

Case No. 18,247.

{6 Blatchf. 555.}<sup>1</sup>

CHARGE TO GRAND JURY.

Circuit Court, S. D. New York.

May 10, 1869.

FRAUDS ON THE REVENUE.

1. Description of the manner in which frauds on the revenue are perpetrated, in obtaining from the government the payment of moneys on drawbacks, on the exportation of goods which have paid internal revenue taxes.
2. Frauds in the warehouse department, commented upon.
3. The subject of giving and taking gratuities for the performance of official duties, referred to.
4. The duties of a grand jury, enforced.

BENEDICT, District Judge (charging grand jury). It is proper for me, on this occasion, to explain to you the nature of the duty you are called upon to perform, to show you the Importance, at the present time, of a careful and conscientious discharge of that duty, and to direct your attention to some provisions of law and some questions of fact which you will be required to consider. The character of the duty devolving on a grand jury in a court of the United States, many of you doubtless understand. It is that of declaring what persons shall be held to answer in court for violations of the laws of the United States. Your services are made necessary by reason of that provision of the federal constitution which declares, that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. This provision, while it affords citizens protection against arbitrary power, carries with it a great responsibility; for, under this provision, it rests with the people, as represented by a grand jury, drawn from the mass of citizens by lot, to say who shall and who shall not be accused of crime in the courts of the United States. You, therefore, represent the important community dwelling in the Southern district of New York, and, in behalf of that community, you are called on to say what laws of the United States have been disobeyed within the district; to inquire as to what frauds upon the revenue of the United States have been committed therein; to ascertain what violations of the laws of the United States which provide for the currency, which protect the post office, which guard the soldier and the sailor from imposition, which forbid smuggling, which, punish bribery, perjury or conspiracy to defraud the government, have been committed; to say whether any and what officers of the United States, having sworn to execute and enforce the laws of the United States, have themselves assisted or connived at the evasion of them. The importance of this duty, which

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is obvious from a statement of it, will be more fully appreciated, if you consider the circumstances under which it is now to be discharged.

The war, which decided the question whether a government framed like ours had the ability to quell by force of arms a great rebellion, raised another question, which is now in process of solution, namely, whether such a government can surely provide for the payment of the interest upon a great debt. The interest upon the public debt must be obtained by taxation, and this taxation, under the most favorable circumstances, must be heavy. It will become odious and intolerable, if it is to be borne by the honest and well-disposed classes alone, and avoided by those willing to grow rich at the expense of their fellow citizens, through fraudulent evasions of the law. This latter class, numerous and powerful, both socially and politically, has, from the beginning, confronted the government in its effort to collect the revenue. At first, the government attempted to compel their obedience by seizure of their property, and large quantities of merchandise detected in the act of escaping taxation were forfeited and sold. But the attempt was a failure, the frauds increased both in number and in magnitude, and the government was compelled to turn to its last resort—the criminal jurisdiction of its courts. It is now, therefore, here and elsewhere engaged in the effort to check these frauds by means of criminal prosecutions—the indictment, trial, conviction and imprisonment of defrauders of the revenue. Inasmuch, then, as no man can be tried until accused by a grand jury, the government and the community, of which the government is but the representative, now turns to the grand juries of the land, and asks the indictment of every man, whether high or low, rich or poor, who is found to be engaged in fraudulent evasions of legal taxes. Time would fail me to describe to you the various forms which these frauds assume, but it is my duty to put you in possession of what I have understood to be the facts in regard to some transactions which must come before you, and to allude in general terms to others which your own inquiries will expose.

I begin with what have been designated the drawback cases. These cases have been the subject of examination in the adjoining district, and are transferred to this district because most of the transactions took place here. They are frauds perpetrated under cover of the provisions of a law which enables a person who has paid taxes upon manufactures which he afterwards exports, to receive back the taxes he has paid, upon proving the actual exportation of the goods. To obtain this drawback, a set of papers is necessary in every case, consisting first of an internal revenue collector's certificate, that the tax on the goods has been paid; second, a certificate of the collector of customs, that such goods appear on a ship's manifest, on file in the custom-house, as actually exported; third, an affidavit by the shipper as to the identity of the goods upon the manifest and the goods upon the tax receipt; fourth, a certificate of an internal revenue collector, that a proper bond to secure the government against any relanding of the goods has been filed with him. These papers

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must be certified to at the custom-house and then go to the department at Washington, to be examined, there. If found correct, a check for the amount of tax, drawn to the order of the shipper, upon the treasury, is returned. Numerous sets of such papers, representing sums of from § 300 to § 7,000 each, all false, no such goods having been exported, there being no such shipper and no such manifest on file, the bonds being fraudulent, the signatures forgeries, and “the affidavits perjuries, have, within a space of six months time, passed through the custom-house here and been certified, have then passed through the department at Washington and been there approved, and corresponding checks have been drawn and paid, every one, or nearly every one, upon a forged endorsement, until the total probably exceeds the sum of § 700,000. The fraud which I am thus enabled to describe, because it has already been the subject of examination in the adjoining district is not disputed, and the money is gone. It will be your duty to say who shall be accused before this court as criminally responsible for the transaction. Some of the parties supposed to have been engaged in this affair are already under bail. One has been brought from Florida, for the arm of the government is long. Others have escaped beyond the seas. It will be your duty, however, to indict all who appear to have been connected in the design, whether present or absent. In your examination of this case, you will have occasion to see with what looseness the public business is sometimes conducted, for it will appear that great numbers of bonds required by law have been accepted as good, without any identification of signatures or of persons, and without any inquiry as to the sufficiency or even existence of the sureties, the greater part being, in fact, executed in fictitious names or by persons entirely worthless. It will also appear that the genuine seal of an internal revenue collector can constantly appear upon certificates now claimed to be forged, and that part of the files of the collector’s office, being bonds required by law, can be removed and taken to a neighboring city, by persons having no connection whatever with the government, there be dealt with as unknown parties may desire, and then be returned without objection or remark. I have explained the features of this case to you fully, because you will be called on to act in regard to it, and not because it is to any very great extent exceptional.

If you extend your inquiries into other departments of the custom-house, you will find that similar frauds have been there committed. You will find that, in the warehouse department, it has been possible for certain parties to withdraw dutiable goods without payment of any duty, until the loss from a single warehouse has equaled § 400,000, according to the estimate of an official. The parties who committed this fraud walk the streets to-day, well known, but unprosecuted and unpunished, unless the repayment of a part of their great gains is to be called punishment. Nor is the case to which I am now alluding, and which you will find fully disclosed upon the files of this court, the only one of this class which has occurred, and with a similar result, if I am correctly informed. You may think

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proper to inquire into them all. Frauds like these are, of course, not to be accomplished without the connivance on the part of officials; and you will have occasion, no doubt to consider what persons shall be accused before this court, for giving or accepting bribes.

There is also an abuse at the custom-house, proper to be spoken of in this connection, which, I notice by the public prints, is now attracting some attention, and of the evil effects of which the drawback cases will give you painful proof. I refer to the custom of giving and taking gratuities for the performance of official duties. Strengthen the hands of the collector, gentlemen, in any effort to stop this steady flow. The law lies at your hands, and it reads thus (Act March 3, 1863, § 4; 12 Stat. 739): "If any officer of the revenue \* \* \* shall knowingly accept, from any person engaged in the importation of goods, wares or merchandise into the United States, or interested, as principal, clerk, or agent, in any such importation, or in the entry of any goods, wares or merchandise, any fee, gratuity or emolument whatsoever, such officer shall, on conviction thereof, be removed from office and shall be fined in any sum not exceeding five thousand dollars, or be imprisoned not exceeding

two years, at the discretion of the court.” The 6th section of the same act is as follows: “If any person who shall be engaged in the importation of goods, wares or merchandise into the United States, or who shall be interested, as principal, clerk, or agent, in the entry of any goods, wares or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratuity or present of any money or other thing of value, such person shall, on conviction thereof, be fined in any sum not exceeding five thousand dollars, or be imprisoned not exceeding two years, at the discretion of the court.”

The market price of whiskey is still less than the first cost of manufacture, with the taxes added. From the tobacco trade honest dealers are fast being driven out. Much of the income tax goes uncollected. The fraudulent bond-maker still plies his busy trade. Men known to have grown rich by illegal means have escaped even the accusation of fraud, and flaunt their wealth before the public eye. Honest officials have been compelled to leave the service for want of due support in the performance of their duty, while other officers of the revenue who have remained and dared to endeavor to protect the government have found the very government they sought to serve turned against them and used with effect to accomplish their destruction and disgrace. In view of a demoralization such as these facts disclose, do you wonder that some men query whether the proper enforcement of revenue laws is possible for such a government as ours, with such a civil service as it has hitherto had? These remarks will have failed of their intended effect, if they have not served to deepen your sense of the responsibility which rests upon you, and to strengthen your determination to discharge yourselves of that responsibility in such a manner as to satisfy the proper demands of the community in which you live. To enable you to do this, great powers are given you. No matter within the jurisdiction of the court is exempt from your scrutiny. No man, of whatever degree, can refuse to obey your summons or decline to answer your proper interrogatories. No compromise of a department can have effect to stay your hand. Within your extended sphere you are supreme. Use, then, these great powers freely, examine diligently and inquire widely, but accuse with all due care, mindful always, that the mere examination of a transaction in open court, is often of great public benefit, but also, mindful that such an examination is often, of itself, a great punishment. It is not your province to try the cases which you may consider. That duty devolves upon the petit jury and the court; but you are diligently to inquire and true presentment make of every offence arising under the laws of the United States which shall be made to appear by reasonable prima facie proof. This duty I charge you to perform, and if to its performance you shall bring that patience, that intelligence and that good courage which the occasion demands, you will render an important service to your fellow-citizens as well as to the government which protects you and under which it is your good fortune to live.

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<sup>1</sup> {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}