

## REPORT OF THE SECRETARY OF THE TREASURY. IX

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

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officer that the person administering the oath was a competent magistrate. Up to July 14, 1862, only such invoices needed to be thus verified, and certified, as covered merchandise, subject to *ad valorem* duty, the owner, or owners, of which resided out of the United States. The seventeenth section of the last-named law forbade any merchandise, no matter where or by whom owned, to be admitted to entry unless the invoice be verified by oath of the owner, or agent, to be administered by a Consular officer of the United States, or a magistrate of the country duly authorized. It is to be inferred that difficulties were again interposed, or consular officers represented that they were interposed, in the way of executing this requirement of an oath, because the subsequent law of March 3, 1863, instead of compelling the owner to make *oath* to his invoice, only required an indorsement thereon of a *declaration* signed by the proper person. Two years later, and on March 3, 1865, there was an enactment, containing only one section (Rev. Stats., sec. 2862) which authorized all Consular officers to require, before certifying any invoice under the law of March 3, 1863, "satisfactory evidence, either by the oath of the person presenting such invoices, or otherwise, that such invoices are correct and true: *Provided*, That in the exercise of the discretion hereby given, the said Consular officers shall be governed by such general or special regulations, or instructions, as may from time to time be established or given by the Secretary of State."

Nothing contained either in the enactment of 1863, or in any previous legislation, distinctly imposed upon consular officers the responsibility and duty of deciding whether or not the actual and true value had been declared in the invoice, but the law of 1865 did, more distinctly than before, put that responsibility upon Consular officers, and yet discretion was therein given to require, or not to require, an oath. They were, nevertheless, to be governed by such regulations, or instructions, as might be given by the Secretary of State, who did, immediately after the enactment of 1865, instruct all Consular officers in this language:

"It is therefore manifestly but proper that those officers be held responsible for any want of truth or correctness in the invoices certified by them, and they will be responsible accordingly. They will be expected to keep themselves informed as to the kinds, qualities, and market value of the merchandise exported from their respective districts to the United States, and to see that each invoice exhibits a fair and true description of the merchandise to which it relates, and contains a true statement of the prices of value thereof. For this purpose they may, *whenever they deem it expedient*, require the oath of the person presenting the invoices, or of the shippers, owners, or manufacturers of the merchandise, to their correctness; and may even, if necessary, examine

under oath such persons or others whose statements would be of value, upon any matters calculated to satisfy the mind of the officers upon the general subject of inquiry. They were, however, admonished to embarrass or interfere with the course of legitimate trade as little as is compatible with the protection of the revenue and all honest traders against the practices of the unscrupulous; and they are therefore expected to observe great prudence and circumspection in their actions in order to avoid the just complaint of such interference." Section 1715 of the Revised Statutes declares that "no consular officer shall certify any invoice unless he is satisfied that the person making oath thereto is the person he represents himself to be, that he is a credible person, and that the statements made in such oath are true. He shall thereupon by his certificate state that he was so satisfied," and section 5442 punishes by fine and imprisonment any consular officer "who knowingly and falsely certifies to any invoice."

The law of 1823 declared that for each verification, *and* certificate of an invoice, by a Consular agent, the fee shall be two dollars and fifty cents, (\$2.50.) That is now the law. The State Department regulations direct that the three triplicates be considered one invoice in that regard. That declaration is repeated in section 2851 of the Revised Statutes, which is supplemented by section 716 (enacted in 1869) which also declares that if any Consular officers shall demand or receive, for anything done in verification or certification of an invoice, or permit any clerk or subordinate to demand or receive any greater sum therein, than two dollars and fifty cents, (\$2.50,) he shall be punished by fine and imprisonment, and removal from office. My inference is that neither the law of 1865, nor the instructions of Consular officers issued thereunder by the Department of State, contemplate an oath to be administered by any other than a Consular officer unless it should so happen that no such officer could be had. It is confirmed by the authority given in section 1750 of the Revised Statutes to every Consular officer "whenever he is required or deems it necessary or proper so to do," to administer, or take, from any person an oath, and to perform any notarial act which any notary public is required, or authorized, by law to do within the United States. Such oath is therein declared to be as valid, within the United States, as if administered therein, and that the offence of perjury can be predicated thereon.

Shortly after I came to the Treasury Department, my attention was called to complaints by shippers that in London, and elsewhere in Great Britain, they were compelled to pay for verification and certification of invoices a sum largely in excess of that prescribed by the Statute. I found on inquiry, that, after 1868-9, the practice had prevailed in

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our Consular offices in the United Kingdom of sending a shipper to a British notarial officer for the administration of an oath, and that the shipper was generally compelled to pay a sum not less, and often more than one dollar and twelve cents (\$1.12) for such administration, in addition to the two dollars and fifty cents (\$2.50) authorized by the Statute. It was represented to me that this additional large tax upon each shipment prevented the legalization of invoices, and inconvenienced the administration of the customs revenue in New York, and other large ports. The law generally forbids any merchandise to be admitted to entry unless accompanied by a legalized invoice, but a discretion is vested in the Collector of the port, under the general instructions of the Treasury Department, to admit, nevertheless, merchandise of a relatively small amount, and under proper circumstances without a legalized invoice. The excessive tax demanded for consular verification and authentication naturally increased the number of importations without a legalized invoice, and thus not only was the revenue inconvenienced, but receipts from the regular consular fee of two dollars and fifty cents (\$2.50) were diminished. With increasing facilities in this country for ordering small parcels of merchandise from European cities, and quickly bringing them to this country, the number of such relatively small importations increase, and it is obviously for the interest of the Government that they be accompanied by a formal and legalized invoice.

The circumstances under which the practice of levying this additional tax for an oath grew up in London and elsewhere, will be found exhibited (pages 352, 355, *et seq.*) in the accompanying documents. The relation of this excessive tax levied indirectly by certain Consular officers in Great Britain will be found significantly mentioned in an Ex. House Doc. No. 145, 3d Session XLII Congress. On May 19, 1881, a resolution of inquiry was presented in the Senate, asking the Department of State whether or not "any consul-general, consul or commercial agent, has been personally benefited thereby, and if so, to what extent." The reply of the Department of State, (Ex. Senate Doc. No. 122, 1st Session XLVII Congress) contains a full presentation of the general subject of consular fees for the verification and authentication of invoices, but omits to answer the most pertinent portion of the Senate inquiry.

The whole sum levied in the United Kingdom, in excess of the statute fee, has however been considered by one of the Special Agents of the Treasury (p. 353) in response to my specific inquiry, and it appears therefrom that there was levied on shippers to this country, during the fiscal year that ended on June 30, 1885, the great sum of eighty-three thousand five hundred and sixty-eight dollars and ten cents, (\$83,568.10.) The total number of invoices certified at the London Consulate, during

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the four fiscal years from 1882 to 1885, inclusive, having been eighty-three thousand seven hundred and eleven, (83,711,) the total sum exacted was ninety-two thousand and eighty-two dollars and ten cents, (\$92,082.10.) At Belfast, and its agencies, four thousand three hundred and sixty-two (4,362) invoices were certified last year. If the number of invoices certified at London, and in the United Kingdom, since 1868, was as indicated, an estimate can be made of the vast sums exacted, and of the benefit received by Consular officers on an arrangement like that reported as made at Bradford. Not a dollar of that large sum has really and appreciably benefited this Government, or been covered into its Treasury.

If the sum total of that large tax inflicted upon shippers, and ultimately paid by American consumers, could have been expended by the Treasury Department in the employment of experts at different points in Great Britain, to actually verify invoice values, something of good might possibly have been accomplished for the revenue, but under the notarial-oath system little has been accomplished for the revenue but injury. It appears from the Senate document last referred to, that generally on the Continent of Europe oaths are, for the reasons therein specified, not required by our Consuls on invoices.

I have been unable to discover a well-authenticated case of prosecution for perjury, or for a false oath, in the verification, or authentication, of invoices abroad, or indeed in our custom-houses at home. It is extremely doubtful whether in Great Britain a prosecution would be attempted, or would be successful if attempted. The crime of perjury would be, as I am advised, difficult to lay and prove in legal form, even if a foreign government would promote, or tolerate in its jurisdiction, a prosecution for an offence against the tariff law of the United States. But, while advising that the *notarial* oath be dispensed with, I would have Consular officers compelled to be more careful and vigilant in acquainting shippers with what our laws require an invoice to contain, and in admonishing them of the great perils that will await their merchandise in the United States if the invoice shall be found to be false in any essential particular. Excepting in a few places in which the manufacture of a limited number of products embraces the industry of the locality, it will be well nigh impossible for a Consular officer, no matter how alert and conscientious, to form a safe opinion in regard to the correctness of all invoices without an actual inspection of the merchandise. To rely upon samples presented by a dishonest shipper may be very misleading. In the large cities of Europe, where fifty, or seventy, or even an hundred invoices may in one day be presented to the Consul, covering every variety of merchandise it will of course be im-

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possible for Consular officers, no matter how expert in values, to adequately inspect the merchandise. It may well be doubted whether the foreign governments, that will not permit an oath to be administered by an American Consul, even although their own Consuls freely administer oaths in New York and in our jurisdiction, will tolerate a detention of merchandise by American Consular officers long enough for such a careful inspection thereof. Consular officers can, however, inform, instruct, admonish, and so somewhat deter shippers from making false invoices. That work they should be required to diligently perform, and not leave it to be done, in a perfunctory way, by subordinates, as is so much of Consular verification.

The Consular service of the United States is not, and cannot well be, under the immediate superintendence of the Treasury Department. The rights to be held, and the duties to be performed, by Consular officers in a foreign country, are regulated by treaty, or by international law. Our Consular officers are necessarily, therefore, under the immediate control abroad of our Diplomatic Agents. It is, for that reason, most fit and proper that the superintendence of Consular officers should be committed to the Department of State. But the legislation of Congress has not been quite logical, or consistent, in that behalf, inasmuch as while Consular officers are generally directed by law to make their reports to the Department of State, they are, here and there, as in section 1715 of the Revised Statutes, required to make reports to the Secretary of the Treasury. The sending abroad of Special Agents of the Treasury, to advise with and assist Consular officers, has not worked altogether satisfactorily, owing in part, perhaps, to the fact that the two classes of officers were subordinates of different Departments and thereby were naturally created inconvenient jealousies and rivalries.

I do not in what I now say, concern myself with any aspect of the Consular service excepting that which relates to the customs revenue, and to the interests of navigation which are especially committed to the Treasury Department, but in respect to the adequate protection of both of those interests I have a very decided conviction that our Consular service needs immediate reformation.

The whole cost of that service for the fiscal year ended June 30, 1885, was \$870,183.10; the whole sum received for official fees during that period was \$791,345.43, and thereof \$699,852 were paid by shippers to Consular officers on the verification of invoices, exclusive always of the large sums paid as unofficial fees to British notarial officers on the same account. Thus it will be seen that the cost of our imperfect Consular service to the Treasury was \$78,837.55 in 1885 in excess of its total

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receipts. During the fiscal year 1883, the total amount of Consular fees received amounted to nine hundred and twenty-six thousand and fifty-four dollars and ninety-five cents (\$926,054.95) and the total cost was only \$870,290.60; in 1884 to nine hundred and eight thousand nine hundred and thirty-two dollars and thirty-two cents, (\$908,932.32,) and the total cost was only \$872,345.08, but the receipts were in 1885 only seven hundred and ninety-one thousand three hundred and forty-five dollars and forty-three cents, (\$791,345.43.) The large falling off may be accounted for by the fact that the fees for services to American vessels in 1884 were ninety-one thousand and thirty-one dollars and eighty-six cents, (91,031.86,) which class of fees was abolished by the law of June 26, 1884. There was also a diminution of consular fees for certifying invoices amounting to fifty-eight thousand nine hundred and thirty-seven dollars, (\$58,937.)

The existing system of Consular fees works badly for the customs revenue in this sense: The tariff law requires that each invoice of merchandise shall be produced to a Consular officer "*nearest* the place of shipment" which place may not necessarily be the place where the merchandise, if imported from across the sea, is actually put on board ship, but the place where the merchandise has been prepared for exportation hither, and its journey is actually to begin. Thus the place of shipment of goods manufactured, or produced, at Manchester, in England, and put on board ship at Liverpool, is not Liverpool but Manchester, and to the American Consular office at Manchester the invoice should be produced. The purpose of the law is to subject the invoice to the scrutiny of a Consular officer "*nearest*" the place where it was manufactured, or actually purchased. The frequent violations by Consular officers of the distinct commands of Congress, and of the Department of State, in this regard, constrained, on January 20, 1881, the sending by that Department of a very peremptory circular letter of complaint and admonition, in which it was said that Consular officers became rivals of one another in obtaining invoices for authentication. There was a scramble for fees! The motive and inducement of this rivalry were those statute fees, or the notarial fees by which the Consular officers either directly or indirectly benefited. Whether or not it be feasible to remedy this evil which is now in existence, by any modification of the existing Statute, I respectfully submit to Congress.

I also especially invite the attention of Congress to the disclosures made in the accompanying documents (p. 425) in respect to the character of a part of the Consular service in the Dominion of Canada, and its relation to that long frontier which separates the two countries,

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In the Manual of Regulations and Instructions prescribed in 1881 for the information and government of Consular officers, there are (pp. 581, 582) forms of declaration to be made where merchandise has been purchased, and also where merchandise is consigned by a manufacturer. These two forms follow with perfect precision the language of the law. There is also the form (No. 140) of a certificate to be attached by the consular officer, and that certificate is required to declare "that the actual market value or wholesale prices of the goods, wares, and merchandise in the said invoice, in the principal markets of the country, and at the time of exportation, are correct and true." This certificate, it will be seen, does not relate to the same place nor to the same time as does the declaration to be made either by the purchaser or the manufacturer. The former relates to the time and place of *purchase*; the latter relates to the time and place of *manufacture*; but the consular certificate is made to relate to "the principal markets of the country and at the time of *exportation*." The time of exportation may be different from the time of purchase, or the time of manufacture. This certificate of the Consul seems intended to cover the time and place which the Appraisers are to ascertain, instead of the time and place which the Statute requires in invoices.

My opinion is that one effect of the legislation by Congress, and the instructions by the Department of State, which placed such duties and responsibilities upon Consular officers in the verification and authentication of invoices, has been to lead shippers who are abroad, as well as appraising officers who are at home, to look, or to pretend to look, upon Consular officers as in effect Customs Appraisers in a foreign country, whose verifications of invoice values are to be received with a credit, and authority, which they really do not, and cannot, deserve. As it is now, the shipper misleads Consular officers, and they, in consequence, mislead Appraising officers, who return false values and classifications to the Collectors.

## THE ENTRY OF MERCHANDISE.

The Consular verification of an invoice having been completed, and the Consular certificate attached thereto, and the document delivered to the shipper, the next step in the law of importation is the presentation of that invoice to the Collector of the port at which the merchandise is to be entered by the person authorized, to make the paper, prescribed by the Statute, and defined as an "entry." The work of boarding arriving vessels when within the revenue jurisdiction of the United States; of presenting a manifest of the cargo by the Master; of unlading the