ALEXANDER H. EVERETT.

[To accompany bill H. R. No. 526.]

July 21, 1842.

Mr. Cushing, from the Committee on Foreign Affairs, submitted the following

REPORT:

The Committee on Foreign Affairs, to which was referred the petition of Alexander H. Everett, have had the same under consideration, and report:

This petition was referred to the same committee in the 24th, 25th, and 26th Congresses, and on each occasion a report was made allowing the petitioner's claim. The present committee adopt the views of its predecessors, as expressed in the reports hereto annexed, and, in conformity with this opinion, submit to the House the accompanying bill.

March 5, 1840.

The Committee on Foreign Affairs, to whom was referred the memorial of Alexander H. Everett, submit the following report:

This case has been the subject of two reports: the first by the Committee on Foreign Affairs, on the 12th April, 1836; and the second by the same committee of the last Congress. Both reports are favorable to the claim.

The facts are the following: The memorialist was the minister of the United States at the court of Spain, from the month of May, 1825, to October, 1828. Under the belief that he would be entitled to charge it in his accounts with the United States, he paid $ 250 per annum for office-rent, and charged the amount in his accounts, regularly, from the month of April, 1826, until the close of his mission. It also appears that he notified the Secretary of State of the expenditure, by his letter dated in April, 1826.

It appears that such allowances had been made to our ministers at London and Paris; and with a knowledge of this usage, and under the impression that such an allowance would be made to him, he actually expended the money and charged it in his accounts, as above stated. No answer was made to his letter informing the Secretary of State of the

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charge, and he was suffered to continue the expenditure until after the expiration of his mission, without any notice that the claim would be disallowed.

It appears from the correspondence with Mr. Livingston, while Secretary of State, that he considered the claim an equitable one, but did not feel authorized to allow it, because it did not come within the language of an act of Congress for the relief of Mr. Everett, passed the 29th of May, 1830; but, in the close of one of his letters on this subject, he holds the following language: "My regret at not being able to make a decision more conformable to your wishes is lessened by the consideration, that, even if the allowance were directed, an appropriation would be necessary before payment could be made, the appropriation being entirely exhausted; and a bill for the settlement of your account will probably pass with no longer delay than that would require." The justice of the claim is very fully shown by the report of the Committee on Foreign Affairs of last Congress, which the committee beg leave to adopt as part of this report.

A bill is therefore reported for the relief of the memorialist.

FEBRUARY 17, 1838.

The Committee on Foreign Affairs, to whom was referred the memorial of Alexander H. Everett, submit the following report:

This case was before the last Congress, and, on the 12th of April, 1836, the Committee on Foreign Affairs made a favorable report upon it, accompanied by a bill for the relief of the petitioner, which was not reached during that session or the next. That report contains a brief account of the case, (Rep. No. 562,) and the committee would refer to and adopt it, but that some other papers have come into their possession, which further explain it, and are proper to be submitted to the consideration of the House.

In the early part of the year 1825, the petitioner was appointed minister to Spain, and on the 25th of May, in that year, his salary commenced. Shortly after his arrival at Madrid, he was informed that it was usual to make a charge for the rent of an office for the use of the legations at London and Paris; and believing that the same necessity or propriety existed with regard to the embassy at Madrid, he inserted a charge for it in his quarterly account, and notified the Secretary of State thereof, in a letter dated April 9, 1826, from which the following is an extract:

"Having been informed that an allowance of about sixty guineas per annum is regularly made to the legations at London and Paris, for office-rent and expenses, and the reason for such allowances being the same here as at those places, I have inserted a charge on this account for the last and preceding quarter, reckoning the amount at the rate of $250 per annum."

It does not appear that any notice was taken of this part of Mr. Everett's letter, either affirming or disallowing the account; and he continued to make the charge, being paid from time to time by drafts upon

Baring, Brothers & Company, in London. On the 22d of October, 1828, his accounts were, for the first time, taken up for settlement in the office of the Fifth Auditor, who addressed a note to the then Secretary of State, inquiring whether or not the charge for office-rent, among others should be admitted; upon which note the following endorsement was made:

"The charge for office-rent cannot be allowed. The other items require further explanation. Clerk-hire, as such, cannot be admitted. The secretary of legation is to perform the duties of a clerk. Mr. Everett should be informed of the above by the Auditor."

On the 19th of February, 1829, the Fifth Auditor addressed a letter to Mr. Everett, enclosing a copy of the above, and saying further: "As the amount thus disallowed and suspended for further explanation is considerable, I have concluded to delay the settlement until I hear from you."

Mr. Everett's salary as minister ceased on the 31st of July, 1829.

On the 11th of December, 1829, the Fifth Auditor addressed a letter to the then Secretary of State, with sundry explanations, which had been required; but as there was still some difficulty in the adjustment of the account, an act of Congress was passed on the 30th of May, 1830, referring the matter to the Secretary of State, to be settled according to the instructions which had been given by the Department of State and usage. Under this reference, all the charges which had been considered doubtful were allowed, excepting one of $958 32, for the rent of an office for the legation, as appears by a letter, with the endorsements thereon, from the Fifth Auditor to the Secretary of State, dated on the 18th of September, 1830.

Mr. Everett having insisted upon the justice of this claim, under the peculiar circumstances of the case, the following letter was addressed to him:

DEPARTMENT OF STATE,
Washington, June 28, 1831.

SIR: It would have given me great pleasure, could I, on an examination of the case stated in your letter of the 22d, have felt myself justified in directing the settlement of your account, by the allowance of the charge which has been objected to. But, on inquiry, I find that the item of office-rent was not only rejected by the Fifth Auditor, but that his decision was confirmed by my predecessor in office, and that the account is finally closed in conformity with these decisions; so that I consider myself precluded from making any revision of the settlement, whatever might be my opinion as to the justice of the claim.

I am, with great respect, sir, your most obedient servant,
EDWARD LIVINGSTON.

ALEXANDER H. EVERETT, Esq., *Boston*.

On the 16th of July, 1831, the Secretary of State addressed another letter to Mr. Everett, as follows:

DEPARTMENT OF STATE,
Washington, July 16, 1831.

SIR: Thinking, after the receipt of your last letter, that it might be satisfactory, and perhaps useful to you, to know my opinion on the charge for office-rent—whether, in the end I should suppose myself justified in

opening the account or not—I undertook the examination with a strong desire to allow the charge, which I think a just and reasonable one.

The facts are—

1. That there is no law expressly authorizing the charge.

2. That similar charges have been allowed in the missions to France and England.

3. That they have not been allowed to our ministers in any other place; and that, as to Madrid particularly, they have been rejected when made.

4. That, in your case, on erroneous information that the charge was usual, and had been allowed, you actually paid the sums charged to the secretary of the legation.

5. That the charge being disallowed, the President submitted it, with other questions of the same nature, to Congress; and, in consequence thereof, the act of 29th May, 1830, was passed, which directs that your account, among others, should be allowed, "as far as the same shall appear to the Secretary of State to have been sanctioned by instructions from the Department of State, or to have a just and equitable foundation in usage."

If the charge be allowed, it must be brought within one of the two circumstances mentioned in the law: it must have been sanctioned by instructions, or have a just and equitable foundation in usage. There are clearly no instructions to warrant it; it must come, then, under the second category, or it cannot be allowed. It must have a just and equitable foundation *in usage*. Equity, by the words of the law, does not appear to me to be sufficient, unless it be an equity founded in usage. But here there is no such foundation; the usage is against the allowance. If it were not for this limitation, which, in my opinion, restricts the exercise of my discretion, I should, under the circumstances of this case, allow the charge, for I think it an equitable one; and I believe, when submitted to them, Congress will direct it to be so settled.

My regret at not being able to make a decision more comformable to your wishes is lessened by the consideration, that, even if the allowance were directed, an appropriation would be necessary before payment could be had, the former appropriation being entirely exhausted; and that a bill for the settlement of your account will probably pass with no longer delay than that would require.

I am, sir, with great respect, your obedient servant,

EDW. LIVINGSTON.

A. H. Everett, Esq.

The Secretary of State being desirous to obtain the opinion of the attorney general, as to the construction of the act of Congress, submitted the case to that officer, whose opinion was given on the 5th of August, 1831, and is as follows:

Attorney General's Office,

August 5, 1831.

I have examined the act of Congress of May 29, 1830, entitled "An act providing for the settlement of the accounts of certain diplomatic functionaries," and have read and considered the three letters of Mr. Alexander H. Everett, late minister of the United States in Spain, ap-

pealing from and remonstrating against the decision of the Fifth Auditor of the Treasury, in the adjustment of his public accounts, by the rejection of a charge which they contained for office-rent at Madrid.

The act of Congress authorizes the expenditures charged to be allowed, as far as they shall appear to have been sanctioned by the instructions from the Department of State, or to have a just and equitable foundation in usage.

The charge in question was not sanctioned by the instructions from the Department of State, and Mr. Everett does not propose to support it on that ground; but he insists that it has a just and equitable foundation in usage.

It appears from the papers before me, that it has been the usage to allow office-rent to the ministers at London and Paris; and Mr. Everett, being informed by Mr. Smith of this usage, inferred that the same allowance would be made to the minister at Madrid. In this, it seems, he was mistaken. The charge in question has never been allowed to the minister at that court.

The act of Congress does not authorize the charge, however just and equitable it may be, unless it is founded in usage; and the usage to allow such a charge to the ministers at London and Paris cannot, under this law, authorize the allowance to the minister in Spain, where the usage has been otherwise.

In order to justify the admission of the claim, it must be one which the practice of the Government has sanctioned, and which it has been usual to allow; and as it has been usual not to allow a charge of this description to the minister at Madrid, I think it cannot, according to the plain words of the act of Congress, be allowed to Mr. Everett.

The right to the allowance in question must depend on the words of the law, and cannot be influenced by the language used in the President's message to Congress, and the documents accompanying it. It is unnecessary, therefore, to inquire whether the message, upon its fair construction, taken in connexion with the documents, can be considered as stating that this particular item has a foundation in usage. I think it cannot be so construed. But I do not pursue the inquiry; because, in my opinion, the language of the message cannot give to the law an interpretation different from that which his own words import.

The claim of Mr. Everett is, without doubt, a just and equitable one. He paid the money to the secretaries of legation, under the belief that they were entitled to it, and that he might lawfully charge it to the Government; and his equity arises from the omission of the Government to inform him that it would not be allowed, after the notice given by him that he had made the charge, and should continue it if it were not disapproved by the Government. But as the act of Congress authorizes those charges only to be allowed which had been sanctioned by instructions from the Department of State, or had a just and equitable foundation in usage, and as the claim in question does not come within either of these descriptions, I do not think it can be allowed, although it is just and equitable on other grounds.

R. B. TANEY.

The committee concur with the Secretary of State and attorney general in the opinions which they expressed, that the present claim could

not be brought within either of the alternative branches of the act of Congress of 1830. It could not be said to be expressly sanctioned by the Department of State, or by usage. But it was so far impliedly sanctioned by the Department, that it would be extremely hard and unjust to permit the petitioner to bear the loss, when he had a reasonable ground to believe that he was justified in making the expenditure. He stated the case to the Government; continued regularly to advance the money out of his own funds; charged it in his account; and had a right to think that no objection existed against the charge, because none was made.

The committee therefore report a bill for his relief to the amount of the advances thus made, viz: $958 32.

April 12, 1836.

The Committee on Foreign Affairs, to whom was referred the petition of Alexander H. Everett, have had the same under consideration, and report:

That the petitioner was on the —— day of —— duly appointed minister of the United States, resident at Madrid, and regularly transmitted his accounts, agreeably to his instructions, at the end of each quarter; that a few days before his departure on his return home, he received a letter from the Fifth Auditor of the Treasury, informing him that his accounts had been *recently* taken up for examination, and that certain charges made under the head of "contingent expenses" were not considered admissible. At the opening of the next session of Congress the account was submitted to that body by the President, and by an act of May 30, 1830, was referred to the Secretary of State, to be settled by him on principles of equity and *usage*. Under this reference the account was settled, and all the charges which had been considered doubtful were allowed, excepting one of $958 32, for the rent of an office for the legation.

Your committee have examined the circumstances attending this charge, and find that it had been usual to make an allowance for the rent of an office for the secretaries of legation at London and Paris, but not at Madrid; that, being informed that this usage existed at the two former courts, and having no information, or means of information, but by reference to his own Government, that it did not exist at Madrid, Mr. Everett made the disbursements, and charged them in his quarterly accounts, which were regularly sent home, but were not examined until a short time before his mission terminated; that these disbursements, actually made by Mr. Everett, amounted to the sum of $958 32.

Your committee are of opinion that the minister had every reason to believe that the expenditure was warranted by usage and law, and approved by the Department. His drafts on his accounts were regularly paid, and he made disbursements for the public service out of his private funds, and rendered accounts thereof as a public charge, without being informed by the proper authorities that the charge was inadmissible.

The committee therefore report a bill for his relief.