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THE MOIETY QUESTION.

SPEECH OF HON. ELLIS H. ROBERTS IN FAVOR OF REPEAL.

HISTORY OF OPERATIONS UNDER THE LAW OF 1863—SEIZURE OF PRIVATE BOOKS AND PAPERS—AMOUNTS COLLECTED, DIVIDED AND REMITTED—ITS DEMORALIZING EFFECTS AND REASONS FOR REPEAL.

Mr. Ellis H. Roberts. Mr. Speaker, the measure which is now submitted for action commands attention by its importance. It deals with much of the machinery for the enforcement of our customs revenue laws. It reduces penalties and forfeitures in cases designated. It submits the question of fraud to the court or jury as a separate issue. It reduces the period of limitation within which suits may be commenced. It abolishes the whole system of moieties, while substituting moderate rewards for the detection of crimes against the revenue. It sweeps away the arbitrary processes for the seizure of books and papers. The aim is to do brave work toward the adjustment of customs legislation to the standard of freedom and intelligence attained in our other statutes.

This bill is the outgrowth of a careful investigation before the Committee of Ways and Means, which began on the 17th of February, and closed on the 28th of April, and which is recorded in a volume of nearly three hundred pages, (Miscellaneous Document No. 264.) Representatives of the merchants of the leading cities have been patiently heard, and the committee have sought information from the most competent experts in the service of the Government. They confidently present the bill as worthy to be enacted into law in the interest of the revenues, of public morality and of commerce.

APPEALS FOR ACTION.

Rarely have stronger appeals come to Congress than those for the reforms here proposed. The sense of wrong had grown to be profound and general among merchants. It found expression in passionate indictments, in glowing appeals, and in the more eloquent language of personal incident and unquestioned fact. Your customs laws rankled like fetters. You collected your revenues without assessment, but at the cost of settling into the hearts of those who saw their neighbors crushed about them. You wrung your forfeitures from the careless as well as the criminal, and the enormous fine of the penalty made the offence appear trivial. Ruin trod in the footsteps of your officers. The emoluments of prosecutors and their attorneys exceeded the salary of your President and of all the justices of the Supreme Court. The informer had but to "strike," and strong men grew pale, great houses tottered, while spoils were gathered in by a charmed circle.

OFFENCES HAVE BEEN COMMITTED.

Offences have been committed against the revenue. But crime may be cultivated instead of being prevented. Cruel and extreme penalties cultivate it. If it be fraud to misconstrue a statute, crime is inevitable. At the best, attempts will be made to defraud the revenue. They will increase, and the chance of punishment will be diminished, whenever public sentiment pronounces the laws unduly severe and their application harsh and oppressive.

DUTY TO REMOVE JUST GROUND OF COMPLAINT.

The first duty of the Government is to remove every just ground of complaint against the laws and their administration. When that is done, enforce them without fear or favor. Our institutions depend on the good-will of the citizen. For the collection of the revenue, one of the primary essentials is the moral support of those who pay. This has been to an alarming degree lost. Sympathy has been aroused for those charged with offences against the customs. Penalties enforced in accordance with the letter of the law have excited odium. The machinery of a past age, the rigors of the war period, the monstrous inferences of the war period, have lost their natural fruit. Violation of the laws has ceased to affix opprobrium. Their enforcement carries a taint as in the case of the old fugitive-slave law.

DEMORALIZATION OF IMPORTERS.

We have heard general denunciations of demoralization among importers. Commerce is not a prohibited occupation. Men honorable in every other relation, an entire class, including those who bear the ark of religion and the sacred fires of the hearth, and who sustain the churches and schools, cannot be all knaves in their transactions with the Government. If they be offenders, provide penalties against them which can be enforced by the courts. Let them be certain, and not dependent upon the temper of customs officers, nor the discretion of the Secretary of the Treasury. Your fines and forfeitures are now so enormous that suits begin with compromise and often end in remission.

ODIUM WITHOUT PROFIT.

The Government bears the odium of cruel exactions without their profit. Our statutes array merchants in hostility without advantage. The honest importer is annoyed and terrified by the shadow of ruinous penalties never collected. It will cost nothing to change this situation. Very much can be gained. Those who pay our duties are citizens. They are interested in our institutions. Besides their money interest in an equal enforcement of the laws, they are an essential part of the constituency which the Government proceeds and on which it depends. Their aid is better than police. Their support is better than armed men. Against their sense of wrong, against their aroused moral sentiment, laws and officers can do little. Just laws, reasonable penalties, humane enforcement, enlist the conscience, the interest, the active support of those who are affected. If we remove the just cause of the spirit, the harsh severity of barbaric ages in laws and administration, we must expect the restiveness, the attempts at fraud, the moral resistance which strong measures always will. The spirit of amelioration in general legislation, every removal of unreasonable penalties and punishment, has tended to diminish crime and to develop better citizenship. The time has come to be guided by a mitigation of the harshness of proceedings, and the extortionate forfeitures under our customs laws.

NOT A QUESTION OF FREE TRADE OR PROTECTION.

This is not a question of free trade or protection. Without duties with very low duties, the difficulty of collection would be increased. But even the most sturdy protectionist cannot desire that cruel and unusual punishment should be inflicted, or that our revenue system should be rendered gratuitously obnoxious. It becomes especially the advocates of protection to show that their policy can be maintained without gross wrongs to individuals, and without conferring extraordinary emoluments upon officers. The one class of theorists every barrier in the path of commerce is an offence. The other school must prove by action that annoying litigation, onerous fines and ruinous forfeitures are no part of its protective system. Can importation, under our laws, be safely prosecuted by honest citizens of average intelligence? This test is now applied. Only an affirmative answer can be permitted. Otherwise our whole customs system must be remodeled.

SEIZURE OF BOOKS AND PAPERS.

The first proposition of the pending bill is the repeal of all laws authorizing the seizure of books and papers. The system as it now exists was begun by the act of March 3, 1863. In practice previously shrewd informers had secured, under color of law, to take books and papers. But before that date no statute gave to the Government any power in this regard, which did not belong to every citizen. The act of 1863 gave out of the exercise of war powers. Revenue was necessary. At some, at least, of our great ports it was alleged that disloyal men were defrauding the revenue. Extraordinary powers were employed in every direction for the national defence. It was natural that Congress should concede them to protect the revenues.

The act of July 18, 1866, and of March 2, 1867, were restrictions upon this power. In the last Congress a bill for more radical restraints upon it was reported by the Committee of Ways and Means, and passed the House but failed in the Senate. A very thorough examination now impels the committee to go a step further in limiting the power of the Government and protecting the interests of the citizen.

The committee do not approach the question of the constitutionality of the statutes which it is proposed to repeal. The right of seizure of books and papers exists, it should be reserved for grave occasions; it should not be the daily resort of the Government. It is the powerful medicine for a dangerous disease, not the constant food for ordinary health.

What is this process? It is, upon the warrant of a judge based upon an affidavit, to enter any premises and to seize any books and papers and to hold them indefinitely to discover or to prove guilt. It is to give the Government officers free range in all the privacy of home or business. It is on mere suspicion to strip naked all the confidences of commerce and of life. The special agent, D. G. Jayne, stated before the committee the method of procedure. (Miscellaneous Document No. 264, page 171:)

"Mr. Roberts. Have you taken in any case any books or papers other than those bearing directly upon the charges made and of which notice had been given?

"Mr. Jayne. It has been the intention, sir, in every case to confine ourselves strictly to books of that kind. We have been very careful in every case to take none but the commercial books of the house. It is very difficult to tell whether a book relates to a particular importation. You have to trace the goods through in order to ascertain. Sometimes it will take a long time to select the books, and most generally the importer's counsel appears upon the scene immediately. We always wait until they arrive. They say, 'Do not wait here to make your examination; if there is any doubt about it, take it along.'

"Mr. Roberts. So that in fact, then, you have taken other books than those bearing on the case?

"Mr. Jayne. We have found that some books that we have taken did not have the entries in pertaining to the importations. That is true. It has not been the intention, however.

"Mr. Roberts. What use have you ever made of any books or papers, including entries, other than those bearing on the particular case?

"Mr. Jayne. Where I have found entries upon the same pages of the books and part of the same general transaction, we have frequently included them for recovery. We have used nothing except it came from the book which had the account of the importations in it to which the warrant referred."

Not merely for purposes of evidence in a particular case are books and papers taken, but they are seized and used for every purpose of a detective. They are held indefinitely, as in a recent case in New York, where, for ten months, Judge Hatchford has just issued an order for their return.

Frequently by mere mention of a warrant, to avoid publicity, officers compel access to the inmost recesses of safe and ledger. Such a power, in its essence, is arbitrary. Exercised by the best of men, it would be offensive and dangerous.

The only excuse for it would be necessity. Yet we do not concede to the Government such powers in defence of its own existence. In Britain, indeed, the official crime is historic, by which, upon private papers seized in his closet, Algernon Sydney was put to death. That brilliant name warns us of the danger of such a system. General warrants and writs of assistance long stained British jurisprudence. They have been abolished, and now the Crown has no power to compel evidence which the meanest subject does not possess.

In no other case whatever is the citizen subjected to like process. Not on charge of treason, nor for any other crime can personal rights be so assailed. Shall we concede the power for the maintenance of the revenue? Put it in the strongest light. Suppose it to be dollars and cents to the Treasury against the liberties of the people. The American Congress must always set liberty above revenue.

But they are not in antagonism. Harsh measures, the extreme resorts of despotism, always breed the crimes against which they are directed. In Turkey, in the days of the bow-string, cruelty was met by crime. Treason has in all lands disappeared as the precautions against it, the barbarism in its detection, and the violence in its punishment have been mitigated. This is the history of crime and of legislation.

In our great national trial it was not force; it was not severe laws which brought treasures into the coffers of the Government. In ordinary times such enthusiasm and sacrifice cannot be maintained. But you must guard against such cruel measures as will render frauds respectable, and will raise false importations into a sort of chivalry.

The Government should have before the law against citizens only the same remedies which citizens have against each other. It will then have every advantage on its side. It endures, and never dies. It has limitless resources. Its eyes are everywhere. Its swarms of officers are wilderness always at hand. The common interest is with it against the accused. In no State in the Union is any extraordinary authority required to collect local taxes. The national Government cannot need the power.

The cases in which the power of seizure has been exercised have not exceeded two hundred in all for the past four years—not an average of fifty a year. That is the statement of the Department of Justice. The greater share of suits for violation of the customs laws occurs in the Southern district of New York. In that district George Bliss, esq., the United States attorney, testifies, (page 197:)

"I have a statement of all the warrants to seize books and papers that have been issued in the Southern district of New York since the 1st of March, 1869. It happens to be five years, although the date was not selected on that account, but was selected for the reason that in the third volume of the report of the Senate committee which was appointed to investigate alleged frauds in the New York custom-house, and which was published in the year 1872, at page 727, a table is found, giving all of those cases from the 19th of March, 1869, to the 25th of November, 1871. The record which I have here takes that up and brings it down from that time to the present. It amounts to this, that in five years there have been 120 warrants to take books and papers issued in the Southern district of New York. In the year 1869, from March to December, there were 19 cases; in the year 1870, the whole year, there were 20 cases; in the year 1871, there were in the year 1872, 10 cases; the year 1873, 83 cases, and in the two and a half months of 1874, 4 cases. So that the committee will perceive that not only is this abuse, as it is called, much less in the extent to them as has been represented, but it is not an increasing abuse. The largest number of warrants issued was in the year 1871.

"Now, of those cases in which books and papers have been taken during those five years, 34 cases are still pending and 82 cases have been finally disposed of by judgment or settlement, or remission. (which I call settlement.) by the Secretary. In these 82 cases the parties have paid, or the judgments were recovered, for about $1,645,000, and the proportion of those cases each year runs very much the same. Of the 19 cases for 1869, 9 are still pending and 10 have been closed, realizing $435,000. Of the 34 cases in 1871, 10 are pending and 24 have been closed, realizing $275,000. Of the 10 cases in 1872, 2 are pending and 8 are closed, realizing $355,000. Of the 83 cases in 1873, 9 are pending and 22 are closed, realizing about $300,000. From the 4 cases of 1874, there has been nothing received. The amount in the Phelps-Dodge case has not been included in the year 1872, the warrant for the books and papers having been issued in that year. In carrying out the amounts realized they are credited to the year in which the warrant for the seizure of the books and papers was issued, although the amount may have been subsequently received."

The table is as follows:

Number of warrants to take books and papers issued in Southern District of New York for five years, from March 1, 1869, to March 1, 1874.

Year.	From	To	Total cases.	Still pending.	No. closed.	Approximate amount of judgment or compromise.
1869	March	December	19	9	10	$280,000
1870	March	December	20	4	16	435,000
1871	March	December	34	10	24	275,000
1872	March	December	10	2	8	355,000
1873	March	December	33	9	24	300,000
1874	March	December	4	4		
Total,			120	38	82	1,645,000

For this small sum of money an odium has been exercised and an indignation aroused beyond estimate in coin. For these few cases our statute-book is stained by these provisions. So far as is shown without them every dollar might have been collected. But suppose that the prosecute these few offenders the liberties of every citizen are put in jeopardy; may more, they are by solemn enactment potentially invaded.

The majority of the committee still deem it of moment to have a uniform rule for all the States for the use of books and papers. It stands in the third section of the bill. The committee do not intently exclude all authority to resort to such process in criminal cases. They extend the common right which exists for the collection of dues to suits for forfeitures. They prescribe a formal notice and a notice upon which books and papers may be produced in court, on actual trial, for specific evidence; not held for months for indiscriminate examination. Of no one is not to be seized at all. The defendant may, if he choose, refuse to produce them, and the alternative is the confession of the allegation based upon the books, unless good cause be shown for not producing them. A minority of the committee, in which I join myself, ask for a separate vote upon the third section upon the motion of the distinguished chairman of Ways and Means.

MOIETIES.

The laws permitting moieties to informers, and allowing officers of customs to participate therein, have been on the statute-book without interruption since 1799. In the 11th of February, 1863, a law was passed which was construed as excluding the officers from all share in the moieties. But in 1849 Judge Ware, of Massachusetts, (Davies' Reports,) decided that that law did not have retroactive effect, but authorized the practice which had then prevailed for half a century.

In 1867, March 2, the law was made more distinct, but was not changed in its essential provisions. Substantially, the statutes relative to moieties are now as they have been since the earliest days of the republic.

From 1849 to 1863, with only the interval from 1846 to 1849, these distributions were made by the several collectors, and not by the Secretary of the Treasury. No restraint of publicity was upon them. Only the injury of the officer was limited by his demands upon the importer or made certain any report of the case to the Treasury. Even now it is hard to tell how much was collected in those years. Annual reports of the Secretary of the Treasury have been examined since 1852. Previously to that date we only know that no supervision was exercised over the collectors; that they distributed to themselves and their subordinates the proceeds of fines and forfeitures, and that the dust of time thickens the darkness which gathers over them. Now, Congress acts upon the rule that no process of distribution should be hidden in secrecy. You ask to know, and will know, what the public money comes from and where it goes to. This may disturb timid nerves. It is the security of free institutions.

The report which the Secretary of the Treasury has submitted to the House shows that the total amount distributed at New York and Boston from July 1, 1863, to June 30, 1873, is $2,102,173.16. At other ports the amount was small. The proceeds have not increased in the recent years. At New York, where the largest share is paid, the collector received:

Name.	Period. From—	Period. To—	Amount.
Hiram Barney	April 8, 1865	Sept. 7, 1864	$94,607 39
Simeon Draper	Sept. 7, 1864	Aug. 3, 1866	66,014 65
Preston King	Aug. 3, 1866	May 15, 1867	93,186 94
Henry A. Smythe	Sept. 3, 1867	Mar. 31, 1869	176,710 13
M. H. Grinnell	May 16, 1869	July 20, 1870	41,204 00
Thomas Murphy	April 1, 1870	Nov. 20, 1871	85,907 54
Chester A. Arthur	July 21, 1870	Mar. 1, 1874	67,518 01

The rate of Mr. Draper's emoluments under Mr. Lincoln was more than double that of the present collector. It is also just to say that in the statement made before the Committee of Ways and Means the chief officers of customs in the leading cities have not been assailed, but have been generally commended for their fidelity; and Mr. Schultz, chairman of the delegation of New York merchants, expressly paid to the collector, naval officer, and surveyor of that port the very highest compliment, by these emphatic words, (page 112:) "There is not one of them whom I would not to-day make the executor of my will." The system works the mischief; and, in behalf of the system, no collector, no naval officer, no surveyor appears to say one word; on the contrary, those officers at Philadelphia come to ask for its unconditional repeal.

Under the stimulus of the moieties, collections under the customs laws, it is alleged, have been enforced by harsh and offensive measures. It is not pretended that they have not been made in accordance with the letter of the law. The charge is that the large interests of the officers has led to the employment of base means for the detection of frauds, to extreme constructions classifying as criminal acts without intent of wrong, to toleration of acts for years afterward denounced as criminal, and to the enforcement of penalties disproportionate to the offence and ruinous to men who had no crime in their hearts. The answer submitted to this allegation is, that the laws have been rigorously enforced without fear or favor; that the courts have been open for defence not only, but for the protection of personal rights, and the Secretary of the Treasury has always listened to every petition for mitigation and remission.

Numerous prosecutions and heavy and ruinous penalties cannot be of advantage to the Government. They may exasperate the citizen. They may render business hazardous, and repel from it prudent and responsible men. It is inevitable that the costs and risks will be charged over to the producer and consumer, with adequate increase for profit. For every dollar extorted by the Government, burning a deep sense of injustice into the victim, honest trade suffers and the whole community is made to pay tenfold.

The assumption is doubtless in favor of the continuance of a statute which under all parties has remained unchanged during our whole history. But conclusive reasons appear for its repeal. It cannot be wise to have it the interest of officers to permit violations of law; to reward them for crimes committed; to enrich them by prosecutions; to pay them for creating antagonisms between the citizen and the Government. The interest of the officers should be on the side of the Government, but not against the importer. It should be for the collection of the revenue at the lowest rates, not for the increase of litigation and the reduction of the receipts of the Treasury. The chief customs officers construe laws, administer them, direct prosecutions, receive propositions for compromise and settlement. They appear as prosecutors; they are neither judge nor jury, but their opinions have as much force as either; yet the laws give them moieties of the proceeds of every case.

Not only does sound reason demand the repeal of the law, but those charged with administration recommend it. Especially has President Grant and both his Secretaries of the Treasury pressed it upon the attention of Congress. In his message of 1869, President Grant said:

"Your attention is respectfully invited to the recommendation of the Secretary of the Treasury for the creation of the office of commissioner of customs revenue; * * and most especially to his recommendation for the repeal of laws allowing shares of fines, penalties, forfeitures, &c., to officers of the Government or to informers."

In the same year Secretary Boutwell said:

"Under existing laws officers of the customs and other persons appearing as informers are entitled to shares in fines, penalties, and forfeitures. During the fiscal year 1868–'69, the Treasury Department distributed the sum of $285,073.61 to such officers and to informers in the various cases arising under the customs revenue laws. A large additional sum was also paid through the internal revenue system. The frauds upon which the laws granting such allowances are based is that officers of the Government are stimulated to greater activity in the discovery of frauds on the revenue by the pecuniary interest. There can be no doubt that such is the effect of the policy; but the experience I have had in the Treasury Department has convinced me that the evils attending the system are more than compensated by the benefits derived from it. It often occurs that revenue officers are led to assert claims in behalf of the Government which have no just foundation in law or fact, but which are asserted because officers where real claims exist it is often the object of the informers and officers who share in the penalties to misrepresent the case to the Department so as to secure the advantage to themselves and others. But a more serious evil is found in the practice, quite general, of allowing persons to pursue a fraudulent course until a result is reached which will insure to the benefit of the officers and informers, instead of checking criminal practices at the outset. It is impossible to set forth in exact language the character of the evils that grow out of the present system. I am, however, fully of the opinion that the Government ought to rely upon public officers for the performance of their duties without stimulating them by any contingent advantages."

In 1870, March 31, President Grant said in his annual message:

"The present laws for collecting revenue pay collectors of customs and informers, and provide for moieties (shares in all seizures) which, at principal ports of entry particularly, raise the compensation of those officials to a large sum. It has always seemed to me as if it must tempt men at times work perniciously. It holds out an inducement to dishonest men, should such get possession of those offices, to be lax in their scrutiny of goods entered to enable them to make large seizures. Your attention is respectfully invited to this subject."

Secretary Boutwell repeated his previous recommendations in these words:

"It is my duty to call the attention of Congress to the importance of abolishing the system of shares in moieties as far as the benefits inure to revenue officers and other persons officially connected with the Government. This became more recommended in my last annual report, and a statement was submitted to Congress showing the amount received by officers of customs, together with the bill introduced for their salaries without any increase of appropriations from the Treasury: the sum now paid from moieties being quite sufficient to place the entire force upon a satisfactory footing in regard to pay.

"During the fiscal year the office of collector and surveyor of the port of New York each received from moieties the sum of $49,215.59, and the naval office the sum of $48,195.59.

"In most of the cases the officers do not perform special services entitling them to the allowance granted, and importers and others whose acts are made the subject of investigation, complain, and, I think, with just reason, that the agents of the Government are thus prompted to unjust proceedings against those charged with violations of the law. The Government ought to pay fair salaries, and rely upon the good faith of its officers for the performance of their duty. The difficulties which the Department has to meet, frequently is, that customs officers have an interest in proceedings for the discovery of fraud, the settlement of cases of the prosecution of them, which is frequently not the real interest of the Government; and, as a necessary result, the conduct of such officers is open to suspicion, both on the part of those who are particularly affected by it and the Government that they ostensibly represent.

"It may be deemed expedient to leave the law as it now stands in regard to informers who are not officers, giving a general discretion to the officer to enter into an arrangement with an informer for any share of the proceeds of the information, and giving to the informer perpetual right of action for the money so agreed upon, or any other valuable thing paid or given to an officer engaged in the discovery or prosecution of a fraud or legal wrong against the Government."

The Commissioner of Internal Revenue expresses a clear judgment against moieties, and his experience gives him a right to speak. His opinion, too, is decided in favor of rewards for information in lieu of the moiety system, recommended by Congress. In the Sanborn investigation he said, (page 96, report 559:

"Q. Congress repealed all the moiety system as far as internal revenue was concerned? A. Yes.

"Q. How long was that before the passage of the act which authorized the Sanborn contract? A. Not long; but I cannot give you the exact time.

"Q. Had the moiety system, up to the time of this repeal, been of such character as to recommend its continuance to you? Were you in favor of the repeal when it was repealed? A. I was in favor of its repeal with this other provision if I could have some means afterward of compensating persons who gave information, and for that a special appropriation of $100,000 was made. My objection was that, before that, officers and all had moiety alike, and that gave to the officers the appearance of hunters for prey rather than of officers doing their duty."

Q. What was the effect of the moiety system that was repealed by Congress on the service? A. It hurt the service, I think, in this way: The officer getting his share the same as a private individual, when he went to the citizen, the citizen always claimed that the officer came there to make money out of him rather than to discharge his official duty, and in that way it seemed to degrade the officer. I think that was the objection."

The present Secretary of the Treasury, in an elaborate letter to the chairman of the Senate Committee on Commerce, argues the subject at length, and recommends the abolition of the present system of moieties with one exception, to wit, where attempts at smuggling are detected or where the act of smuggling is accomplished."

This distinction is made in the bill as reported from the Committee on Ways and Means. It is in accordance with the repeated recommendations of the President and his Secretary of the Treasury. It is not presented as an Administration measure, but it has every claim to publicity, in the provisions relative to moieties, which such a measure could possess.

The bill will reduce in a large measure the emoluments of certain officers. This effect has more than a pecuniary significance. To save money is something; but the controlling principle is higher. The public service should be no place from which to extort huge fortunes for official or favorite. A British historian draws a picture of the effects of the passage of the reform bill:

"No example more aptly illustrated the altered relations of rulers to the people than the revision of official emoluments. Ministers once grew rich upon the gains of office, and provided for their relatives by monstrous sinecures and appointments egregiously overpaid. To grasp a great estate out of the public service was too often their first thought. Families were founded, titles endowed, and broken fortunes repaired at the public expense. It was asked what an oath was worth, but what services were to be rendered. This selfish and dishonest system perished under exposure; but it proved a tedious and unthankful labor to bring its abuses to the light of day. Inquiries were commenced early in the present century; but were followed by few practical results. At that time 'all abuses were freeholds,' which the Government did not venture to evade. * * Soon after the reform act, ministers of State accepted salaries scarcely equal to the charges of office: sinecures and reversions were abolished; offices discontinued or consolidated; and the scale of official emoluments revised, and apportioned to the duties performed, throughout the public service. The change attested a higher sense of duty in ministers, and increased responsibility to public opinion.—*May's Constitutional History of England*, volume 1, page 548."

That is a British picture. In all governments the tendency is to excessive official emoluments. When a legislator may, even by indirection, have an interest in them, they become doubly dangerous. They are always the source of faction, strife and corruption. They are no incitement to the most worthy; they may serve to organize and uphold the least deserving. To clip emoluments to the dimensions of fair compensation is one of the problems of statesmanship. It is in itself reform. It is an index of something deeper and better in legislation. Banish venality from the public service, and you confirm character and purify action. Substitute for money-getting higher ambitions and worthier motives. That is the aim in the blow we strike at moieties.

After abolishing the whole system of moieties the committee felt compelled to provide rewards for the detection of smuggling away from the custom-house, and for information for offences against the revenue by importers or officials.

Every representative of the merchants who referred to the matter before the committee, every Secretary and official who has discussed the subject, insists upon this distinction. Our long sea coasts and frontiers afford many facilities for smuggling. Officers stationed at isolated points, with all aid from other persons, with all diligence, will find it difficult to prevent it. The reward in such cases, the committee believe, will contribute to the interests of the revenue. The amount, it is to be observed, is to be certified by the court or judge before whom proceedings occur, and the Secretary will act upon that certificate.

In no case other than smuggling can any officer of the United States receive any reward or any share in it, but compensation for information may be paid to other persons for the detection of crime on the part of officials as well as of importers.

This policy of rewards to outside informers has been adopted for our own internal revenue. Britain, with its simple tariff on a few articles, finds it necessary to offer like rewards, (Lee's Laws of the Customs, 193.) In every government compensation for such information is found indispensable. To discover aggravated crimes local authorities everywhere incite effort and diligence in this way. The committee deem it dangerous to dispense with this provision. As a metropolitan journal, which cannot be said to be under custom-house influence, the New York *Tribune*, has sharply said:

"Honest importers do not wish to have the precautions against fraud relaxed. It is of more consequence to them than it is to the United States that every package of goods sent into the country should pay the full amount of duty required by law. They could afford, if necessary, to raise a liberal annual subscription for the compensation of informers and the detection of frauds."

In providing rewards, the committee have guarded that they shall not be excessive, by limiting them, except in cases of smuggling, so as not to exceed $5,000 in any one case, and by requiring a certificate of their value from the court or judge. They have also provided severe penalties against any officer who becomes interested in the rewards. The requirement that an annual report shall be made to Congress, in detail, of all payments for this purpose, provides every safeguard against abuse. And only from specific appropriations are any rewards to be paid.

PENALTIES AND FORFEITURES.

The penalties and forfeitures prescribed by law as construed by the court are seldom or never collected. They are so enormous as rarely to be named as the basis of a suit. They hang in terrorem over commerce and taint the atmosphere. They are neither collected nor do they serve to indicate the relation of offences to each other. Take this statement of the nominal penalties and duties withheld, with the amount in suit or paid in settlement, including the most important customs cases for the past two years:

Duties withheld.	Nominal penalties.	Amount claimed in suit or settled for.
$1,576 44	$95,222 38	$9,000 00
2,119 21	60,191 84	25,000 00
3,018 03	51,917 90	11,357 00
5,053 70	146,877 12	80,000 00
5,055 50	30,626 34	30,626 34
603 00	78,000 00	Pending.
240 00		30,000 00
1,724 63	1,750,000 00	271,017 23
4,500 09	2,000,000 00	10,000 00
4,113 79	100,000 00	Pending.
500 00	20,700 00	3,000 00
1,994 64	24,558 48	19,668 95
6,546 83	104,879 46	50,000 00
2,206 25	75,000 00	25,000 00
3,945 21	41,935 68	41,935 68
" "	70,000 00	1,000 00
" "	8,000 00	100 00
" "	200,000 00	135,515 15
" "	200,000 00	25,250 00
" "	1,000,000 00	400,000 00
" "	43,730 68	12,014 60

Commonly the settlement does not bring one tenth of the penalties; sometimes a large share is paid, but in most cases the amount is nominal. Fines are one seventieth part of the whole, or even only 1 per cent. of the threatened penalty. Yet it is the legal forfeiture and penalty in all their magnitude which is held over the heads of those accused of even technical violations of the law.

What is the consequence? That the commencement of a suit for violation of the customs laws is the signal for all the evil passions to be active against public notice of such an event; merchants with moderate capital are wiped out. Mr. Jackson S. Schultz before the committee said, (page 107:)

"I talked with a man who had been in the trade day, and he did not know what entrees were, and I did not know myself till recently. They are little paper boxes in which gloves, handkerchiefs, &c., are put. These little paper boxes are packed inside of the general cases or boxes. Any honest, common-sense reading of the law would infer that it did not apply to these inside boxes at all. The Secretary of the Treasury, in 1873, had under his law then in force, issue instructions to the effect that they were not to be included in the cost of the goods; but he afterward, upon the change of the law, rescinded his order and said they must be included. But that change or order did not reach the merchants, and they were allowed to go on for years omitting these cartons from their invoices, until the invoices containing these cartons amounted to two or three hundred or four hundred thousand dollars in each case, and then the moiety officials swooped down upon them. They come around and sweep them into their net, and they have caught them. Three or four of them have, I am told, are absolutely ruined. I was riding down Broadway the other day, with a friend of mine, and he pointed out a house to me and said: 'Six months ago I would have told you that a man hundred thousand dollars' worth of goods on six months' credit; to-day he cannot pay his bills. I asked him what the matter was. He said: 'He has been struck by the custom-house to the amount of three, four or five hundred thousand dollars; and he thinks he will be lucky if he pays more than one hundred and fifty or two hundred thousand dollars.'"

The Constitution was meant to guard against just such abuses. It ordains that no fine be exacted, that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Unless these are excessive fines and cruel and unusual punishments, what can be devised? The penalty of confiscation is ruin; absolute confiscation could hardly be worse.

But the Treasury derives no advantage from such atrocious provisions. The enormous forfeitures are not collected. They have incited tigerlike lying in ambush over importations; they have prompted the commencement of suits; they have driven men of business to the hands of enriched lawyers, who watch and wait about the custom-house, ready to accept vast retainers from either side. Whenever anything is collected, one half has gone to the informers. The odium has fallen upon the Government.

These enormous forfeitures are a growth, and not an enactment. They are massed, first, by a construction that the forfeiture attaches to a single item the whole invoice is forfeited; second, that the omission of the price of the sacks, envelopes or cartons forfeits the entire invoice; third, that the omission of a single item from an invoice is technically fraud, and carries with it the penalty, whatever the intent of the importer; and fourth, that for five years all these penalties hang over the owner and consignee and his importations.

Good lawyers question the rulings by which the whole invoice is forfeited by the taint of a single item. In the Senate, in the discussion of Senate bill No. 85 of this session, they were distinctly controverted. But so the courts held. Various constructions have prevailed on the effect of the forfeiture, and now from a Christian judge the doctrine of confiscation is enforced. The claim is often made that crime cannot exist without intent; but it was at Secretary Guthrie's instance that the repeal was passed by Congress, and presumed in revenue cases upon acts of omission or of commission in the absence of intent.

Obviously these provisions have wrought evil, and the time has come for their repeal. They are enforced, and offenders should know that they will be prompt and certain. That is the spirit in which the committee have sought to frame the pending bill.

Instead of forfeiting the whole invoice for under-valuation of a single item, the bill proposes to forfeit the particular item and to add a fine not exceeding $5,000 in the discretion of the court. When costs, charges and packing are, without intent to defraud, omitted, the collector or appraiser is to add double the sum omitted to the invoice, and the importer may then pay upon the one is to be submitted as a distinct proposition to the jury, or to be decided by the court when no jury is called. Then the period within which suits may be commenced is reduced from five years to two years—a period quite adequate for exposing any fraud.

These provisions are meant to render the penalties certain and determinate, to bring them within the cognizance of courts and juries, and to leave nothing to the favor or the vengeance of the officer.

In connection with the reduction of forfeitures, additional precautions are thrown about the method of procuring remission and mitigation.

MINOR PROVISIONS.

Section 7 allows the defendant to testify whenever the officer or other person interested shall appear as a witness on the part of the Government. This principle has been successfully adopted in the revenue laws of many States.

Sections 8, 9 and 10 facilitate the entry of goods by accepting affidavits and statements in lieu of invoices, under careful restrictions.

APPROVAL AND OBJECTIONS.

Rarely has so important a bill been reported, which has commanded so much favor and called forth so little adverse criticism. From organized boards of trade and chambers of commerce unqualified approval is expressed. From gentlemen of experience in various official positions commendation is not stinted. From any authority representative of the mercantile interests two sections only arouse any measure of hostility.

The third section, of which I have already spoken, meets with some question in a published letter of Mr. Jackson S. Schultz, chairman of a committee of the New York Chamber of Commerce. I must for the present leave further discussion of that subject to my colleagues on the Committee on Ways and Means.

To the twelfth section, also, Mr. Schultz makes objection. The section is in the following words:

"Sec. 12. That any merchandise entered by any person or persons violating any of the provisions of the preceding section, but not subject to forfeiture under the same section, may, while owned by him or them, or while in his or their possession, be taken by the collector and held as security for the payment of any fine or fines incurred as aforesaid, or may be levied upon and sold on execution to satisfy any judgment recovered for such fine or fines. But nothing herein contained shall prevent any owner or claimant from obtaining a release of such merchandise on giving a bond with sufficient sureties satisfactory to the collector, or, in case of judicial proceedings, satisfactory to the court, for the payment of any fine or fines so incurred: *Provided, however*, That such merchandise shall not be released until all accrued duties thereon shall have been paid or secured."

Mr. Schultz says after considerable detail—"I would not be especially objectionable to allow the Government to make these seizures, even in advance of trial, for an amount equal to the alleged loss of actual duties, or to an amount equal to twice or three times such loss. Attachments of that kind, where, when one party claims a debt of another, the latter, pending suit, secures the former, are not unprecedented. But who ever heard of security in advance of trial being demanded for fines and penalties of such vast sums?"

Mr. Schultz complains that the collector, "Whenever fines are incurred, can aggregate them, on a basis of a penalty for each offence of $5,000, *plus* the value of the particular item tainted by the alleged fraud, and can then seize any merchandise belonging to or in the possession of the suspected importer or agent equal in value to the aggregate of all such penalties."

If the district attorney or collector had a direct personal interest in multiplying and magnifying suits, some grounds might exist for this sort of complaint. But all that has been removed by the bill. The customs officers have no moiety; the district attorney has not even a commission to impel him to exaggeration of this kind. By the bill penalties have been greatly reduced. The cases where the appraised value is less than $1,000 the Secretary of the Treasury may order a remission or mitigation. For larger sums a summary process is provided for the same purpose. Can we do more than this for the relief of commerce? We must also protect the Government. The smuggler taints the vehicle in which he commits the crime. A false entry or fraud in procuring a license forfeits the ship. This section holds property in the hands of the offender for any fraud perpetrated by him in importation. It is a brand set upon the dishonest importer, which will prevent consignees from taking advantage of his knavery. The purpose is to enlist the interests of every owner, importer, consignee, or agent in careful and scrupulous observance of the revenue laws. They cannot afford to wink at fraud in others when it may involve themselves. Character and integrity will be sought in consignees rather than adroit and bold scheming. Every merchant will be bound to throw his influence in favor of honest importation. The provision cannot harm those who are scrupulous themselves, and who demand the same qualities in others. We deem the section very important. We claim surety from commerce that the Government shall get its dues. The committee, upon the suggestions urged, however, by an amendment now embodied in the bill, limit the property seized to double the amount claimed by the Government.

A historian of the British constitution draws this strong contrast of two periods in British legislation and administration:

"While the basis of power was narrow, rulers had little sympathy with the people. The spirit of their rule was hard and selfish, favoring the few at the expense of the many; protecting privileges and abuses by which the governing classes profited, but careless of the welfare of the governed. With freedom there grew a stronger sense of duty in rulers, more enlightenment and humanity among the people, wiser laws, and a milder policy. The superstitious fear of power were tempered, and the State was governed in the spirit which society approved.—*May*, vol. 2, page 547."

Our history furnishes no such dark colors for the like contrast. But we have a right to demand that more and more freedom shall bear its fruit here in wiser laws and a milder policy, and that in all departments of the public service that which will command the confidence and the approval of the worthiest elements in society.

Mr. Speaker, the purpose of this bill is to protect the rights of the citizen, to mitigate enormities in the statutes which have interfered with their due enforcement, and to provide sure and certain methods for collecting the customs revenue. The penalties are not remitted or relieved, but they are demanded by the interests of the Government and of morality. Instead of demoralizing emoluments to officers, instead of arbitrary and uncertain rewards, we bring certainty and appeals to the good will of the citizen and to that certainty of enforcement of judicious penalties which are the only trust of a free government.

The bill does not remove the shield of the law, let it protect the secrets of business and friendship from arbitrary invasion; let it free commerce from cruel and unreasonable penalities; let it punish fraud, but let it not make fraud impossible by honest misconstruction; let it thus enlist the conscience as well as the interest of the merchants in the collection of customs, and you will mark an ep