

iners in the Appraising Department is especially noteworthy, as well as the tendency, more or less apparent, of so many of the local officers and the Special Agents, to allude to New York as the port where the larger part of the offences against the revenue laws have been and are committed, as well as the disagreement of opinion between the Collector, the local officers of certain ports, and Special Agents of the Treasury assigned to those ports.

In transmitting to the Senate and House this large body of information on customs affairs, coming from so many different sources, and from so many widely separated ports and places, and many of the opinions conflicting with one another, it will naturally be expected by Congress, and by the country, that I express my own conclusions on the matters wherein there is not a unison of opinion in the replies.

INVOICES, AND THEIR VERIFICATION.

The weakest point in the execution of the customs-revenue law has been, and is now, at the inception of the importation of dutiable merchandise. Perhaps such defect in administration is inherent in any tariff system that depends for its integrity on the correct ascertainment of foreign values. The difficulties are twofold. The first comes of the persistent unwillingness of shippers to tell the truth in invoices. The second comes of the ignorance, or inattention, or something worse, of our own Consular officers. This last is the more inexcusable, since quite four-fifths of the money that upholds, and keeps alive, our entire Consular system is derived from fees levied for the pretended Consular examination of invoices.

During nearly three-quarters of a century, our tariff laws have required shippers, and especially manufacturers, as a condition precedent of sending merchandise to this country, to disclose, and declare, the real value thereof. This will appear on a brief review of our legislation, and such a review is necessary now because of the idea that has recently been so industriously put about, that there is something modern, or novel, or unnecessarily exacting in the present requirements of Congress in that relation.

In 1789, the first law was enacted to regulate the *collection* of duties. Therein it was required that every person, having any merchandise on board any arriving vessel, make entry thereof with the Collector of the port where the same shall arrive, declaring *the net prime cost*, and produce to the Collector the original invoice, or invoices. One year after ward that law was repealed. Another was enacted to take its place.

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for which, on March 2, 1799, the elaborate enactment of that last-named date was substituted. It has remained to this day as the foundation and the frame-work of subsequent legislation for the taking possession of arriving merchandise, and the levying and collecting of duties thereon. The thirty-seventh section declared as did former laws, that the owner or consignee, or agent of the owner or consignee of merchandise, shall make an entry thereof in writing with the Collector, and shall therein specify, among other things, the "*prime cost.*" This law referred, it is to be assumed, only to *purchased* goods.

On April 20, 1818, the law of 1799 was amended, and new requirements made in respect to invoices, so that, in addition to the former oath under the law of 1799, the person making entry of merchandise subject to *ad valorem* duty, must declare that the invoice produced by him exhibits "*the true value*" of such merchandise, in its actual state of manufacture, at the place from which the same was imported. The eighth section declared that any dutiable merchandise, belonging to a person residing and being at the time of entry outside of the United States, shall not be admitted to entry unless the invoice shall be verified before an American Consul abroad. This is one of the earliest laws requiring the participation of Consular officers in the importation and entry of merchandise. The same section declared that, under the circumstances of ownership last described, the owner or owners, shall swear "whether he or they are the manufacturers, in whole or in part, of such goods, wares or merchandise, or are concerned directly or indirectly in the profits of any art or trade by which they have been brought to their present state of manufacture; and if so, he or they shall further swear that the prices charged in the aforesaid invoice are the current value of the same at the place of manufacture, and such as he or they would have received if the same had been there sold in the usual course of trade." This early law, it will be seen, distinctly regulated the entry of merchandise by foreign manufacturers consigning their products to this country for sale on their account and risk, which has recently created so much difficulty.

The law was again amended on March 1, 1823, when the distinction was made plain, which now exists in the law, between an invoice of merchandise purchased abroad and imported by the purchaser, and merchandise not actually purchased abroad in the ordinary mode of bargain and sale, but imported by the manufacturer. That law of 1823 required that the invoice of *purchased* goods shall contain "a true and faithful account of the actual cost thereof" and be accompanied by an affidavit of the truth of such declaration administered by the Consul.

or Commercial Agent, of the United States. If the merchandise be imported by one who has not acquired it in the ordinary mode of bargain and sale, or belongs to the manufacturer in whole or in part, then the invoice, verified by the oath of the owner, must contain "a true and faithful account of the said goods, wares or merchandise at their fair market value at the time and place when and where the same were procured or manufactured as the case may be." On March 3d, 1863, new requirements were added. Theretofore only a single legalized invoice was necessary, but, in 1863, all invoices were required to be made in triplicate. They must, at or before shipment, be produced to a Consular officer *nearest the place of shipment*, and have indorsed thereon, when so produced, a signed declaration setting forth that the invoice is in all respects true; that it contains, if the merchandise be subject to *ad valorem* duty and was obtained by purchase, a true and full statement of the time when and the place where the same was purchased and of the actual cost thereof; and, when obtained in any other manner than by purchase, the actual market value thereof at the time when and where the same was procured, or manufactured. This law (Rev. Stat., sec. 2855) also requires that the person producing the invoice shall, at the time of production, declare to the American Consular officer, the port in the United States at which it is intended to make entry, whereupon such officer shall indorse, upon each of the triplicates, a certificate stating that the invoice has been produced to him, with the date of such production and the name of the person producing it, and the port of entry. This last proceeding by the Consul is the consular *authentication* of the invoice, as distinct from the *verification* of the invoice by the owner. The Consular officer is required to deliver one of said triplicates to the shipper to be used in making an entry; file another in his office to be there preserved; and transmit the remaining one to the Collector of the port of entry. It will thus be seen that, ever since 1823, and even earlier, the law has imposed upon a shipper of *purchased* goods the simple task of honestly and truthfully declaring by his invoice, to the customs officers, the actual transaction by which he obtained the merchandise.

It will be inferred from an examination of the documents herewith transmitted that a large part of the frauds perpetrated on the revenue have been, and are accomplished by incorrect invoices of merchandise not obtained by purchase, but consigned hither by manufacturers for sale in this country by their agents on the account and risk of the owner. The requirement of the law in respect to the invoices of such merchandise has been so long in force in this country that the meaning of it ought to be, by this time, well established, and understood, both at home

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and abroad, by those concerned in importations to this country, and the existence of a "market value" of merchandise manufactured abroad, and extensively imported, and sold in this country, ought to be a fact easy of ascertainment at home or abroad. But, nevertheless, the existence of the fact appears to have been denied, and the difficulty of ascertaining the fact by our own Appraisers appears to have been so great, that the ninth section of the law of 1883 declared that when the fact cannot be ascertained, to the satisfaction of the Appraiser, "it shall then be lawful to appraise by ascertaining the cost or value, of the materials composing such merchandise at the time and place of manufacture, together with the expense of manufacturing, preparing and putting up such merchandise for shipment."

The Special Agents of the Treasury, and several of the local officers of the customs, express the opinion that the consignment of products to this country by foreign manufacturers for sale by their agents, has largely and injuriously increased during recent years, and that our tariff law has promoted the increase. Whether or not that opinion be correct, and whether or not our tariff legislation has increased such consignments relatively to the sum total of importations, I am not prepared to say. Nor am I prepared to say that such form of importation, by which foreign manufacturers present their merchandise in this country for sale, is an injury, provided the full rate and amount of duty prescribed by Congress be thereon uniformly levied and collected. That form of importation is not novel. After the enactment of the law of 1863, and twenty years ago, prosecutions were begun in California, and in New York, for the forfeiture of large shipments of Champagne Wines, Sherry Wines, Silk Ribbons and Silk Goods, all of which were sent to this country by the producers, or manufacturers, on consignment. The averment of the Government was that the invoices did not contain "the actual market value" as required by the law of 1863, but that the invoices were knowingly and with intent, made to evade the revenue by declaring a less value. A suit originally tried by a Court and jury at San Francisco, came by writ of error to the Supreme Court at Washington. (See *Cliquot's Champagne*, 3 Wallace Rep., p. 114.) That Court in its opinion considered, and finally adjudged, many of the questions which have been presented to me, in the documents herewith transmitted to Congress, as novel and obscure. The Court defined the distinction in our revenue law between "the actual cost" of purchased goods, and "the actual market value" of consigned goods, and, in the following language, declared the meaning of the last phrase as applied to invoices. It said:

"The inquiry therefore presents itself: What is the 'actual market value' in the sense of that (1863) statute? The market value of goods

is, the price at which the owner of the goods, or the producer, holds them for sale; (2) the price at which they are freely offered in the market to all the world; (3) such prices as dealers in the goods are willing to receive, and purchasers are made to pay, when the goods are bought and sold in the ordinary course of trade."

Subsequently, and in 1868, the prosecution for the forfeiture of Sherry Wine, consigned in like manner by the manufacturers, came on for trial in the City of New York, before Judge Blatchford and a Jury sitting in the Federal District Court. The charge to the Jury of the learned Judge is given at length in the second volume of Benedict's District Court Reports, (page 249,) and deals in a most instructive and authoritative way with all the questions which appear to have recently so perplexed and confused the local customs officers at New York, and the Special Agents of the Treasury. During the next year, and in New York, a suit for the forfeiture of six cases of Silk Ribbons, involving similar questions, came on for trial before the same Judge and a Jury, where again the phrase "actual market value" was, for a third time, most clearly considered and defined in its manifold relations, together with the sources to which either the appraiser in determining dutiable values, or the jury in ascertaining invoice values were entitled then, and are entitled now, to look.

It is difficult to understand how an honest, and well-meaning manufacturer, consigning his products to this country for sale, can now have doubt about the meaning of the phrase "actual market value." He is to be presumed, as well as one of our own citizens, to know our laws. The laws themselves are printed, and judicial expositions of the meaning of the phrase "actual market value" have also been printed, and are accessible to the foreign manufacturer, as well as to our own citizens. Each one of those manufacturers, who has large transactions with this country, has most intelligent agents here who are his consignees. The manufacturer, or those agents, can always apply to this Department for information as to the meaning of obscure or doubtful phrases in the tariff law, or, if he or they prefer, they can apply to counsel learned in the tariff law who will adequately advise them. There can be no excuse, therefore, for ignorance, or misinformation. The plea of the foreign manufacturer is that, for his own purposes, he does not freely offer at the place of manufacture for sale and shipment to the United States, articles similar to those that he consigns to this country, and therefore, since they are not thus freely bought and sold at that place for the American market, there is no "market value" of them at that place within the meaning of our invoice law. But the Supreme Court of the United States anticipated the frivolous objection when it said that the "actual market value," in the sense of the statute, is such

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a price as manufacturers of the goods "are willing to receive." It is absurd for a foreign manufacturer to seriously contend that there is not a price, at the time and place of manufacture, that he expects to receive for the merchandise which he has manufactured year after year in such large quantities for consignment to the United States. It is probably true that the whole production of such manufacturer is not sent to the United States, but that a portion is sold to go to other parts of the world, and for such portion there is a price asked, and received, by the manufacturer, which should be evidence to his own mind of the "market value" of the portion sent to the United States. The net price which, during a longer or shorter period, the manufacturer abroad actually receives, as the result of his consignments to this country, should also offer evidence to his mind tending to show what is his "market value" of the merchandise at the time and place of manufacture. It is true that our law levies duties, not upon the *home* value in the United States, but upon the foreign value at the time of shipment, in the principal markets of the country of exportation, and evidence of this home value may not, in all cases, be relevant, according to strict rules of legal evidence, to the question of foreign value, but if a manufacturer takes orders from New York to deliver his merchandise in that city at a specified price, duty paid, that transaction ought to afford, and undoubtedly does afford, an honest manufacturer a satisfactory basis by which he can arrive at the "market value" at the time and place of manufacture. The real difficulty is believed to inhere in the fact that the manufacturer does not wish, or intend, to declare in his invoice to the customs officers of the United States, the true value prescribed by American law which he is bound to know, and does know. I can but think, therefore, that the difficulties suggested, by the Special Agents of the Treasury, and local officers, in the documents herewith transmitted, are more fictitious than real, and that they will, in a measure, disappear if there be more intelligence, vigor, and fidelity manifested by the consular, appraising and prosecuting officers of the United States in ascertaining invoice values.

That very extensive frauds have, during many years, been perpetrated upon the revenue by false invoice values, I cannot doubt. Many of them have been perpetrated by invoices of merchandise consigned by manufacturers. I appreciate the difficulties which surround the administration of our revenue law in that regard. But large frauds have also been perpetrated by invoices of goods obtained by purchase, and especially by invoices of merchandise obtained by purchase in the great cities of Europe. Sellers openly propose to buyers in those cities to make a fictitious invoice for use at the custom-house in this country

American purchasers who dislike to directly participate in a fraud upon the revenue of their country, consent, I am told, that the articles shall be shipped hither by an agent in Paris to his agent in New York, (such agent being often an express company,) and to such agent in New York the agent in Paris sends a fictitious and fraudulent invoice upon which the goods may be entered and duty paid,—the buyer fancying that, although he perfectly understands the transaction, and that the law is to be violated, he will, nevertheless, be himself free from the taint of immoral and illegal conduct, and his property safe from condemnation. Merchandise entered under such circumstances would be liable to forfeiture under the law if the facts were known to the officers of the United States, and could be judicially established.

I have dwelt so much in detail upon the subject of invoices, because a true and correct invoice lies at the foundation of, and is essential to, an honest enforcement of the existing complicated tariff law. A false invoice, coming from a well-known dealer abroad of respectable repute, may poison the appraising system of this Government at its fountain, and for a long time mislead the Appraisers. The United States have the right, and the power, to prescribe the circumstances under which either their own citizens, or foreigners, may be permitted to bring merchandise into the country. Those requirements may, in the opinion of foreign manufacturers, be onerous, severe, and embarrassing, but, if ordained by our law, they must be complied with, or those manufacturers must abstain from the attempt to send their merchandise hither.

CONSULAR AUTHENTICATION OF INVOICES.

A large number of the accompanying replies from Special Agents, and local customs officers, refer to the imperfect and misleading manner in which consular officers execute the laws enacted to insure the presentation of correct and truthful invoices upon the entry of imported merchandise. My observation leads me generally to concur in the criticisms made. The work, as it has been, for some time past, and is now performed by too many of our Consular officers, in the verification and authentication of invoices, is really worse than worthless, because tending to mislead, and deceive, appraising officers. It has been seen that not until the law of April 20, 1818, were Consular officers required to participate in the verification of invoices. Difficulties were experienced in executing that law because certain foreign countries forbade American Consular officers to administer oaths to shippers not American citizens. Therefore the subsequent law of 1823 attempted a relief in that regard by permitting such foreigners to make oath before a magistrate of the country where the oath was administered, and then requiring the invoice to contain a certificate by an American Consular