

and it may be allowed, but the proof and allowance of it must be subject to the other provisions of the law. The proof and allowance of it before the end of the year will not entitle him to participate in dividends if the assets have been previously distributed by order of the referee, unless other assets are subsequently discovered, or there are unclaimed dividends, under section 66, subs. a, b. The final settlement or closing of an estate in bankruptcy cannot be delayed when it is ready for the final settlement or closing thereof, and other creditors cannot be kept out of the money which is due them upon their claims in order to furnish the negligent creditor a further opportunity for the proof and allowance of his claim after all the assets of the estate have been converted into money and are ready for distribution. Under the bankruptcy law of March 2, 1867, second and third meetings of the creditors might be held, respectively, three and six months after the adjudication, or earlier, if practicable, and a final distribution might be ordered and made at a third meeting of the creditors, whenever held, excluding from participation therein all creditors who had not then proved their claims. Rev. St. U. S. §§ 5092-5094. A dividend which was ordered and paid at an earlier meeting of the creditors could not be disturbed by the subsequent proof of claims. Id. § 5098. Section 57, subd. n, of the present act, does not make any substantial change in these provisions, except to restrict the proof of claims for any purpose to the period named therein.

The ruling of the referee upon the question certified by him is therefore overruled, and he is directed to proceed with the settlement of the estate in conformity with this opinion.

BUTTFIELD v. BIDWELL.

(Circuit Court, S. D. New York. April 23, 1899.)

CUSTOMS LAWS—EXCLUSION OF INFERIOR TEAS—CONSTITUTIONAL LAW.

The present tariff law vests in the administrative officers of the government the power to fix the standard of quality of teas that may be imported, which does not necessarily depend on their purity and wholesomeness, and to determine finally the question whether an importation meets the requirements of the standard so fixed; and such provisions are a constitutional exercise of legislative power.

This is a suit by William J. Buttfeld against George R. Bidwell, collector of the port of New York, to restrain his action in respect to the importation of certain teas. Heard on motion for preliminary injunction.

James L. Bishop, for the motion.

Edward B. Whitney, Special Asst. U. S. Atty., and Arthur M. King, Asst. U. S. Atty., opposed.

LACOMBE, Circuit Judge. Having reached a conclusion in this cause, it seems best to announce it promptly, instead of withholding it in order to prepare an elaborate opinion, because from an order

now made an appeal may be taken and perfected so as to be heard at the session of circuit court of appeals on May 24th (the last session before vacation), when the circuit justice is expected to sit.

In brief, it may be said that this court is still of the opinion expressed in the earlier cause of Cruikshank v. Bidwell, 86 Fed. 7, that, by the insertion of the word "quality" in the statute, congress intended to cover more than mere purity and wholesomeness. So interpreted, the statute is in entire harmony with the drift of recent legislation, which, to a continually increasing extent, relegates to governmental determination and control matters which have always heretofore, in this country, at least, been left to the disposition of the individual citizen, or to the operation of natural laws. The questions as to the power of congress to pass such an act, and to provide that the standard of quality should be fixed each year under the supervision of the secretary of the treasury, were passed on in the Cruikshank Case. Motion denied.

PETERS v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. February 13, 1899.)

No. 463.

1. **CRIMINAL LAW—OFFENSES COGNIZABLE BY FEDERAL COURTS.**

The courts of the United States do not resort to the common law as a source of criminal jurisdiction, but can only take cognizance of such crimes and offenses as are expressly designated by the laws of congress, and of which they are by such laws given jurisdiction.

2. **INDICTMENT—SUFFICIENCY—CHARGING OFFENSE IN LANGUAGE OF STATUTE.**

Where a statute fully, directly, and expressly, without any uncertainty or ambiguity, sets forth all the elements of an offense, an indictment is sufficient which charges the offense substantially in the language of the statute.

3. **SAME—DESCRIPTION OF OFFENSE.**

The sufficiency of an indictment is to be tested by ascertaining whether it contains every element of the offense intended to be charged, and sufficiently apprises the defendant of what he must meet, and whether, in case other proceedings are taken against him for a similar offense, the record shows with accuracy to what extent he may plead a former acquittal or conviction.

4. **SAME—REFERENCE TO AVERMENTS OF PREVIOUS COUNT.**

An averment in the second or a subsequent count of an indictment, drawn under Rev. St. § 5209, that said defendant, on a date given, "being then and there the cashier of said association as aforesaid," as such cashier, committed the acts charged, is sufficient to identify and incorporate in such count the averments of the first count that the defendant was, at the time referred to, the duly elected and acting cashier of a certain national banking association, and that such association was at the time existing and carrying on business under the laws of the United States.

5. **SAME—MANNER OF DESIGNATING YEAR.**

The designation in an indictment of the year in which the offense is laid by Arabic figures is sufficient, and no prefix is essential; the year of the Christian era being understood as meant in all public or judicial documents in this country, unless otherwise expressed.

6. **NATIONAL BANKS—FALSE ENTRIES BY OFFICERS—SUFFICIENCY OF INDICTMENT.**

An indictment against a sole defendant, charging that, as cashier of a national banking association, he caused and procured the making of false entries in the books of the bank, by certain clerks under his control as