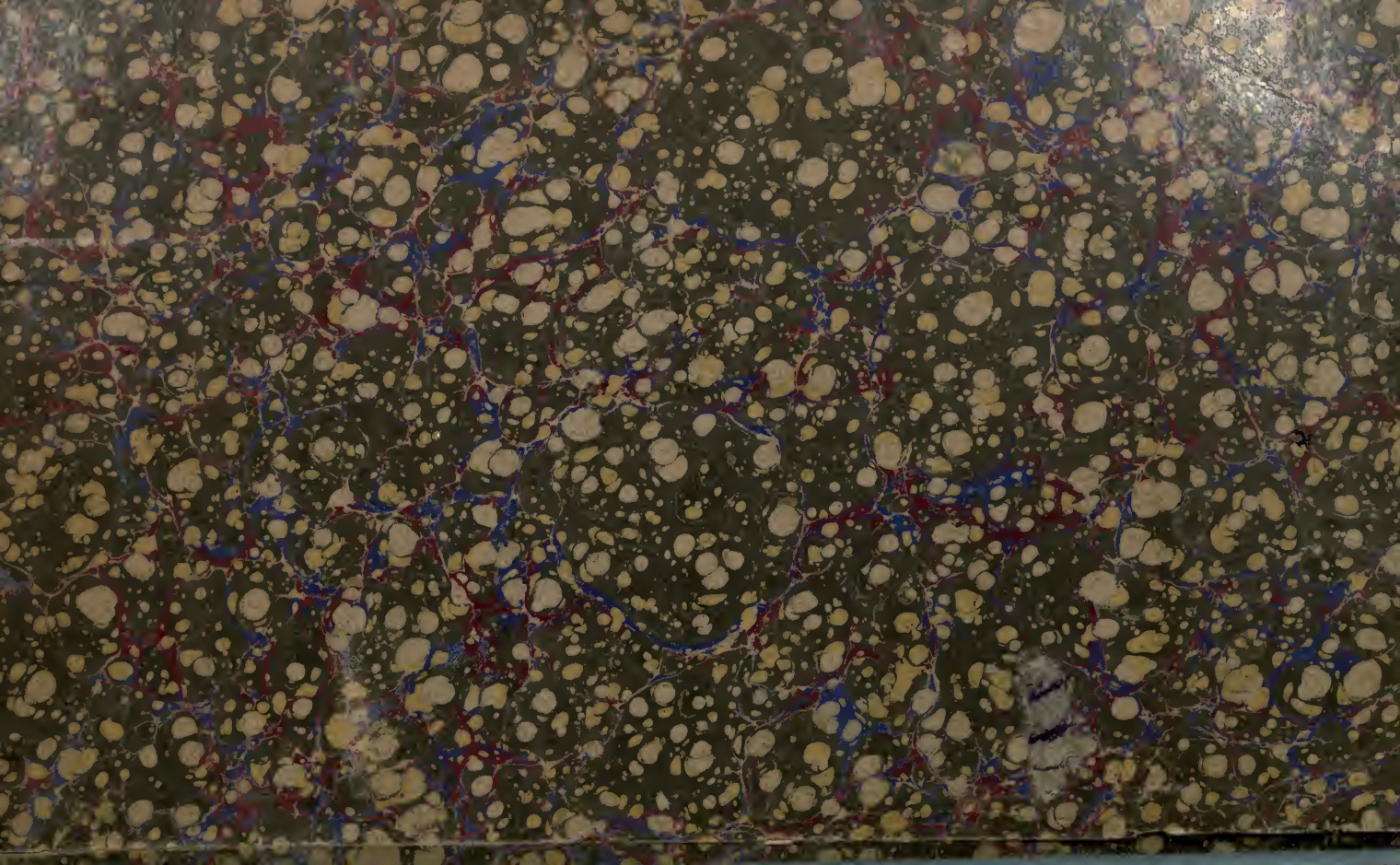

THE

KNIT-GOODS INDUSTRY

AND

THE TARIFF.

BY

JOHN L. HAYES, LL.D.,

SECRETARY OF THE NATIONAL ASSOCIATION OF WOOL MANUFACTURERS, AND OF THE NATIONAL KNIT-GOODS ASSOCIATION.

REPUBLISHED FROM THE BULLETIN OF THE NATIONAL ASSOCIATION OF WOOL MANUFACTURERS.

CAMBRIDGE:
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KNIT-GOODS INDUSTRY AND THE TARIFF.

No event of recent years has excited so much alarm throughout all the industries dependent upon protective legislation — and that is to say, substantially our whole manufacturing and a considerable part of our agricultural industry — as the recent judicial and administrative construction of the duty on knit goods. As annalists of the woollen industry, it becomes our duty to record the circumstances attending this alarming decision of the Supreme Court and extraordinary construction of the Treasury Department, and the measures taken to avert the peril which threatened directly one of the most important branches, and indirectly every branch, of the American wool and woollen industry.

As a preliminary to this record we will consider the position of the knit-goods industry in its relations to the tariff. The knit-goods industry did not exist in this country as a branch of manufacture, properly so called, before 1832, when the principle of knitting by power was first successfully attained at Cohoes, N. Y., though nothing of importance was accomplished until 1841. Before 1841 the whole production did not exceed in value $40,000. In New Hampshire, now employing 20,000 operatives in this manufacture, although a factory had been commenced at Portsmouth in 1834, the work was performed upon knitting-frames operated by workmen without power until 1844. Even up to 1850, in that State, there were only three sets of machinery in operation upon hosiery, and a product of 3,000 dozen per year was considered so enormous, that the managers of the single mill

doubted if a demand could be sustained for this trifling supply.

The tariff of 1842 gave an important impulse to this industry, particularly in the State of New York. To this was added the effect of the adoption of the circular knitting-machine invented by Pepper in 1851, and the subsequent introduction of the circular machine for the same, invented by the Messrs. Aiken, — father and sons. Although during the period preceding 1860 the manufacture was still inconsiderable, the knitting manufacture had attained skill and machinery for the demand made upon its resources at the commencement of and during the War of the Rebellion, to supply the class of clothing most indispensable for the health and comfort of our soldiers. While foreign knit goods were kept out by the Morrill tariff, the Government became an enormous purchaser of the heavier and staple classes of hosiery goods, such as woollen shirts, drawers, blouses, and stockings. The demand was so great through this source, and the complete protection afforded by the tariff, supplemented by the high prices of gold and exchange, that the production of the finer classes of hosiery was undertaken, which had never before been attempted in this country. Looms and machinery adapted for these goods, with skilled operators, were brought from abroad, and the knit-goods manufacture expanded to national importance. The value of the production, according to the most reliable estimates, had risen from $40,000 in 1841 to $19,200,000 in 1866!

At the latter period, with the withdrawal of the patronage of the Government and the protective influences of the war, there was much anxiety among the knit-goods manufacturers as to their future prospects. A revision of the tariff was demanded, and an increase of the duties on wool was insisted upon by the wool growers. The attention of the knit-goods manufacturers was then drawn to a fact which had not troubled them in the prosperous times of the war; viz., that in the protection afforded them by the tariff their goods were not on an equality with other woollen goods, such as flannels, although the latter, being used for the same pur-

poses, as underclothing, were the direct competitors of knit goods, — as under the tariff then existing the specific duty on knit goods was four cents, and the *ad valorem* duty ten per cent less than on flannels and other woollen goods. To place themselves upon a perfect equality in the tariff duties with other woollen producers, then, became a prominent object with the knit-goods manufacturers.

It is well known that the preparation of the woollen tariff then under consideration was under the charge of the National Association of Wool Manufacturers, of which the leading knit-goods manufacturers were members. To aid the general association, and to promote the special object above referred to, an auxiliary association of knit-goods manufacturers was formed, which was dissolved as soon as the tariff bill was enacted. The legislative work, however, was all done by the first-named association, its secretary (the writer of this paper), upon whom the immediate responsibility devolved, being present at Washington during the whole pendency of the tariff consideration, which was finally consummated by the enactment of the wool and woollen tariff of 1867.

For a proper construction of the existing tariff relating to knit goods, at least when the language of its provisions is not absolutely clear, it is indispensable to recur to the peculiar historical circumstances attending the enactment of the tariff of 1867 ; for the provisions in the schedule, " wool and woollen goods," in our codified laws are but re-enactments of the provisions of the act of 1867, — by the terms of the codification nothing being added to or subtracted from the laws existing at the time of the codification.

The tariff of 1867 was enacted under extraordinary circumstances, which, unlike ordinary cases of legislation, must be taken into consideration in its interpretation. This bill was adopted by the financial committees and Congress, on the official recommendation and report of the Commission appointed for the Revision of the Revenue System of the United States. This commission, in pursuance of the law authorizing them to take testimony, called together the rep-

resentatives of the two branches of the wool industry of the United States, and embodied the results of their agreements and representations in a report submitted to the Secretary of the Treasury, and officially published, and also submitted by him to Congress, with an earnest approval of its recommendations. This work, printed by order of Congress at the Government printing-office in 1866, bears the title of "Reports of a Commission appointed for a Revision of the Revenue System of the United States. 1865–1866."

The tariff of 1867, with the exception of the word "eleven" for "ten," so far as the wool was concerned, was precisely that recommended by the Revenue Commission and agreed upon by the executive committees of the National Wool Growers' and Wool Manufacturers' Associations. The provisions relating to woollens were the same, with trifling exceptions, — such, for instance, as the reduction of the proposed specific duty on woollens from fifty-three cents to fifty cents per pound, a change made by the Committee of Ways and Means. This report of the Revenue Commission, stating in detail the principles upon which the proposed tariff, which subsequently became a law, was based, and giving the testimony upon which it was urged, is a part of the *contemporaneous history* of that legislation given under official sanction, and must be received and considered in the interpretation of that law just as any admitted facts of history are received in the interpretation of all laws.

From those official reports it appears that the main principle solemnly agreed upon by a joint committee of wool growers and wool manufacturers, which formed the basis of the tariff of 1867, was, after clearly fixing the duties on wool, that —

"All manufactures of wool or worsted shall be subjected to a duty equal to twenty-five per cent, net; that is to say, twenty-five per cent after reimbursing the amount paid on account of duties on wool, dyestuffs, or other imported materials used in such manufactures, and also the amount paid for the internal revenue tax imposed on manufactures, and upon the supplies and materials used therefor." (See Joint Report of Wool Growers and Manufacturers, page 431 of Report of Revenue Commission.)

It is important to observe, in view of the decision of the United States Supreme Court, and the Treasury construction thereof, hereafter referred to, that this principle is made expressly applicable to manufactures of worsted.

The above principle was practically carried out in the proposed bill, which became subsequently the tariff of 1867, by making the specific duties on goods exactly compensatory of the duties on wool and dyestuffs, and by adding thereto the *ad valorem* duty. (See pages 444 to 450, Report of Revenue Commission.)

Among the papers submitted to Congress by the Revenue Commission in their report are elaborate "statements," one made by the Executive Committee of the National Wool Growers' Association, and another by the Executive Committee of the National Association of Wool Manufacturers. In the former is presented the proposed tariff on wool, with the reasons therefor. In the latter is presented the proposed tariff on manufactures of wool, with detailed and precise explanations of the purpose and effect of each of the provisions of the proposed act. The manufacturers' statement covers the whole of the present tariff on woollen and worsted goods, except section 245, relating to "bunting," and section 248, relating to "small-wares," which were subsequently added by the manufacturers' executive committee through the Revenue Commission. The proposed tariff on manufactures of wool was drafted by the late Mr. E. B. Bigelow, the President of the Association, after consultation with committees from every branch of the woollen or worsted manufacture in the country, at every one of which consultations the writer of this paper was present. The statement was written by the writer, as the committee's secretary, but in daily consultation with Mr. Bigelow. It was signed by the Executive Committee after careful consideration by them individually. It is believed that since the death of Mr. Bigelow the writer is the only person now living who was personally familiar with every act connected with the preparation and final passage of the tariff of 1867, and with the revision thereof in 1873.

The "statement," after reciting the provisions of the proposed tariff, and the proposition above quoted, adopted in the "joint report," proceeds to show the reasonableness of this proposition, and the consistency therewith of the tariff provisions proposed. It first considers the general and comprehensive clause, adopted in its structure from the tariff of 1861, fixing the duty on "woollen cloths, woollen shawls, and all manufactures made wholly or in part of wool, not otherwise provided for," at 53 cents per pound and 35 per cent *ad valorem*, — the same as section 242 of schedule L in the Revised Statutes, with the exception that "50" is substituted for "53," and the word "herein" is added before the word "provided." In relation to this clause covering all manufactures of wool not afterwards specifically mentioned, the "statement" says: —

"Nothing less than a specific duty of 53 cents (changed to 50 cents) will be sufficient to place the manufacturer in the same position as if he had his raw material free of duty, — a position which he must demand as an imperative necessity for the preservation of his industry. The committee do not hesitate to affirm that, independently of considerations of general public policy demanding a duty on wool, the wool manufacturers of this country would prefer the total abolition of the specific duties, provided they could have their raw material free, and an actual net protection of twenty-five per cent."

The "statement" next considers the following provision, being the same as section 243 of schedule L in the Revised Statutes, with the exception that in the latter "50 cents" is substituted for "53 cents."

"Flannels, blankets, hats of wool, knit goods, balmorals, woollen and worsted yarns, and all manufactures of every description composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animals, except such as are composed in part of wool, not otherwise provided for, valued at not exceeding forty cents per pound: twenty cents per pound; valued at above forty cents per pound and not exceeding sixty cents per pound: thirty cents per pound; valued at above sixty cents per pound and not exceeding eighty cents per pound: forty cents per pound; valued at above eighty cents per pound: fifty-three cents per pound; and, in addition thereto, upon all the above-named articles, thirty-five per centum *ad valorem*."

Of this section the "statement" says: —

"The system of minimums, or a series of the lowest valuations to which certain specific duties can be applied to given ranges of goods, is proposed for the articles above enumerated for the purpose of adjusting the specific duties, as nearly as practicable, to the proportions of wool paying the increased duties which the enumerated articles may contain, in order that the specific duties on the goods may be nearly compensatory for the duties on the wool. The highest minimum is fixed at eighty cents per pound; flannels, blankets, hats of wool, and *knit goods* costing above this value, must be composed of clothing-wool, paying a specific duty of eleven and a half cents per pound, and requiring four pounds to a pound of finished goods. It is clear that the reimbursing specific duty upon these goods should be fifty-three cents (changed to fifty), at which they are fixed in the proposed bill. It is considered that cotton, or wool paying less duty, will enter somewhat into the composition of the woollen goods costing less than eighty cents per pound and more than sixty cents, therefore a lower specific duty, viz., forty-five cents, is given to these goods. As the valuation diminishes, it is supposed the proportions of cotton, or wool paying the lowest duty, increase, and the specific duties are proportionately diminished. . . . It is believed that the provisions under consideration operate more equitably than those of the present tariff in respect to a most important and rapidly developing industry, that of knit goods. Under the present tariff, the duty on shirts, drawers, and hosiery of wool, or of which wool shall be a component material, not otherwise provided for, is fixed at twenty cents a pound, and, in addition, thirty per cent *ad valorem;* the specific duty being four cents, and the *ad valorem* duty being ten per cent less than upon woollen cloths. The wool which enters into a majority of these goods is fine American fleece; and, if wholly composed of wool, they would be clearly entitled to the same duty as woollen cloths. A large class of knit goods, including the fancy hosiery, a rapidly advancing and peculiarly American industry, furnishing goods of great beauty and taste, and consuming the most expensive aniline dyes, is made wholly of American clothing-wool. These goods, which would cost more than eighty cents per pound, would bear under the bill proposed a specific duty of fifty-three cents, and the same *ad valorem* duty as is provided for other goods. Another class of knit goods has a portion of cotton, which is introduced to prevent shrinkage. It would be impracticable to separate the goods composed wholly of wool from those partially composed of cotton by

placing a less duty on the latter, as all foreign competing goods, whatever their value, would have some cotton placed in them to bring them within the lower duty. The distinction is sufficiently provided for by the minimum scale of duties. It is desirable that the specific duties on the knit goods should be sufficiently ample to secure full compensation, as the waste in hosiery goods, from cutting, trimming, and fitting, is greater than in other woollen fabrics; while there is a large consumption of trimmings, such as bindings, tape, spool-cotton, silk, buttons, linen thread, &c., on which duties are paid. The industry of knit goods is entitled to special consideration, from the national importance which it has already attained." (Report of Revenue Commission, pp. 248, 249).

The report of the Revenue Commission contains a special statement of "the condition and necessities of the knit-goods manufacture," addressed to Hon. Justin S. Morrill, chairman of the Committee of Ways and Means, by a committee of the National Association of Knit-Goods Manufacturers, in which the committee say: —

"In respect to the duties upon foreign knit goods composed in whole or in part of wool, we commend to your attention, and express our approval of, the provisions contained in the proposed tariff on manufactures recommended by the Executive Committee of the National Association of Wool Manufacturers in a statement addressed by them to the United States Revenue Commission. The provisions in relation to knit goods recommended by that committee were adopted after full consultation with the leading knit-goods manufacturers in the country, and were cordially approved by the latter. The views expressed in the 'statement' referred to are fully in accordance with our own, and the placing the manufacturer of woollen knit goods upon an equality with other manufacturers would remove much soreness existing in relation to the inequality of the present provisions."

The tariff law embodying these provisions in relation to knit goods, and equally careful ones in regard to all other branches of the wool manufacture, and thus universally recognized as the most thoroughly considered, philosophical, and comprehensive revenue law found in the pages of our statute books, went into effect on the 2d day of March, 1867, and has remained intact, with only the slight disturbance

caused by questions raised, but soon solved, in consequence of the codification of 1873, until the recent decision by the Supreme Court of March last.

Accomplishing the great object aimed at by the knit-goods manufacturers, of placing their industry upon an exact equality with other branches of the wool manufacture, its beneficent effect upon that industry has been more conspicuous than in any other branch. We shall not attempt to give what would be merely approximate statistics of the progress of this industry, as complete statements are to be so soon furnished by our accomplished associate, Mr. George W. Bond, in the census returns, but will give a few illustrative facts from a single city. The admirable article contributed by Mr. Blodgett to this journal, on the "Woollen Industry of Philadelphia," shows that the hosiery and knitting industry of that single city employs about 12,000 persons at wages, of whom one-half are females and one-fourth men or adults. To include the proprietors and those engaged at their homes on piece-work and otherwise would increase the total giving their time to this industry to 15,000. If all engaged in the spinning and dyeing of hosiery yarns were included, the number would be increased about one-fourth, making a total of 20,000 persons employed in this industry in Philadelphia alone. Their weekly product is estimated at 300,000 dozen of hosiery and 30,000 dozen of wool shawls, jackets, scarfs, &c., the total of the value of $675,000 per week.

The social aspects of this industry should not be overlooked. "The mills and working floors," says Mr. Blodgett, "occupied in the hosiery and knit-goods manufacture are worthy of notice, most of them being new and spacious, well ventilated, with high ceilings and open surroundings. The work is not dirty or disfiguring to the employés, but is pleasant, light, and especially adapted to girls and youths, or to any persons where skill and care are the essentials rather than physical strength. As the demand is active for such labor, and the returns are prompt to the manufacturer, the wages paid are the best in the textile trade. There is nothing of the appearance formerly supposed to be characteristic of

'mill hands' to be seen in the tastefully dressed and self-respecting employés of the hosiery mills."

At a recent meeting in Philadelphia, which the writer attended, it was the testimony of an intelligent lady, who had devoted herself to the interests of women's labor, that the knit-goods mills surpassed all others in the social condition of the female operatives.

Of the whole national industry in this department, it may be stated in brief that the annual production is estimated by good authority at $50,000,000, and the number of operatives at 90,000. The industry is extensively pursued in ten different States.* It has an important relation to our national wool industry, ninety-five per cent of the wool consumed being of American growth, and the quantity consumed being estimated at one-fifth of our whole production. There is no need of enlarging upon the obvious conclusion from these statements, — that the disturbance of such an industry would be a national calamity.

We must be permitted here to waive for a moment the special consideration of the knit-goods industry, and to consider some of the features of the tariff of 1867, and its reproduction in schedule L of the Revised Statutes.

A remarkable feature of the tariff of 1867 was that it repealed all the provisions of all previous laws respecting the duties on wool or manufactures of wool. This has been judicially settled.

In the case of the Washington Mills *v.* Thomas Russell, in the United States Circuit Court, Massachusetts District, Mr. Justice Shepley, in delivering the opinion of the court, says: "The first section of the Act of 1867 provides that from and after the passage of this act, *in lieu* of the duties now imposed by law, there shall be levied, collected, and paid on all manufactured wool, &c. . . . the duties hereafter provided."

"The expression, '*in lieu* of the present duties,' or in lieu of the duties now imposed by law, is an expression frequently

* Namely: New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Illinois, and California, and more or less in eleven other States.

found in revenue statutes when the intention of Congress is to repeal the duties previously in force and to substitute new rates of duty. No language could more clearly express the intent of Congress; and these terms have come to be considered the peculiarly apt terms of revenue appeal." In the case of Gossler *v.* the Collector of Boston, May term, 1867, before Justice Clifford and Judge Lowell, the court says, in allusion to the same terms in a revenue statute, "Terms more explicit could not be employed; and the provision neither contains any exceptions, nor admits of any, without resorting to positive legislation."

Thus the duties on the articles mentioned in section 318 of schedule M, hereafter referred to, so far as they were made of wool, were repealed, for the original statutes, from which this section was compiled, were all prior to the law of 1867.

A still more remarkable feature was the comprehensive clause imposing a duty of fifty cents per pound and fifty per cent *ad valorem* "upon all manufactures of wool of every description made wholly or in part of wool not *herein* [or in that act] otherwise provided for," making it prohibitory to look to any other act than that of 1867 for duties on manufactures thus composed. This identical clause is reported in schedule L of the Revised Statutes, making it equally prohibitory to seek outside of schedule L, "wool and woollen goods," for the duties on articles composed wholly or in part of wool.

Under this law, and its construction by officers of the treasury and customs department for fourteen years, the security of the knit-goods manufacturers was complete. It is true that soon after the revision the question was raised whether the Revised Statutes had not altered the duties established by the Act of 1867. But in four hearings before the Attorney-General, in all which the writer acted as counsel, it was solemnly decided by this high judicial officer that the tariff of 1867 was left unchanged by the revision. These decisions made the security more complete.*

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* At one of these hearings a letter addressed to Mr. Bristow, Secretary of the Treasury, by Hon. Luke P. Poland, was introduced. Judge Poland was chair-

In the midst of this security and the prosperity attending it, the knit-goods industry was appalled by the following de-

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man of the committee of the House on the revision of the laws. He says the "sections of the revised laws were not discussed in the House, but were adopted precisely as reported by the committee. In the Senate, the revision was reported as adopted without examination, or even being read." . . .

"The committee (he says) repeatedly and publicly declared in the House their purpose not to have the revision make any change in the law, and in their action on the subject they intended to act with scrupulous regard to this pledge to the House. They intended to leave the law of 1867 in full force." . . .

"I understand very well," he continues, "that in the construction of a statute its meaning and purpose must mainly be sought in its own language; but the history of, and concurrent circumstances attending, legislation have often been considered in determining the true intent and meaning of a statute whose language left its object obscure or doubtful; so, in the construction of any section of the revision, when it becomes a question of doubt and difficulty whether a change of law was intended, the fact I have stated above — that the committee so often and so publicly declared their purpose to make no change, and upon which Congress acted — is a matter proper to be considered. If the words of the revision have but one construction, and that works a change in the laws, that must prevail, even if not so intended by those who used it. But I submit that, to have such effect, the intent to change the law should by its language be clear and apparent."

The writer may be permitted, in this connection, to make a personal statement illustrative of "the history and concurrent circumstances of the legislation" in regard to the revision.

At the suggestion of Senator Dawes, and under the instruction of the Executive Committee of the National Association of Wool Manufacturers, the writer made a journey to Washington, expressly to examine and correct the proofs of the revision, so far as it related to "wool and woollen goods." He was most cordially welcomed by Judge Poland, chairman of the committee, and other members. The printed proofs of schedule L, "wool and woollen goods," were placed in his hands by the committee as covering all the provisions upon these subjects, and he was requested to critically examine them and to suggest any alterations that might be required to make the revision conform to the then existing law, viz. the tariff of 1867. To insure perfect conformity to the law of 1867, the writer made copies of these proofs, and sent them to leading wool manufacturers for their revision. Through this examination the writer was able to suggest the supplying of some important omissions, particularly that of the duty on washed wool, for which he received the hearty thanks of the committee. A point which demands special notice is, that nothing was submitted to the writer, acting as an advisory expert to the committee, in regard to wool and woollens but schedule L, "wool and woollen goods," showing the understanding of the committee on revision that schedule L covered all the duties pertaining to wool and woollens. No reference was made to section 318 of schedule M, and indeed the existence of that section was unknown to the writer until the promulgation of the recent Treasury circular. The circumstances of the relation of the writer to the revision of the tariff on wool and woollens are fully reported in the "Bulletin" of January–March, 1874, vol. v. pp. 1 and 2.

cision of the Secretary of the Treasury, which came upon it like a thunder-clap from a cloudless sky: —

CIRCULAR. — WORSTED STOCKINGS.

TREASURY DEPARTMENT, WASHINGTON, D. C.,
March 29, 1881.

To Collectors and other Officers of the Customs:

The following decision of the Supreme Court of the United States, in the case of Vietor *et al.* against C. A. Arthur, Collector of the Port of New York, is published for the information of customs officers and others concerned: —

"The question in this case is whether stockings of worsted, or worsted and cotton, made on frames, and worn by men, women, and children, imported after the Revised Statutes went into effect, June 22, 1874, are dutiable as knit goods, under schedule L, class 3, sec. 2504, or as stockings, under schedule M. The two provisions under which the parties make their respective claims are as follows: —

"*Sched. L.* — 'Flannels, blankets, hats of wool, knit goods, balmorals, woollen and worsted yarns, and all manufactures of every description composed wholly or in part of worsted, the hair of the alpaca, goat, or other like animals, except such as are composed in part of wool, not otherwise provided for, valued at not exceeding forty cents per pound: twenty cents per pound; valued above forty cents per pound and not exceeding sixty cents per pound: thirty cents per pound; valued at above sixty cents per pound and not exceeding eighty cents per pound: forty cents per pound; valued at above eighty cents per pound: fifty cents per pound; and, in addition thereto, upon all the above-named articles, thirty-five per centum *ad valorem*.'

"*Sched. M.* — 'Clothing, ready made, and wearing apparel of every description, of whatever material composed, except wool, silk, and linen, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, not otherwise provided for, caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, except silk and linen, worn by men, women, or children, and not otherwise provided for, articles worn by men, women, or children, of whatever material composed, except silk and linen, made up or made wholly or in part by hand, not otherwise provided for: thirty-five per centum *ad valorem*.'

"In U. S. *v.* Bowen, 100 U. S. 513, we held that the Revised Statutes must be treated as a legislative declaration of what the statute

law of the United States was on the 1st of December, 1873, and that when the meaning was plain the courts could not look to the original statutes to see if Congress had erred in the revision. That could only be done when it was necessary to construe doubtful language. We applied this rule in Arthur *v.* Dodge, 101 U. S. 36, to the construction of the revision of the tariff laws.

"It is also well settled that when Congress has designated an article by its specific name and imposed a duty on it by such name, general terms in a later act or other parts of the same act, although sufficiently broad to comprehend such article, are not applicable to it. (Movius *v.* Arthur, 95 U. S. 144; Arthur *v.* Lahey, 96 U. S. 112.)

"It is conceded that stockings made on frames have been dutiable *eo nomine* since 1842, and by four different statutes: 5 Stat. 549, chap. 270, sec. 1, subdivisions seven and nine; 9 Stat. 44, chap. 74, sec. 11, sched. C; 12 Stat. 194, chap. 68, sec. 22; *Id.* 556, chap. 163, sec. 2. Now, when we find, as we do in schedule M of section 2504, 'stockings . . . made on frames, of whatever material composed, except silk and linen, worn by men, women, or children,' it seems to us clear beyond question that goods coming within that specific description are dutiable in the way thus provided, rather than as 'knit goods . . . composed wholly or in part of worsted.' It may be true, as suggested, that if there had been no revision, and we had been required to construe the statutes as they stood before December 1, 1873, a different conclusion might have been reached. We have not deemed it necessary to institute such an inquiry, for it would be contrary to all the rules of construction to say that where in one part of a section of a statute it was provided that 'stockings made on frames, of whatever material composed, except silk or linen,' should pay duties at a certain rate, it was not *plain* such articles were not in any just sense 'otherwise provided for' in a preceding clause of the same section fixing the duties to be paid on 'knit goods composed wholly or in part of worsted.' The judgment below was before U. S. *v.* Bowen, *supra*, was decided here.

"The judgment is reversed and a *venire de novo* awarded."

Under the ruling of the Supreme Court in this case, caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever material composed, except silk and linen, will be classified for duty at the rate of 35 per cent *ad valorem*, as against the provision in schedule L for flannels, blankets, hats of wool, knit goods, balmorals, woollen and worsted yarns, and all manufactures of every description composed wholly or in part of

worsted, or any other provision of law. Where duties have been exacted on the class of goods referred to, in excess of the rate of 35 per cent *ad valorem*, and the provisions of section 2931 have been complied with, certified statements will be forwarded for refund of the excess of duty so exacted.

Where suits have been instituted for the recovery of the excess, you will require a certificate of their discontinuance, and include in the certified statement the proper interest and accrued costs.

These instructions will be treated as applying only to cases in which the duties were exacted under the provisions of the Revised Statutes, and not to cases in which duties were assessed under the laws in force prior to the passage of said statutes.

Very respectfully,

H. F. French, *Assistant Secretary.*

It is proper, especially for the information of the members of the National Association of Wool Manufacturers, of which this journal is the organ, that a statement should be made in this connection of the action of the Association, through its officers, in this important crisis.

The first information received by the secretary of the Association, the writer of this paper, of the promulgation of the above circular, was from Mr. George C. Bosson, a member of the Association, engaged in the knit-goods manufacture. The secretary immediately obtained at the Boston custom-house the only copy then in the city, and caused several hundred copies to be printed, which were sent to each member of the Association engaged in the manufacture of knit goods, accompanied in each case by a letter urging immediate action.

In reply to one of these letters the secretary received a telegraphic despatch from a member in New Jersey, requesting the former to meet a number of knit-goods manufacturers at Washington the next day, for a hearing before the Secretary of the Treasury. Under the instructions of the Executive Committee of the Association the secretary at once proceeded to Washington, and was present at the time appointed. The manufacturers there present, with their immediate counsel, Hon. S. W. Kellogg, of Connecticut,

were more specially engaged in the manufacture of shirts and drawers, and with the light they then had on the subject deemed it wiser to attempt first to remove that branch of the knit-goods industry from the operation of the Secretary's circular. At a preliminary and informal hearing before the Secretary, at the special instance of Senator Dawes, who was present, a telegraphic order was transmitted to New York by the Secretary of the Treasury *temporarily* withdrawing the operation of the circular from knit shirts and drawers.

At the hearing the next morning Mr. Kellogg made the following argument, subsequently printed and filed : —

To the Honorable Secretary of the Treasury:

The undersigned, in behalf of an industry producing more than thirty-five millions of dollars in value of manufactured goods annually, and furnishing employment to more than twenty-five thousand persons, urgently ask that the recent circular of the Treasury Department in relation to worsted stockings may not be construed by the revenue officers under the department to apply to knit goods, or knit shirts and drawers.

The decision of the Supreme Court, in Vietor *et al. v.* C. A. Arthur, Collector, was in a case involving stockings only. The court bases its decision upon the ground that stockings are specifically named in "schedule M," and therefore subject to a duty of thirty-five per cent only.

But knit goods are also specifically named in schedule L, and have always been construed by the department to include knit shirts and drawers. The only shirts and drawers named in schedule M are "wove shirts and drawers," which are an entirely different article. This language would seem to exclude knit shirts and drawers, as it is limited to shirts and drawers that are "wove," and the phrase "all similar articles made on frames" refers only to the shirts and drawers, socks, stockings, and other specific articles named in the same clause of schedule M, and *not* to *knit* shirts and drawers. Whatever the phrase "made on frames" may mean generally, it should be limited here to the articles similar to those named in the clause connected with it; and it does not mean "knit shirts" in any event. The term "knit goods" in schedule L is quite as specific as "articles made on

frames," and the law should be construed so that both sections shall remain in force.

Upon the reasoning of the court the phrase "knit goods" as specifically mentioned in schedule L, subjects those goods to the tariff of duties in that schedule, except in case of stockings and other articles mentioned by name in schedule M; and the only shirts and drawers there mentioned are "wove." Woven shirts and drawers are made *with a shuttle*, and they *must* have a warp and woof. Knit shirts and drawers are made *with a needle*, and whether made by hand or by knitting-machines, the work is done with a needle; and there is no warp and woof in knit goods. The loop or stitch of a single thread is the same whether made by hand or by knitting-machines, and will unravel the same.

These two classes of shirts and drawers are well known to the trade as distinct and different; and they have been recognized for years as such in the statistics of the department. On page twenty-one of Home Consumption and Imports will be found "shirts and drawers woven or made on frames," referring to goods in schedule M. And on page fifty-five will be found "shirts, drawers, and other knit goods," referring to articles in schedule L. And this distinction runs back through the reports and statistics of the department for years. As we have said, the phrase, "all similar articles made on frames," in its place in the statute does not refer to knit shirts and drawers at all, but only to the articles just before named in that schedule; and the phrase, "not otherwise provided for," leaves the knit goods not specially named in schedule M subject to the duties provided by schedule L.

The case in the Supreme Court was upon stockings only. The circular "Worsted Stockings" is limited to the same, and to articles specially named in schedule M. What we desire is, that the officers charged with the collection of duties should be informed that *knit shirts and drawers* are not included in the circular. The parties we represent find that officers charged with that duty now claim that these articles are within the decision and the directions of the circular.

If "knit shirts and drawers" are construed to be subject to a duty of thirty-five per cent only, then the raw materials necessary for the fine grade of goods will be subject to a duty of more than twenty-five per cent greater than the manufactured article. This was never intended; and the duties on knit goods in schedule L were fixed by

the law of 1867, in consequence of the duties imposed on imported wools.

We ask for immediate action in this matter, as ruin and disaster will surely come upon this immense industry if foreign "knit shirts and drawers" are admitted in competition with only the duty of "schedule M." This industry has grown up, and given employment to many thousands of our laboring classes, under a different construction of the law; and their interests, as well as the interests of the Government, demand that the decision of the Supreme Court should not be extended by construction over any articles of import not in question in that case. The loss to the Government in the rebate of duties, though great, will be a trifling matter in comparison with the loss and distress brought upon its citizens, if this great industry is made subject to the late decision of the Supreme Court.

Washington, April 15, 1881.

Norfolk & New Brunswick Hosiery Co.,
Per John N. Carpenter, *Treasurer.*

American Hosiery Co.,
James Talcott, *Agent.*

New Britain Knitting Co.,
Thomas Porter, *President.*
Thomas S. Hall, *Manager.*

The Medlicott Company,
James C. Cooley, *Agent.*

W. G. Medlicott Company,
Brown, Wood, & Kingman, *Agents,*
Per S. A. Swenarton.

Root Manufacturing Company,
Per James W. Cromwell.

And Others.

S. W. Kellog,
Of Counsel.

The secretary of the National Association of Wool Manufacturers, considering it his duty, from his official position, to represent every branch of the knit-goods manufacture, gave a broader scope to his argument, urging the limitation of the circular to *worsted stockings.* This argument, read to the Secretary and subsequently filed and printed, was as follows: —

DUTIES ON KNIT GOODS UNDER TREASURY CIRCULAR "WORSTED STOCKINGS."

Argument for Limitation of Treasury Circular.

Hon. WILLIAM WINDOM, *Secretary of the Treasury.*

The undersigned, secretary and counsel of the National Association of Wool Manufacturers, including many persons practically engaged in the manufacture of what are usually denominated as *knit goods*, composed principally of wool and worsted, begs to represent that a recent decision of your department, dated March 29th, 1881, entitled "Circular — Worsted Stockings," founded upon a recent decision of the Supreme Court of the United States, in the case of Vietor *et al. v.* C. A. Arthur, as interpreted at the custom-houses of the United States, or liable to be interpreted, threatens most disastrous consequences to the knit-goods manufacturers of this country. This decision, as at present interpreted, or liable to be interpreted, threatens the destruction of an industry having an annual production, as is believed, of not less than forty million dollars in value, and employing not less than forty thousand operatives. The threatened destruction will result from the fact that under a simple *ad valorem* duty of thirty-five per cent the American manufacturer will be unable to pay the high duties on wool and the rates of wages prevailing in this country, and must abandon the manufacture to European competitors, paying no duties on wool, and scarcely more than half the rates of wages paid here.

The undersigned does not present these considerations as any reasons why the Secretary should not administer and interpret the law as construed by the supreme tribunal of the land. But considerations of public welfare may rightfully be appealed to as reasons why a decision injuriously affecting public interests should be construed so as to have simply its strict legal effect, and that no inferences and deductions should be drawn from such a decision, not warranted by the *precise* language and direct bearing of the decision in question.

The object of this appeal to the Secretary of the Treasury is to urge him to confine his instructions to custom-house officers as to the imposition of the duties of knit goods, to the precise question, and that *only*, decided by the Supreme Court; and upon that question it is freely admitted that the decision of that tribunal is so absolutely imperative upon the Secretary, that he has no discretion, whatever the consequences of that decision may be.

Your department must be aware that the sweeping and fatal effect which is held in some quarters should be given to the decision in question, viz. to reduce the duties on all knit goods, composed of wool and worsted, from substantially fifty cents a pound and thirty-five per cent *ad valorem*, to thirty-five per cent *ad valorem*, which would take off from every dozen of winter shirts or drawers, weighing twelve pounds, six dollars (the present duty), could never have been contemplated by the Supreme Court; for the circumstances and reasons which led to the imposition of the duty on knit goods are not once referred to by the court, nor in the brief of the counsel for the Government, and these considerations could not have been overlooked if the sweeping effects of the decision, in its broadest possible application, had been contemplated by the court.

The department is so familiar with these circumstances and reasons, upon which its construction of the duties applicable to wool and worsted knit goods has been based for twelve or more years, that they need to be but briefly recapitulated.

The tariff of 1867, of which the schedule "L, wool and woollen goods," in the Revised Statutes was intended to be a mere condensation, was framed substantially from an official report of the United States *revenue commission* existing in 1866–67, stating the duties on wool and woollens agreed upon by manufacturers and wool growers. The reasons for the duties are given in published documents communicated to Congress by the "revenue commission," and are a part of the history of the legislation of the time. The law of 1867 was declared to be *in lieu* of all duties on wool and woollens, — an expression declared by the courts in repeated cases to be a well-recognized form of repeal of laws then existing.* This law raised the duty on the principal classes of wool used in knit goods from less than six cents to ten cents per pound, and eleven per cent *ad valorem*. It was held that four pounds of wool were required to make one pound of woollen goods, including knit goods, and fifty cents per pound on the goods, specific, was given to neutralize the high duty on the wool, — the thirty-five per cent *ad valorem* being the only protection to the manufacturer. Upon the passage of the tariff of 1867 the duty now found in schedule L was the only duty in existence on knit goods of wool and worsted. Among the articles on which the previous duties were repealed by the act of 1867, so far as they were made of wool and

* Washington Mills *v.* Thomas Russell; Gossler *v.* The Collector of Boston, U. S. Circuit Court, Mass. District.

worsted, were caps, gloves, leggins, mitts, socks, stockings, &c., retained in schedule M, as the department certainly can have no question, because relating to articles other than those of wool and worsted, viz. those principally of cotton. The original statutes relating to these articles were all passed previously to the act of 1867.

The Revised Statutes, as is perfectly established by the contemporaneous legislators who enacted them, intended no new legislation. The schedules headed "wool and wool fabrics" were gathered under one head, and were intended to give all the statutes then in force relating to those subjects, that is, a mere collation of the act of 1867. Until within a month it was admitted, without question, by the department, by manufacturers, and by all familiar with the legislation on the subject, that all the duties on knit goods of wool or worsted were covered by schedule L in the Revised Statutes, and that schedule M referred solely to articles not composed of wool and worsted, articles composed of these materials being excluded by the provision "otherwise provided for," viz. in schedule L.

The department is fully aware that there are other cases pending awaiting the decision of the Supreme Court, which will give it the opportunity to apply its principles of construction to other classes of knit goods besides that specifically in question, and possibly allow the court to gather new light, to use its own language, "by recurring to the incidents of the time when the law was passed, to ascertain the reason as well as the meaning of its particular provisions." *

What, under these circumstances, is the duty of the department? Clearly, to accept the decision of the Supreme Court in question, but not to carry it *one step beyond its strict limitations.*

The court says: "The question in this case is whether stockings of worsted" — nothing else — are dutiable under schedule L or schedule M. Although the *reasoning* of the decision may possibly be held to cover other articles, there is not one word in the decision to show the intention of the court to cover any other article than that in question, "worsted stockings."

Until there is an express decision, upon cases now pending, in respect to other articles mentioned in schedule M, there is no legal obligation upon the department to draw inferences from this decision, not made by the court, such as would include caps, gloves, leggins, mitts, wove shirts and drawers, or similar articles made on frames, and socks and stockings *made of wool;* while considerations of public policy, of

* Union Pacific Company *v.* The United States.

manifest justice, and of self-respect for its own long-established rulings, require the department to maintain its old constructions, except where they conflict with the precise decision of the controlling tribunal.

Not only the exclusion derived from the precise application of the decision in question, but all the inferences or doctrines of construction to be derived from it, forbid the application of the thirty-five per cent *ad valorem* duty to knit shirts and drawers, the most important single branch of the knit-goods manufacture, having an annual production of not less than fifteen million dollars.

If it is allowable to draw any general inferences from the decision of the Supreme Court in question, we may infer that the court holds that schedule L, referring as it does to knit goods composed of wool or worsted, except those specifically mentioned in schedule M, viz. "caps, gloves, leggins, mitts, socks, stockings, *wove* shirts and drawers, and similar articles made on frames," includes all knit goods of wool and worsted except those clearly and specifically excepted, and that such as are not thus excepted retain the duty of fifty cents per pound and thirty-five per cent *ad valorem*.

The undersigned begs to show that *knit* shirts and drawers, especially, do not come within this exception. The distinction is perfectly clear and as obvious to common sense as to the technical manufacturer, between *woven* shirts and drawers and *knit* shirts and drawers. Weaving is conducted by the rectangular crossing of *two distinct continuous* threads, the woof and the warp, which together make a woven fabric. Tapestry, although it has a woof and warp, is never recognized as a woven fabric, because the woof is not continuous, being composed of different threads, not continuous. Knitting differs both from weaving and tapestry, because the fabric is made by one continuous fibre worked by needles, whether by hand or machine, and not by a shuttle carrying a single thread across the warp, as in woven goods, or by many bobbins carrying many threads, as in tapestry.

The distinction in the arts between "wove" and knit goods is absolutely beyond all question. Fabrics are here shown to illustrate the distinction. Woven shirts and drawers or those made of woven fabrics are well-known forms of "clothing ready made," the generic designation of schedule M. Knit shirts and drawers are clearly not excepted *eo nomine* in schedule M, while *knit* goods, the only term applied in the tariff of 1867 to designate all forms of wool and worsted hosiery, are expressly mentioned in schedule L. The distinction between woven and knit goods or those made on frames is found in the earlier tariffs, as on "shirts and drawers wove *or* made on frames,

composed of cotton or cotton velvet." Cotton velvet must have been woven, while cotton might have been knit. The distinction between "wove" and knit shirts and drawers is thus fully established by the very original law from which the expressions in the Revised Statutes were derived.

Wool or worsted knit shirts and drawers could not be held to come under the designation of "similar articles made on frames," immediately following the words "wove shirts and drawers," because knit shirts and drawers are not similar to wove shirts and drawers, a distinction between them being recognized in former laws.

Finally, the Secretary of the Treasury has, first, the power, in view of the discretion allowed to him, and invariably exercised by our wisest administrative officers, to consult public interest when not prohibited by a strict rule of law, to modify the possible unhappy effects of a decision, at least admitted by the court to be founded upon an error of Congress in the revision, by limiting the decision to the single point decided, viz. as to *worsted* stockings, which do not include socks and stockings made of *wool;* and, secondly, it is his duty to see that no such inference from the decision referred to shall be made so as to include *knit* shirts and drawers under those subjected to a thirty-five per cent *ad valorem* duty, while the express provision of schedule L gives these goods, when composed of wool paying the highest duty, a duty of fifty cents per pound, with the duty added of thirty-five per cent *ad valorem.* Thus, although one very important branch of the knit-goods industry, that of the manufacture of *worsted* stockings, must inevitably succumb, the most important branches of this manufacture, employing the largest number of operatives, may still survive through a continuance of the compound specific and *ad valorem* duties, which alone have given the knit-goods manufacture so conspicuous a position in our national industry.

JOHN L. HAYES,
Secretary and Counsel of the National Association of Wool Manufacturers.

WASHINGTON, April 16, 1881.

The result of this hearing was the declaration of the Secretary of the Treasury, that his final decision would be reserved until he had obtained the views of the appraisers and collectors of the principal custom-houses, to whom copies of the arguments filed would be transmitted; and it may be here stated that subsequently answers were received from all these

officers, agreeing with the position taken in the preceding argument.

A period of about ten days now elapsed, during which all branches of the hosiery and knit-goods manufacture, now thoroughly aroused, organized a special association to meet the emergencies of this crisis. In the mean time, the secretary of the National Association of Wool Manufacturers, without knowledge of the movement last referred to, employed himself in correspondence with the senators at Washington from all the States known to be engaged in the knit-goods industry, urging them to bring their influence to bear upon the Secretary of the Treasury for the limitation of his circular.* The correspondence had been just completed when

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* Letters were written to ten senators substantially like the following: —

OFFICE OF NATIONAL ASSOCIATION OF WOOL MANUFACTURERS,
95 Milk St., Boston, April, 1881.

Hon. JUSTIN S. MORRILL, U. S. Senate, Washington, D. C.

DEAR SIR, — Before leaving Washington I ascertained that the Treasury Department would not make their final decision in the knit-goods question until they had learned the views of the collectors of the different ports, to whom they had sent copies of the briefs filed in the case. I also gathered that it was the present impression of the department to except only knit shirts and drawers from the operation of their circular, and to apply the operation of the decision to all the other articles specifically mentioned in schedule M.

I enclose a copy of my argument, in which I take the position that the circular should be confined *strictly* to *worsted stockings*.

Since my return I find that this is the view entertained by all the manufacturers, as well as many experts in revenue laws. I am informed that if the circular is applied only to "worsted stockings," it will do comparatively little mischief, as there are no manufacturers of worsted stockings to speak of in the country. The distinction between *worsted* and *wool* stockings is perfectly well established, the former being made of combed wool and the latter of carded wool.

The manufacture of wool hosiery amounts to some $20,000,000 a year.* If the Secretary decides to apply the circular to *wool* hosiery, the manufacturers have no remedy, because there will be no decision at the custom-house to appeal from by which the case may be carried to the Supreme Court. On the other hand, if the Secretary decides not to include wool hosiery in his circular, the importers can appeal and carry the case up to the Supreme Court of the United States.

Under these circumstances, I feel that the Secretary will be justified in confining himself to the strict point decided by the Supreme Court, viz. "worsted

* Stated too low.

the writer was requested by the chairman of the executive of the new knit-goods organization to act temporarily as its secretary, and to accompany the members of that committee to Washington as counsel, with Mr. Kellogg, before named, in a new hearing before the Secretary of the Treasury. Proceeding towards Washington, the writer addressed at Philadelphia a very large meeting of the knit-goods manufacturers of that city, called by Mr. Dolan, one of the vice-presidents of the National Association of Wool Manufacturers, at the suggestion of the writer, and a delegation of Philadelphia manufacturers accompanied the executive committee to Washington.

A new hearing was granted to the executive committee of the knit-goods manufacturers, most ably presided over by Mr. Bosson, of Boston, an old member of the national association, through their counsel, Mr. Kellogg and Mr. Hayes. Upon consultation of counsel, it was agreed that the point originally made by the latter should be urged, viz. the limitation of the circular to *worsted stockings*, — a member of the committee, Mr. Spencer, also an old member of the national association, the only person in the country engaged in the manufacture of worsted stockings, magnanimously consenting to this course. The following senators were present: Mr. Morrill, of Vermont; Mr. Rollins and Mr. Blair, of New Hampshire; Mr. Hoar, of Massachusetts; Mr. Hawley and Mr. Platt, of Connecticut; and Mr. Mitchell, of Pennsylvania. The opening oral argument was ably made by Mr.

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stockings." The Secretary will thus have the power, without violating any rule of law, to sustain the policy of protection asserted in the late election. Such a decision will give infinite satisfaction in all quarters where this policy is favored, and will keep here thousands of foreign operatives who have come to this country to work in our hosiery mills, who would otherwise return to Europe.

Would it not be proper for the senators from the States affected by this decision to confer together and devise some means of impressing these views upon the Secretary more forcibly than they have yet been done?

I send you to-day a copy of the last "Textile Manufacturers' Directory," by which you will see how many mills in your State are affected by the decision.

Very truly yours,

JOHN L. HAYES,

Secretary of National Association of Wool Manufacturers.

Kellogg, and is not reproduced here, because it was not reported or printed. Mr. Hayes, whose duty it was to close, out of courtesy to the senators present, and considering the greater weight of their opinions, waived the oral argument he would otherwise have made, and requested the expression of their views. Senator Hawley spoke as follows: —

"Mr. Secretary, — I will make one point only in this discussion, and that as briefly as possible. Whatever I may omit that is essential will be set forth by Mr. Hayes, the secretary of the National Wool Association, who knows as much about the production and manufacture of wool and woollen goods as any man in the country.

"He has just said that the wool used by our American manufacturers of knit goods is ninety-five per cent American. To make it so was precisely the object of the provisions of the tariff that we are discussing. For many years the efforts of the wool growers and the woollen manufacturers of this country were clashing. In 1866 they came to an agreement, — let me call it a treaty, — which took form in congressional legislation in 1867. That treaty is not stated *totidem verbis* in the statutes, but is very clearly to be discerned from them, and assists materially in understanding them. The wool growers desire protection against foreign wools. This the manufacturers conceded, upon condition that they were to have a compensating protection by duties upon foreign woollen goods; wherefore the duty upon foreign manufactures is placed at fifty cents a pound specific and thirty-five per cent *ad valorem*. The advantage of that fifty cents a pound duty might be spared were there no duty upon wools, but to reduce those duties retaining the duty on wools is to convert the tariff into a measure for the protection of foreign manufactures. Now, when Congress came to the revision of Dec. 1, 1873, nobody asked, nobody intended by that revision itself, any modification whatever of what I have called the treaty between growers and manufacturers, the principles of which had been adopted by the Government. Indeed, everybody knows that Congress positively forbade the revisers to make any changes whatever in the effect of the laws. Now it is discovered that by pure accident, by giving one date to statutes which followed each other through a series of years (one at least seriously modifying one of its predecessors), a change is made in the tariff in gross violation of the compromise or treaty, or at least the Supreme Court is brought to think upon a very imperfect presentation of the case. Among business men of character and standing like these manufacturers, or like our bankers, the dis-

covery of an accidental variation in a well-understood contract would lead to no change in the relation of the parties. The real contract as understood by both parties would be carried out. We ask our Government to be equally honorable, so far as obedience to law and order will permit. We ask the Treasury Department to confine the reduction of duty to precisely that which the Supreme Court decided upon, — the duty upon worsted stockings.

"My point is this: I will not admit for one moment the necessity of an apology, or the shade of an apology, for this strict construction. Equity, justice, fairness, and honor are all with the manufacturers. A shrewd lawyer, proceeding upon speculation, and not put forward by even the importers themselves, has secured a decision that worsted stockings may be admitted on thirty-five per cent *ad valorem* duty only. We ask you to confine it to that precisely. This is Shylock again. Equity is with us in forbidding him to take a drop of blood. The other suits pending we firmly believe will enable us to show that the reduction ought not to go beyond worsted stockings, and perhaps even to show that the decision in the case of Vietor *v.* Arthur was a mistake. We cannot doubt that Congress will speedily correct any errors of the revisers, who were emphatically commanded not to legislate, but simply to condense."

Senator Morrill, who had been chairman of the Committee of Ways and Means, reporting the tariff of 1867, forcibly expounded the principles upon which it was founded, and emphatically declared the intent of Congress to preserve it intact in the Revised Statutes. Senator Hoar exposed the dangerous consequences of stretching a decision of the courts so as to cover supposed analogous cases. Senator Blair eloquently enlarged upon the important relations of the knit-goods industry, and Senators Pratt and Mitchell made pertinent suggestions.

The following printed argument, by Mr. Hayes, was filed on the next day: —

DUTIES ON KNIT GOODS UNDER TREASURY CIRCULAR "WORSTED STOCKINGS."

Additional Brief of Points for Limitation of Treasury Circular.

Hon. William Windom, *Secretary of the Treasury.*

Sir, — Having in the hearing of the case in question waived the oral argument which I should have made as associate counsel, in order

that the views of senators as to the interests of their constituents involved in this case might be presented, I beg leave to enforce with more emphasis, if possible, simply a single point made by my associate.

We claim that the circular should be strictly confined to *worsted stockings*, the single point before the Supreme Court.

The Supreme Court says, substantially, that the two provisions upon which the particular question at issue, viz. that of the duty on worsted stockings, turned, were section 243 of schedule L and section 318 of schedule M.

The applicability of these provisions to the case of worsted stockings is for *the present* admitted.

The point which I desire to bring into special prominence is, that the court, having in view simply *worsted stockings*, did not construe or refer to the section of schedule L which fixes the duties upon all manufactures of wool of every description, made wholly or in part of *wool.*

The controlling section which the department has hitherto recognized as fixing the duties upon knit goods composed wholly or in part of wool is as follows: —

"Section 242. Woollen cloths, woollen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not herein otherwise provided for, fifty cents per pound, and in addition thereto thirty-five per cent *ad valorem.*"

All varieties of woollen knit goods — viz. "caps, gloves, mitts, socks, stockings, shirts, and drawers, and all similar articles made on frames," composed in whole or in part of wool — are obviously included in this provision.

There are certain exceptions, but the terms of the exception are peculiar and precise, viz. "*not herein* otherwise provided for," — a term not to be found elsewhere in the tariff law; the invariable term in other cases being, not "otherwise provided for." The words, "not herein otherwise provided for," originally referred to the law of 1867, of which schedule L, "wool and woollen goods," is an exact repetition, and the word "herein" refers precisely and exclusively to schedule L. Nothing is excepted not found in schedule L; and the idea is thus positively excluded that any reference in regard to manufactures of wool can be had to schedule M, under the head of "sundries."

Now what articles are "herein otherwise provided for"? The sec-

tions immediately following enumerate them. First, the law enumerates in section 243, the one referred to by the Supreme Court, certain manufactures of wool and worsted, upon which the specific duties given vary according to their value. The reason for these provisions is founded upon the well-known theory upon which all the specific duties in this schedule are fixed, viz. that the specific duty on the goods is simply intended to reimburse the duty on the wool or raw material. Goods of the lower values are supposed to be made of wool paying low duties, in some cases three cents per pound; while those of the highest value are supposed to be composed of wool paying ten cents per pound specific, and eleven per cent *ad valorem*. These reasons do not appear on the face of the law, but they are well established by the published contemporary history of the legislation of the time. And it is settled by the Supreme Court, in Union Pacific Mail *v.* The United States, that where the language of the law is not clear, recurrence may be made "to the incidents of the time when the law was passed, to ascertain the reason as well as the meaning of its particular provisions."

The object of this section is not to determine the duties to be paid on the great bulk of knit goods, which cost above eighty cents per pound, and are composed of wool paying the highest duty, — these had already been provided for in the preceding section, 242, — but to provide lower specific duties on goods of less value, composed of wool paying less duty.

The Supreme Court referred, in the case specifically before them, *worsted* stockings only to section 243, because this is the only section in which manufactures composed of worsted are distinctly referred to. A distinction in that section being made apparently between manufactures of worsted and those of wool, although I believe that manufactures of worsted, equally with those of wool, were intended to be included in section 242, under the head of "manufactures of wool of every description." If the case in question had been in relation to knit goods or stockings of *wool*, the court would have been compelled to refer to section 242, in which is the only provision for knit goods of wool (knit goods of *wool* not being mentioned in section 243), under the head of "manufactures of wool of every description." If the court had referred to section 242, it is impossible to conceive that they would have held that goods provided for in this section were designated more specifically in schedule M, since the term "*herein* otherwise provided" prohibits, in the most explicit language that can be conceived, reference to any other schedule.

There is this vital difference between the two sections, 242 and 243. In the former section, under which knit goods of *wool* are provided for, the words "not *herein* otherwise provided for" are used. In the latter, more explicitly providing for worsted goods, the general and usual words "not otherwise provided for" are used. In construing the latter section, the court was not limited to schedule L, but might properly refer to any other part of the law where the articles are more specifically mentioned, as in schedule M, if that had in view articles of wool and worsted, which I think it did not. In reference to knit goods of wool, the court would be strictly confined to the designations and exceptions in section 242, and could not look beyond schedule L for more specific designation.

There having been no construction by the Supreme Court of section 242, the vital section fixing the duties unquestionably upon all manufactures of wool as distinguished from those of worsted, except otherwise excepted in schedule L, and, as I believe, upon those of worsted also, the Secretary is bound to adhere to the construction prevailing since the tariff of 1867, and to limit his circular to the case specifically decided by the court, viz. "worsted stockings."

I beg briefly to advert to another point.

If a recurrence to the history of the legislation on this subject is made by the Supreme Court on a rehearing of the case of "worsted stockings," which is now likely to be granted, or in a hearing in other pending cases involving the general question, the Secretary must be satisfied that with the new light thrown upon the case the Supreme Court will hold, as he, with his present knowledge, cannot fail to hold, that section 318, schedule M, was not intended to apply to woollen and worsted goods, but simply to those made of cotton.

The wool and woollen tariff of 1867 was declared, in its preamble, to be in *lieu* of the duties theretofore imposed. In the case of Washington Mills *v.* Thomas Russell, United States Circuit, Massachusetts District, the court decided, upon the force of the term *in lieu of*, that the law of 1867 repealed all laws then in existence in relation to wool and woollens. Schedule L in the Revised Statutes is an exact reproduction of the law of 1867. It is entitled "Wool and Woollen Goods," indicating the intention to cover all the laws relating to these subjects. So careful were the revisers to keep the old law of 1867 intact, that they retained in schedule L sections relating to oil cloths, oil silk cloths, cotton and flax carpetings, — subjects which, if the preservation of the integrity of the original law had not been kept in view, would have come under the schedule of "sundries."

A review of previous legislation shows that the provisions of section 318 of schedule M were derived from acts of 1846 and 1861, relating to cotton. Thus a strong presumption arises that, as the legislation on the subject of wool and woollens had been exhausted in schedule L, this section, 318, of schedule M, related simply to goods made of *cotton*, and had no relation to those made of wool and worsted.

From these considerations the Secretary is justified in awaiting further instructions from the Supreme Court founded on cases now pending. He should draw no inferences or deductions from the case in question, but confine his circular of instructions strictly to the point decided, viz. the duty on *worsted stockings*.

JOHN L. HAYES,
Secretary of the National Association of Wool Manufacturers, and of Counsel for the National Knit-Goods Association.

WASHINGTON, May 2, 1881.

NOTE. — It is clear that an exception should be made of "balmorals" composed of worsted. This term, well known in the trade as a designation of *striped stockings*, whether of wool, worsted, or cotton, found in schedule L, is a more specific designation than the term "stockings" found in schedule M, and must take precedence of the latter. The distinction is well established in the schedule L between "balmorals" and "balmoral skirts and skirting," both terms being found in the schedule, — the former being applied to stockings, and the latter designating the striped form of the skirt.

On the Monday succeeding the hearing on Saturday, the executive committees and counsel received satisfactory assurances from the Treasury officials that the object sought for in the hearing would be attained, and that an order would be issued limiting the circular to worsted stockings, — thus, with this slight exception, restoring to the whole knit-goods industry of the country the protective duties which it had enjoyed for the last fourteen years. Before the issuing of such an order, however, the Attorney-General, at the solicitation of Mr. Kellogg, to whom we heartily concede the credit of the movement, consented that a motion should be made in the Supreme Court for a reopening and rehearing of the case of worsted stockings. The motion was made, and a decree for a rehearing of the case was ordered by the court on the last day of the session. An order was thereupon issued by the

Secretary of the Treasury absolutely rescinding the obnoxious circular.

The future relations of the knit-goods manufacture to the tariff will depend not upon administrative but judicial construction in the reopened and other cases which will arise, unless anticipated, as is possible, by legislative action. We await the result without apprehension. The disclosure made by recent events of the vast interests involved will enlist all the powers of the Attorney-General in the argument, and the gravest consideration of the court in its decisions. Not merely a single section, no other material sections being purposely withheld, as in the former hearing, will be before the court in the briefs of counsel, but the whole woollen tariff, with its transparent intent to cover every branch of the wool manufacture. And whatever may be the result in the reopened case, though we feel strong confidence in the reversal of the former views, we have absolute confidence that the court will take care that no such monstrous inference can be drawn from their decision as was made in the Treasury circular, — that a judgment in respect to a single article by analogy covers every article produced in the knit-goods industry.