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VOL. XXXV. EASTON, MD., SATURDAY, APRIL 17, 1852. No. 17.

PRINTED AND PUBLISHED EVERY **SATURDAY MORNING,** BY **GRAHAM & JOHNSON.** J. A. JOHNSON, EDITOR.

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Extracts from Mr. Brooks' Speech.

In the House of Representa ives, made on the Deficiency Bill.

THE REVENUE AND TARIFF OF 1846.

The expenses of the administration of the Government now being necessarily so large, I shall be asked, no doubt, "How is it that you Whigs, who predicted the tariff of 1846 would not yield revenue enough to carry on the Government then, now find it yields enough not only to maintain the expenses of what you call a double United States, but to leave a surplus of some millions in the treasury?" It is a fair question, and I will not shirk it; I will meet it face to face. There was a time when it would have appalled me, but only because I was ignorant of the history, the written and unwritten history, of the tariff of 1846. It may well have appalled a Whig to know why it was, when such sound men as George Evans and others predicted in the Senate and in this House that the tariff of 1846 would not yield enough to carry on the Government, that it should really yield enough, and more too. I propose to solve this apparent contradiction of prophecy and experience, and to the solution I beg the careful attention of the House.

When George Evans and others, in 1846, made these predictions, they were based upon the tariff bill of July 30, 1846, which cut up all importations into schedules, from letter "A to letter I," and then affixed to them horizontal, universal ad valorems, from one hundred per cent. down to five per cent. and "duty free." The novelty of such a Procrustean tariff bed attracted their attention. No other nation under the sun, civilized or savage, had ever been thus before, to say the least, so *original*. Procrustes struck out the idea of a bed, upon which short men were to be stretched out to fit it, and long men to be chopped off to fit it; but a universal ad valorem tariff bed was something altogether new in political economy. So many cents duty on a gallon of brandy or wine was a duty, a specific duty, every body could comprehend; but "one hundred per centum ad valorem" ("schedule A") on brandy and other spirits distilled from grain (such schedules, from "A" to "I") confounded them. Brandy, wines, spirits, and a thousand other like things, susceptible of accurate specific admeasurements, why, they asked, ad valorem them? It was a premium for bad brandy and half poisoned wine, every body saw; for the cheaper was the nominal cost abroad the less was the duty at home, unless a wrongful or fraudulent system of invoices was introduced, by which all such things were rated abroad below what they were worth. What appraisers, they asked, too, can tell what wine is worth, (ad valorem,) unless they have been experienced, practiced wine bibbers from their youth up? Even they, too, might be deceived, for when liquors come over sea, especially high-priced wines, they often come, as it is termed technically, "sick;" that is, muddy and roiled; apparently of an ad valorem not quarter price. Universal geniuses, they said, were wanted under such universal ad valorems for appraisers—the universal genius that can turn from arrack or kirchenwasser to ginger roots and gelatine, or from bananas to beeswax, with an instant, thorough comprehension of every thing. Their great objection, however, and their apprehensions came from the serious radical defects in the principle of an universal ad valorem system, and from the numerous frauds that must constantly be arising, and the constant conflicts the treasury must always be in with merchants, American and foreign. Their leading objection was, that it based the American tariff upon European ad valorems—that is, made our American tariff in Europe; and that when it thus surrendered American to European interests, there was no fixed system, no proper rule, no real law prescribed for estimating these values even in Europe. It is obvious that an American tariff which surrenders the whole American system of home valuations to foreign valuations is a foreign tariff, levied at American ports.—If the value of cottons, or woollens, or iron-wrought articles is fixed in Europe, and upon that value, thus fixed there, a duty is levied and collected in New York, two things are obvious: first, that such a tariff is a foreign levied tariff, even though collected under American law; and, second, that the value, the advalorem, depends upon foreign estimation, foreign caprice, or, it may be, foreign fraud or perjury. The tariff law of July, 1846, was open to all these objections, and I shall show, on Democratic, anti-tariff authority, too, has been admitted so to be

The force of these objections struck Mr. Secretary Walker and the Committee of Ways and Means in 1846, and they did not believe that as the tariff stood then, under the act of July, with the whole advalorem system then subject to foreign caprice, that they could collect duty enough under it to carry on the Government. I make these remarks, and draw these inferences, because in that very extraordinary place for making tariffs, the civil and diplomatic bill, approved August 10, 1846, there was inserted—may I not say, smuggled; for who then probably foresaw its full effect?—this very significant and pregnant item:

"That in *appraising* all goods at any port in the United States, heretofore subjected to specific duties, but upon which ad valorem duties are imposed by the act of July 30, 1846, entitled an 'Act reducing the duty on imports, and for other purposes,' *reference* shall be had to values and invoices of similar goods *imported during that fiscal year*, under such general and uniform regulations *for the prevention of fraud or undervaluation as shall be prescribed by the* Secretary of the Treasury."

I call this item in this civil and diplomatic bill a significant and pregnant item, for it not only refers to, and to some extent revives, the tariff of 1842, (certainly as to values and invoices,) but what is more, it vested in Mr. Walker, then Secretary of the Treasury, the power of prescription of such general and uniform regulations (as to ad valorems) as he might think proper.—Mr. Walker instantly availed himself of this plenipotent power; and, in order to levy as high duties as possible on high advalorems, he not only revived what he could of the tariff of 1842, but he went a great deal further, even into what the Supreme Court of the United States subsequently decided to be contrary to law. He meant to balk the prediction of Whig prophets, law or no law; and he did do it in defiance of law.

ILLEGAL TREASURY CIRCULARS.

There are, Mr. Chairman—you as a lawyer knew—two kinds of law, written and unwritten; the statute law, such as that of July 30, and August 10, 1846, and the common law, the law of "prescription." The common law of the Treasury Department is a treasury code, called treasury circulars; and, as the tariff of 1846 was going into operation, Mr. Walker began to scatter them as thick as the leaves of Vallambrosa. The Treasury code, which issues its rescripts in Treasury circulars, has power more plenipotent for the time being than any statute law. The appraisers, who inspect and examine imports, and judge of their values, hold their offices from the Treasury, and whatever the Treasury prescribes with them is law. Hence, when Mr. Walker had in the civil and diplomatic bill, or thought he had, the power of "prescription" as to the ad valorems, and exercised that power without restraint, he became the law. This power, I shall show you, was exercised with a high hand from December, 1846, up to January, 1851.

Mr. Walker himself began the first exercise of the power of prescription in a somewhat famous Treasury circular, November 25, 1846. He quotes, as if with exultation, the hitherto hidden item in the civil and diplomatic bill. He dictates, also, the modes and manner of appraisement, thus:

"The principle upon which the appraisment is based is this: That the actual value of articles on ship board at the last place of the shipment to the United States, including all preceding expenses, duties, costs, charges, and transportation is the foreign value upon which the duty is to be assessed. The cost and charges that are to be embraced in fixing the valuation over and above the value of the articles at the place of growth, production, or manufacture, are:

"1st. The transportation, shipment, and terms; shipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water carriage, to the vessel in which a shipment is made, to the United States.—Included in these estimates is the value of the sack, package, box, crate, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels, and demijohns.

"2d. Commission, at the usual rate, but in no case less than two and a half per cent., and when there is a distinct brokerage, that to be added.

"3d. Export duties, including such duties at all places from the place of growth, production, or manufacture, to the last place of shipment to the United States.

"4th. Cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues, and shipping charges, dock and wharf dues, and all charges to place the article upon ship board.

"Discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount, positively known to the appraiser.

"The freight from the last place of shipment of the United States is not to be included in the valuation; and insurance is also excluded by law."

Here the Treasury circular assumed that the principle on which the appraisment is based is the actual value on board ships at the place of shipment, including *all* preceding expenses, duties, costs, charges, and transportation. The difference was essential to the revenue of the United States. You will see whether the duty was levied on the actual value at the place of purchase or procurement, or at the place of shipment. Silks or velvets, purchased at Lyons, in France, or watches or jewelry purchased at Geneva, had one value; but when transported for shipment to Havre, subject, it may be, to city duties, or duties international, to costs and charges also of transportation, that original value was essentially enhanced. Goods purchased of the manufacturer in the interior of Germany, or at forced auction sales, had one invoice—one value at the time of purchase; but at the time and place of shipment, from a great rise in value, or from some other cause, the invoice or ad valorem would be altogether a different one from what it was at the start. Here, then, in one Treasury rescript, Mr. Walker made a tariff of his own, and his appraisers in New York, Boston, and in every custom-house of course obeyed.

This Treasury rescript was followed by another, July 6, 1847, more imperial by far than its predecessor. This circular starts with stating that the twenty-third and twenty fourth sections of the tariff act of 1842 are in force, and gives the Treasury construction of them:

"This construction (I quote his circular) of the Department must be binding upon all who perform any duties under these laws, from whatever source their appointment or authority may be derived; and *from such decision, their can be no appeal*, except to the judicial powers. [Merchant appraisers—appraisers selected by the Collector—were claiming their right to construe the law for themselves, independent of the circular.] The department, notwithstanding the broad language and comprehensive authority conferred upon it by Congress, feels bound to adopt the construction of the revenue laws pronounced in solemn adjudications by the Supreme Court of the United States." [The merchant appraisers were hushed at a blow!]

Mr. Walker goes on to say, treating of the right claimed to estimate the market value of goods at the place or time of purchase:

"The most enormous frauds would be the consequence of such construction. Simulated, ficticious, and antedated purchases, to suit the period of lowest price, would prevail extensively, to the great injury of the fair trader and of the revenue. In truth, under such system, the whole importing business would soon be thrown into the hands of the dishonest and fraudulent, who would be willing to produce antedated or ficticious foreign sales, and that most useful and meritorious citizen, the honest and fair trader, would be thrown entirely out of the market. It is know at present—at the commencement of this proposed system—that even where the purchasers are not deemed by the parties fraudulent, the person designing to import into the United States goes to some prior purchaser, who has purchased, not for importation into the United States, at some prior date when the goods were much lower in value, and imports the goods in the name of the first purchaser, consenting to give a certain profit or price on the delivery here, and thus deprives the revenue of the difference in value, and obtains a most unjust advantage over the fair trader, who will resort to no such artifices. It is the duty of this Department to declare that such a practice is a fraud upon the revenue, and subjects the goods to seizure and confiscation, and the parties committing the fraud to all the penalties prescribed by law; and the utmost vigilance is enjoined upon collectors, appraisers, and all other officers of the customs, in taking all proper measures to detect and punish all who are engaged in such fraudulent practices."

This circular the Secretary followed up by another, August 7, 1848, in which he says:

"Forced sales of goods in the foreign market at reduced prices, under extraordinary and peculiar circumstances, cannot be taken as the true market value of such goods. When trade is paralyzed by revolution, and sacrifices of goods take place, sales then made, not being characterized by the ordinary free and healthy state of trade, do not, it is conceived, form proper data for the establishment of an 'actual market value' in contemplation of law."

There is sense and sound reason in all this; but it was, as will be seen in the end, in violation of law. The dangers to the revenue from changing all specific duties into universal ad valorems brought out yet another circular, December 26, 1848, in which the Secretary says:

"The intent of the 17th section of the act of 30th of August, 1842, in the appointment of merchant appraisers, is evidently to give the merchants an opportunity to appeal from one class of appraisers to another. But it is clear that Congress did not design to relinquish the power in the Government to select the merchant appraisers to whom the case might be referred, nor to give the parties appealing any more voice in the selection of such appraisers than of any other Government officers.—*To consult the parties concerned, or allow them a voice in the selection of merchant appraisers*, would soon result in permitting the importers to control the appraisement of their own goods, and it is presumed is not permitted at any port. Merchant appraisers should be particularly instructed that when acting in that capacity they are to be governed by the same rules and regulations as provided by law for the direction of regular appraisers, and are to act upon the principle *that the invoice price, or even the price actually paid for an article of merchandise, is by no means a true criterion of the fair market value as prescribed by law.* Adopt a contrary principle, and one who is so fortunate as to have a quantity of merchandise given him, would be entitled to receive it free of duty, or at a nominal duty, if purchased at nominal prices, and different rates would often be assessed by appraisers on articles of the same value. The fair market value intended by law is the general or ruling price of the article in the principal markets of the country from which the same shall have been imported."

The Secretaries of the Treasury who followed Mr. Walker necessarily followed the principles of construction he had established in his circulars and the precedents until they were overruled by the courts; and among them all they piled circular upon circular, Pelion upon Ossa, till an indignant community appealed from the high court of the Treasury to the higher Federal courts of judicature. The principles of collecting duties enacted by these Treasury circulars, and all in violation of law, as subsequently decided, were:

1st. That the value of goods at the time and place of shipment to the United States were to be the ad valorem, on which duties were to be collected at the American custom-houses.

2d. That the Treasury circulars were binding and conclusive upon collectors, and all classes of appraisers—merchant as well as Government appraisers—and that the Government had power in removing as well as in selecting merchant appraisers.

These Treasury circulars thus established a tariff of their own, known under no act of Congress, and, as soon as they were tested in the Federal court, the Federal court swept them away at once. The Whigs contended, and contended truly, that the tariff acts of 1846, as they have passed, left the whole revenue of the Government a prey to foreign fraud, or foreign caprice, or foreign invoices, subject to all sort of foreign fluctuation of value. The Whigs contended that under such a tariff there could be no adequate revenue. The Whigs contended that to allow foreign manufacturers to fix the market values of all dutiable (American imported) manufactures at their own door, by their own workshops, was not only wrongful and subversive of all true principles of a tariff or sound political economy, but in utter violation of the Constitution of the United States, which requires that "all duties shall be uniform throughout the United States." The keen eye of Mr. Walker saw all this, and hence in the civil and diplomatic bill (August 10, 1848) he obtained, as he tho't, new powers for Treasury constructions; and hence his great effort, under the tariff act of 1842, to make his construction and instructions "conclusive and binding." It is impossible to say, even to guess, how much of additional duties he gained to the Government by these illegal circulars; but it is enough to show, by his own Treasury confessions, that, without such circulars under the tariff of 1846, "enormous frauds, simulated, fictitious, and antedated purchasers" would have prevailed; and, under such a system, the whole importing business would soon be (have been) thrown into the hands of the dishonest and fraudulent."

NULLIFIED TREASURY CIRCULARS.

These Treasury circulars run on, and were acted upon as law, from December, 1846, till January, 1851, when the Supreme Court of the United States nullified the great body of them, and pronounced them void and without law. The revenue, nevertheless—the revenue boasted of as so large, but made so large only by lawless circulars—was collected under them for three years and over. Judge Woodbury, sitting in a case in Boston, (Greely *vs.* Thompson & Johnson,) first overruled these circulars. He decided:

1. That the date of the *procurement* of a cargo of iron in Newport, Wales, to wit: The 24th January, 1849, was the time at which the appraisers should have fixed the value of the iron, and not the date of invoice or bill of lading, the 24th of February, (the price have materially advanced during the previous thirty days, and the jury assessed damages against the collector in the sum of $6,681.28, as illegally exacted.)

A like case was made in New York.—N. L. & G. Griswold sued the the collector for excess of duties upon plantain bark, or hemp, and sugar, imported from Manilla, the collector exacting duties upon the market value at the time of shipment, and the plaintiffs paying under protest, contending that the law only compelled them to pay duties upon the market value at the time of purchase. The jury, under the instructions of Judge Nelson, gave a verdict for the plaintiff of $3,206 44, (difference,) and the verdict was affirmed, on appeal, by the Supreme Court in Washington.

These two cases, the pioneers of others now pressing, not only nullified the Treasury rescripts, and broke down the Treasury code, but they exposed the revenue to all the fatal consequences that Mr. Walker had set forth in his circulars, and realized at once the prediction of such men as Geo. Evans and others, that under such a tariff the Government could not be carried on. These decisions were made known immediately to the Treasury Department, to the Ways and Means Committees of the House, and to the Finance Committee of the Senate, and they inspired all with alarm. A double alarm was felt. First, it was asked, what are we to do for revenue? and next, how are we to get rid of paying the enormous sums in illegal duties we have been over four years exacting under these illegal Treasury circulars? An honorable Senator from Virginia, (Mr. Hunter,) the chairman of the Finance Committee, a gentleman I am happy to see, whose views are extending beyond the Blue Ridge and tide-water, immediately brought the whole difficulty and danger before the Senate. He introduced a bill which, March 3d, 1851, became a law, and which really and substantially revolutionized the old tariffs, in re-enacting the Treasury circulars, and providing stronger guards and greater securities than ever against under-valuations, false invoices unequal duties, &c. Mr. Hunter, in introducing his bill, said:

"The result will be that hereafter, unless we legislate in relation to the subject, the foreign value of goods will be computed at the time of the procurment or purchase, or at the place of purchase, and time of importation, and not at the time and place of importation, as has been heretofore done, and now proposed. *This would give rise to a great inequality, and open a door, perhaps a very wide door to fraud.* All men experienced in regard to this matter testify alike. All the Secretaries of the Treasury—Mr. Walker, Mr. Meredith, Mr. Corwin—were of the same opinion in regard to the mode in which the foreign value should be computed. And when we come to look at the effect of substituting the value at the time and place of purchase for that time and place which this bill proposes, and Mr. Walker's circular required, we find that it throws open a wide door door to fraud, and is calculated to drive the importing business into the hands of foreign merchants, thus discriminating in favor of foreign and against our own importers."

The tariff law of 1846, we thus see, as expounded by the court, left the whole revenue system subject to "great inequality," "to fraud," and was calculated to "drive the importing business into the hands of foreign merchants," "discriminating against our own."

Mr. Hunter continues—and I cite his authority because his condemnation of the principles upon which the tariff act of 1846 left the revenue to be collected, will have greater weight than any thing I could say:

"If you adopt the principle laid down by the Supreme Court, the same ship might bring a cargo from the same place and deliver it at the same port. But one part of this cargo having been purchased when the vessel sailed, and the other before, say thirty days, as was done with the iron in the case of Thompson and Forman; and the same article purchased at different times, but delivered at the same moment, would be subject to different rates of duty. This would not only produce a great inequality between man and man, but would often afford an opportunity and temptation for fraud, and make it very difficult for the appraisers to ascertain what was the precise value of these goods at the time designated by law for their estimation. Let us take, by way of illustration, the case of port wine in the warehouses of London. Wine may have been kept there improving, and after having been kept two or three years the importer, according to this decision, would have to pay duty for it according to its value at the time of purchase when it was new, and thus, although he sold the old article, he would have a great advantage over another importer who bought the article out of the warehouse and paid for it the value at the time of importation.

"Again: If we were to adopt such a principle of valuation as this the manufacturer would, in very many instances, have the advantage in carrying on the import trade with our own country, and would probably possess himself of the largest share, for such a mode of valuation would discriminate in his favor. The manufacturer who has a great quantity of goods on hand, and can wait when the market is glutted until they rise in value, according to this decision could send them over here and pay duty for them according to their value at the time of procurement, or by a fictitious sale transfer them to some consignee, or man of straw, at a date when prices were lower.—He would thus have an advantage over the American importer which would to a great extent throw the business of importation into his hands."

THE TARIFF ACT OF 1851.

It is almost impossible to describe in stronger terms the vicious principles of revenue in the tariff act, which were left to us by the Congress of 1846. They justify every prediction, every announcement of the Whigs of that day; and when enforced by the decisions of the Supreme Court, Congress immediately proceeded to correct them; and without the act of March 3, 1851, a sufficient revenue could not have been collected. The new tariff act of March 3, 1851, provides that—

"The actual market value, or wholesale price, at the *period of exportation* to the United States in the principal markets of the country," (of export,)

Shall be the real market value on which the duty shall be levied in the United States custom-house, to which shall be added—

"All *costs* and *charges*, except insurance, and *including in every case, a charge for commissions*, at the usual rates, as the true value at the port where the same may be entered, upon which the duty shall be assessed."

This new Tariff act gave the force of law to the nullified Treasury circulars; nay, went further in subsequent sections, by creating four travelling appraisers to go from port to port, to secure, as far as possible, a uniformity of duties in the ports from Eastport, Maine, to Puget's Sound, in Oregon. This act of 1851 is what the lawyers call a Congressional *cogno vit* to all the indictments of George Evans and others in the Congress of 1846. Under the old Treasury circulars, issued against law, and under this law alone has the tariff of 1846 been able to yield revenue enough to carry on the Government and to meet the public debt. The Treasury circulars, however, have bequeathed to the country hosts of lawsuits, fifty, it is said, in New York alone still undecided, such as that of Thompson *vs.* Collector of Boston, and Griswold *vs.* Collector, of New York, with business incumbering the Federal courts, and running up the already too great expenses of the Federal Judiciary; and with hosts of demands for refunding duties, the amount of which can be seen by glancing at the record and estimates of the Register of the Treasury. I see at one hasty glance now, $439,588, in "repayment of duties on sugar and molasses illegally exacted by collectors, refunded under a decree of the courts, acquiesced in by the Treasury Department; and these, among other such items, now swell up the apparent expenditures of this Government!

But, say gentlemen of the other side, "if the tariff of 1846, or what you now call the tariff of 1851, yields revenue enough, and is high enough, why demand any change in such a tariff? Why complain of it? I have anticipated such a question, and I am prepared to answer it now.

THE VICE OF THE SYSTEM.

The essential, radical, incurable defect of the tariffs of 1846 and 1851 is the universal *ad valorems*, and the *principle* of them, that establishes the duty to be levied upon the ever fluctuating, ever uncertain foreign valuation. It is wrong, radically wrong, that foreign nations should, in foreign invoices make a universal American tariff.—And it is a wrong that no stiff, stern legislation, no violent Treasury circulars, no travelling appraisers can ever cure. The tariff of 1851 has followed the foreign invoice down to the place of export and affixed to it there all costs, and charges, and commissions—so far, well—but levying a duty upon a Manilla, a London, or a Marseilles invoice, in a New York custom-house, is, to a great extent, collecting American duties upon a foreign tariff in Manilla, London, or Marseilles. It is impossible to inspire confidence in these foreign invoices. It is impossible to make an American merchant believe that he is doing business on fair and equal terms with the London born, the Manilla born, and the Marseilles born merchant. It is impossible to know for a certainty in New York whether or not the invoice is a real *bona fide* invoice, or if so, whether or not it may not be under, or above, the general, actual, even real value of the goods in the country of the export It is impossible to find appraisers that know every country, every production, every process of manufacture, every price of every thing, every where; and hence there is a constant collision between merchant and appraiser, between the Treasury department and the business of the country. To make them universal geniuses, or to qualify themselves to presume to know every thing every where, I venture to say you will find scarcely an appraiser who does not study a foreign price-current more than he studies the tariff statutes of his own land, and I am sure you will find Wilmer's European Times with its numerous prices-current (and not always correct ones) hung up in every appraiser's office, from the Commissioner of the customs here in Washington eastward to Eastport, and westward to San Francisco. Wilmer's European times is thus practically the American revenue law of the land; and the foreigner who wants to amend the American statute to suit him will resort to amending the prices-current sent from Liverpool to New York. "Why quit our own, I ask, to stand on foreign ground?" No other nation does so. The British revised tariff of 1846, which has so often been commended to us for imitation, collects only £38,000 ($182,000) per annum in a gross receipt for customs of £22,000,000 ($105,000,000) for articles paying *ad valorem* duties, being less than one-fifth of one per cent. of this immense income from imports! All Europe pursues a similar course.

The errors or frauds that do arise, and must arise, from subjecting all the productions of the earth to universal, horizontal *ad valorems* cannot be got over or got under, however much the attempt may be made to avoid the facts that have been marshalled in proof of the allegation. The Secretary of the Treasury, in his report of December, 1850, exhibits irresistibly-conclusive proof in demonstration of them.—He shows that prior to the act of March, 1851, in New York and Boston alone, the appraisers advanced on the invoices, from January, 1849, to October 1, 1850, $4,098, in number, thus:

Whole number of advances in N. York,	2,359
Whole number of advances in Boston,	1,739
	4,098

He shows, too, that in an importation of fruit (oranges) shipped by the same house, from St. Michaels to Philadelphia, N. York, and Boston, at Philadelphia they passed at the invoice value; at New York the appraisers advanced it 75 per cent., and at

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