judge. It is unnecessary to decide the question argued upon this application, viz. whether or not this court is expressly forbidden by statute from releasing on bail pending appeal, where the relator is a Chinese immigrant. Concededly, there is such a prohibition, where the application is being considered by the court in the first instance. Act May 5, 1892, § 5. That being so, it would be a singular exercise of discretion which would release an immigrant on bail after the court has decided that he should not be permitted to enter the country, when the statutes require that he shall not be released on bail before the court has so decided, and when there is still a possibility that its decision might be favorable to him. Application denied.

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## WHITE et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 15, 1895.)

CUSTOMS DUTIES—CLASSIFICATION—MANUFACTURES OF JUTE AND FLAX — BURLAPS.

Articles woven of flax, and of jute and flax, less than 60 inches in width, used chiefly in the manufacture of clothing, for the particular purposes of stiffening collars and fronts of coats and other garments, and as bands in trousers, etc., the goods being known commercially as "canvas," "paddings," "ducks," "coatings," etc., are properly dutiable as manufactures of flax, under paragraph 371 of the tariff act of October 1, 1890, and as manufactures of jute and flax, under paragraph 374 of that act, and are not dutiable as burlaps, not exceeding 60 inches in width, under paragraph 364 of the same tariff act.

At Law.

Appeal by the importers from a decision of the board of general appraisers affirming the decision of the collector of the port of New York in the classification for customs duties of certain articles entered at that port from a foreign country March 13, 1893, which articles were classified for duty, as to part thereof, as manufactures of jute and flax, valued at over 5 cents per pound, at 40 per cent. ad valorem, under paragraph 374 of the tariff act of October 1, 1890, which is as follows: