

pensation should be made to the shipper of the lobster for the loss he has sustained in consequence of the refusal to admit it free of duty, which rendered it necessary to take the lobster back to the place of shipment.

I have, &c.
(Signed) EDWD. THORNTON.

Inclosure 2 in No. 19.

Mr. Fish to Sir E. Thornton.

Sir, *Department of State, Washington, November 17, 1875.*

REFERRING to your note of the 30th ultimo, further in regard to the importation of certain canned lobsters in the British vessel "Lizzie Dakers" at the port of Philadelphia in the year 1874, I have the honour to inclose, for your information, a copy of a letter of the 12th instant upon the subject from the Secretary of the Treasury, to whom a copy of your note was submitted.

(Signed) HAMILTON FISH.

Inclosure 3 in No. 19.

Mr. Bristow to Mr. Fish.

Sir, *Treasury Department, November 12, 1875.*

I HAVE the honour to acknowledge the receipt of the communication of the Acting Secretary of State, under date of the 2nd instant, transmitting a copy of a note and its accompaniments lately received by you from the British Minister further in regard to the importation of certain canned lobsters in the British vessel "Lizzie Dakers" at the port of Philadelphia in the year 1874.

It appears from the papers before the Department that the Collector of Customs at that port declined to admit said importation to free entry on the ground that the lobsters were presumed to have been preserved in oil, a fact which, if true, would exclude them from the benefit of the provision in the Treaty of Washington, allowing, with certain exceptions, the free entry of fish, the produce of Canadian fisheries.

It further appears that, in consequence of such action of the Collector, the owners of the lobsters returned the same to the Dominion of Canada, under an entry for warehouse and immediate exportation, and, consequently, without any examination by which the fact, whether the same were or were not preserved in oil could be determined.

Evidence is now presented going to show that the lobsters in question were, as a matter of fact, not preserved in oil, and were, therefore, entitled to free entry; and claim is made on behalf of the Canadian owners for damages alleged to have been sustained by reason of the non-admission of said merchandize to free entry, and the supposed compulsory re-exportation thereof under the circumstances stated.

In reply I have to remark that it may be deemed sufficient to state, so far as the action of this Department is concerned, that, under the circumstances of the case, the Secretary of the Treasury has no jurisdiction of said claim: first, because it is for constructive or equitable damages; and, secondly, because, if he could entertain the claim and adjust the amount to be allowed (if any) there is no appropriation out of which he could direct the same to be paid.

It may be proper to add, however, for the information of the claimants, that, as the facts appear before the Department, there was no legal stress or compulsion which prevented them from exercising the right to enter the merchandize, either in bond or for consumption, and therefore to have such examination made as would have determined the precise character of the importation, or would have enabled them to bring the question before the Department on protest and appeal.

It would seem, therefore, that the claimants voluntarily adopted an alternative of their own selection, a course which they may have taken in ignorance of their legal rights, but not of itself affording any grounds for the relief they now seek, and which, if they are entitled thereto, can be afforded only by a special Act of Congress.

I am, &c.
(Signed) B. H. BRISTOW, *Secretary.*