

isdiction of this court in the distribution of his individual assets and estate, in satisfaction of the claims of his private creditors.

2. Have the petitioning creditors made out a case to warrant the court in annulling the discharge heretofore granted to the bankrupt? Section 5120 of the Revised Statutes prescribes the manner of annulling a discharge by a creditor who takes steps to contest its validity at any time within two years after it has been granted, on the ground that it was fraudulently obtained. The application to the court shall be in writing, and shall specify which in particular, of the several acts mentioned in section 5110, it is intended to prove against the bankrupt, and shall set forth the grounds of avoidance. In his proofs the creditor is limited to the particular acts specified, and no allegation will be considered outside of the acts named in the said section. On the hearing, the court must be satisfied of two things: (1) That the fraudulent acts had been committed by the bankrupt before the date of the discharge; and (2) that the creditor had no knowledge of the same while the application for discharge was pending. After a careful consideration of the evidence to sustain the fraudulent acts alleged in the petitions, I am satisfied that the proofs in the case only go to such acts as were shown on the examination of the bankrupt previous to his discharge. All the creditors of the bankrupt are parties to the proceedings, and when an application is made for the bankrupt's discharge, and his examination takes place, the creditors must then oppose the discharge for the fraudulent acts discovered by his examination; and, if they abandon their opposition, they are afterwards estopped from attempts to annul the discharge, except upon grounds afterwards discovered, and not known or found out on the examination. I am of the opinion that the discharge ought not to be annulled upon the case presented.

3. What creditors are permitted to participate in the distribution of the assets? This is an individual proceeding against Jay L. Adams, and his individual creditors have the first lien upon the fund. The partnership creditors agreed to the composition, and have partaken of the fruits. However irregular those proceedings, they will not be allowed in these proceedings for the distribution of the private estate of the bankrupt, as against his individual creditors, to impeach their validity. It appears, however, that, as to several creditors, the same debt is due from the partnership and from Jay L. Adams individually. Several of them were proved on notes of the partnership for which Jay L. Adams is liable as an indorser. In such cases, the creditor has two sources to look to for the payment of his debt, and has the right to proceed against both parties until his debt is paid. These creditors are entitled, therefore, to share with the individual creditors of Jay L. Adams in the distribution of the fund in the assignee's hands.

The petitions to vacate the discharge, and annul the proceedings in this court, must be dismissed, and the assignee will proceed with the distribution of the assets according to the views above expressed.

UNITED STATES *v.* HACKETT and others.

(*Circuit Court, N. D. California.* January 31, 1887.)

1. COURTS — OF UNITED STATES — DISTRICT OF CALIFORNIA — DIVISION OF DISTRICT — INDICTMENT.

Under act of congress of August 5, 1886, dividing California into two judicial districts, and providing, in section 11, that "all offenses heretofore committed in the district of California shall be prosecuted, tried, and determined in the same manner, and with the same effect, to all intents and purposes, as if this act had not been passed," the old district and circuit courts for the district of California are practically continued in existence for the purpose of prosecuting offenses antedating the passage of the act, and an indictment for such an offense found by a grand jury of the old district or circuit court, after the passage of the act, is properly found.

2. SAME — QUALIFICATION OF JURORS — APPLICATION OF STATE LAW.

In applying Code Civil Proc. Cal. § 198, establishing, as one of the qualifications of a juror, that he shall have been "assessed on the last assessment roll of the county, or city and county, on property belonging to him," to the United States courts, under the act of congress adopting as the qualification of jurors in the United States courts those prescribed by law in the courts of the state, it is sufficient that the juror pays taxes upon property assessed upon the assessment roll, although assessed in the name of another.

Motion to Quash Indictment, and Plea in Abatement.

The proceedings in this case were remitted from the district court to the circuit court for decision. The motion to quash was upon the ground that the act of congress of August 5, 1886, dividing California into two judicial districts, abolished the old district of California, and as this indictment was found by a grand jury of the old district court, after the passage of the act redistricting the state, that it was not properly found. The plea in abatement was on the ground that two of the grand jurors who found the indictment did not possess one of the qualifications for jurors required by the statutes of California, viz., that they were not on the last assessment roll for any county in the district, and therefore the finding of an indictment by the grand jury was void. The act of August 5, 1886, provides for the organization of the Northern and Southern districts, and section 11 of the act reads "that all offenses heretofore committed in the district of California shall be prosecuted, tried, and determined in the same manner, and with the same effect, to all intents and purposes, as if this act had not been passed."

The Code of Civil Procedure of California, § 198, reads as follows:

"A person is competent to act as a juror if he be (1) a citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year, and of the county, or city and county, ninety days, before being selected and returned; (2) in possession of his natural faculties, and of ordinary intelligence, and not decrepit; (3) possessed of sufficient knowledge of the English language; (4) assessed on the last assessment roll of the county, or city and county, on property belonging to him.

"Sec. 199. A person is not competent to act as a juror (1) who does not possess the qualifications prescribed by the preceding section; or (2) who has been convicted of malfeasance in office, or any felony or other high crime."

*John T. Carey*, U. S. Atty., for plaintiff.