Mr. UNDERHILL, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 3278]

The Committee on Claims, to whom was referred the bill (H. R. 3278) for the relief of A. S. Rosenthal Co., having considered the same, report thereon with a recommendation that it do pass.

STATEMENT OF FACTS

This bill directs the reference of the claim to the Court of Claims with jurisdiction and authority to hear and determine the same to judgment, with the right of appeal as in other cases, provided that no suit shall be brought under the provisions of the act after six months from the date of the passage thereof.

The case of silk could not be located for delivery to the owner after its examination by the appraising officers, and the Rosenthal Co., through its attorneys, submitted a claim for the value of the merchandise. The parties were informed by the collector of customs at New York that no fund or appropriation was available from which reimbursement could be made to them for the value of the merchandise, and as the goods were regularly imported and had gone into consumption there could be no abatement of the duties.

Inasmuch as the bill proposes the reference of the matter to the Court of Claims for determination on its merits, your committee approves passage of the same.

TREASURY DEPARTMENT,
Washington, February 18, 1926.

DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter of the 27th ultimo transmitting a copy of bill H. R. 3278 for the relief of A. S. Rosenthal Co, now pending before your committee and requesting an expression of opinion on the merits of the measure.
The claim is one for damages for the loss and nondelivery of one case of silk belonging to the company while it was in the custody of the United States at the appraiser’s stores in New York City and for the duty thereon. The bill directs the reference of the claim to the Court of Claims, with jurisdiction and authority to hear and determine it to judgment, with the right of appeal as in other cases, provided that no suit shall be brought under the provisions of the act after six months from the date of its passage.

Inasmuch as the bill proposes the reference of the matter to the Court of Claims for determination on its merits, the department will interpose no objection to its passage.

These are substantially the views incorporated in letters addressed by the department to your committee on November 1, 1919, and March 25, 1924, on similar measures introduced in previous Congresses. The department’s file on the subject was transmitted with the letter of March 25, 1924.

Very truly yours,

A. W. Mellon,
Secretary of the Treasury.

Hon. Charles L. Underhill,
Chairman Committee on Claims,
House of Representatives, United States.

TREASURY DEPARTMENT,
UNITED STATES CUSTOMS SERVICE,
Port of New York, May 13, 1915.

The Secretary of the Treasury,
Washington, D.C.

Sir: I transmit herewith for the department’s consideration a communication with its inclosures, received at this office under date of 7th instant, from Harrington, Bigham & Englar, Esq.s, attorneys for A. S. Rosenthal Co., of this city, in a claim for the recovery of the value of a certain case of silk which had been in the custody of the Government for purposes of examination. There are also inclosed for the department’s information the entry papers in the case, together with copies of all correspondence between this office and the claimant.

The case in question, No. 2760, was part of a shipment of 42 cases containing Japanese silk and was valued, including the duty, at $1,806.70. At the time the original complaint was lodged with this office a careful investigation was made of the loss of this case, the details of which are as follows:

The case was received in the appraiser’s stores, October 27, 1914, and was passed as “correct,” containing 78 pieces of Japanese silk, on the following day. The records of the examiner who had the case for appraisement show that it was marked as ready for warehouse the same day as passed, together with other cases in his room. Under date of October 30 it appears recorded on the “warehouse book” for transfer to warehouse at 386–392 West Twelfth Street, which would indicate that it had passed the examiner and had been corded and sealed, ready for delivery to the elevator for transfer to the first floor, there to await delivery to the warehouse. The examiner’s records do not show on what date the case was placed on the elevator.

The records of the appraiser do not show that this case has ever been delivered to a truckman for transfer to warehouse. The public stores have been thoroughly searched, as has also the warehouse at 386–392 West Twelfth Street, without success in locating the case or throwing any light on its disappearance. As the case in question was admittedly received by the appraiser, and the records do not show its delivery to anyone, and as the warehouse records further fail to show its receipt, there is a strong presumption that the case was stolen or lost while in customs custody.

The importers have been informed that no fund exists for reimbursing them for the value of the case, as the same was regularly imported and as the contents apparently have gone into consumption there can be no abatement of duties. They were also informed that in cases of this character relief may only be obtained through an act of Congress, and the attorneys, accordingly, have submitted a draft of a private bill, herewith inclosed, looking toward that end, and request to be informed as to their future procedure in the premises.

In conclusion, I may add that the applicant is the A. S. Rosenthal Co., of New York City, the president of which is Abraham S. Rosenthal, who, in 1903, was a partner in the firm of A. S. Rosenthal & Co., which firm at that time was com-
posed of the said A. S. Rosenthal and his son-in-law named Cohn, both of whom in company with a United States examiner named Browne were prosecuted in this jurisdiction. (See U. S. v. Rosenthal et al., 129 Fed. Rep. 766.) Browne was convicted and for years was a fugitive from justice. He died several years ago. Rosenthal, for upward of 10 years after his indictment, remained a fugitive from justice, but recently he returned to this jurisdiction, pleaded guilty and was fined $10,000 by the court. The defendant Cohn, who was tried with Browne, was acquitted. The firm's civil liability was compromised.

I deem it proper to bring this matter to the attention of the department, although the previous record of A. S. Rosenthal might not have any material bearing upon the merits of the present claim.

The return of the entry papers is requested after they have served the department's purpose.

Respectfully,

H. C. STUART, Special Deputy Collector.

May 24, 1915.

F. M. HALSTEAD, 
Chief, Division of Customs.