IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1859.

On motion by Mr. Crittenden,

Ordered, That the report from the Committee on Foreign Relations, on the claim of Francis Dainese, made at the last session of Congress, be printed and referred to the Committee on Foreign Relations, with bill S. 14.

IN THE SENATE OF THE UNITED STATES, *March* 3, 1859.

Mr. CRITTENDEN made the following

REPORT.

[To accompany bill S. 464.]

The Committee on Foreign Relations, to whom was referred the bill for the relief of Francis Dainese, have had the same under consideration, and report to the Senate that they recommend the passage of said bill.

For a statement of the case they refer to the accompanying reports made from the Committee on Foreign Affairs of the House of Representatives on the 8th of August, 1856, and on the 5th of March, 1858, respectively.

IN THE HOUSE OF REPRESENTATIVES, *March* 5, 1858.

Mr. BURLINGAME, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, acting consul, and consul, from May 16, 1849, to December 20, 1852, a period of three years, seven months, and four days, as appears by the records of the State Department, (copies of which have been furnished to the com-

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mittee;) and he claims to be allowed compensation for contingent, travelling, and other expenses and losses as such vice-consul, acting consul, and consul during that period. A part of the amount claimed is for compensation, at the rate of one thousand dollars per annum, amounting to three thousand five hundred and ninety-five dollars and forty cents for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as not allowable, because the act of 1848, under which it is claimed, is considered, in their opinion, as not entitling the diplomatic and consular agents of the United States in Turkey to the same compensation therein made for like officers in China; and, in this particular, the committee concur with the views of that of the 34th Congress upon this matter.

Another part of the claim of the memorialist is for the sum of six hundred and thirty-five dollars, on account of the contingent expenses of his consulate, for the support whereof an annual appropriation of five hundred dollars is made. Upon a careful examination of this item, and after fully investigating his accounts by transcripts from, and inquiries at, the Treasury Department, the committee are satisfied there is justly due, on this account, the sum of four hundred and thirty-one dollars and forty-nine cents, which should be allowed; this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed, and that reported to be due, arises from two facts: First, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16th of that year, the commencement of the period of his service; and, second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of one hundred and forty dollars on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for interest and loss on exchange on his drafts, for money allowed to him as an indemnification for his support of those refugees having American passports at Constantinople, from 1849 to 1851, both inclusive. The committee, after a careful examination of the documents communicated to the last Congress by messages of February 23 and March 3, 1857, as well as those now submitted by the memorialist, and circumstances therewith connected, and after taking under due consideration the statements made by his opponents, and the facts set forth, and proofs submitted by the memorialist in refutation thereof, in his communications of 12th September, 1856, and 28th February, 1857, are satisfied that, to do the memorialist justice, there should be allowed to him, in connexion with this claim, the additional sum of $609 11. The committee, however, aware of the objection existing in the minds of many to the payment of interest and losses in the case of any

claim on the government, have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for those items; and, therefore, advise the memorialist to accept in lieu thereof the allowance proposed in full, as stated in this bill.

It appears to the satisfaction of the committee, from an examination of the numerous public documents above referred to, that on the 29th of July, 1851, whilst the memorialist was the duly recognized incumbent of the consulate at Constantinople, and was discharging the duties thereof, the persons then having charge there of the affairs of the legation of the United States forcibly, and *without proper authority*, ejected him from and violated his consular office, and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that *he was thereby*, and by their persistent interference with his official duties, *unwarrantably driven from his office*, and, for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, was compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at the rate of $500 per annum, which he paid out of his own funds, and for which he has not been reimbursed; that after a full and protracted examination of the facts of his case, his course was unqualifiedly approved by the then Executive, Mr. Webster being then Secretary of State. (Mr. Webster's decision is fully sustained in a recent letter from the Secretary of State, dated February 27, 1857, to one of the parties implicated, in which the Secretary further *declines complying with their request to recognize the legality of their occupancy of the consulate during the period of the forcible ejection therefrom by them of the memorialist.*) Moreover, by reference to the opinion of Attorney General Cushing, (September 19, 1855, vol. vii, page 512,) the memorialist was, at the time he was forcibly ejected, deemed a person invested by the United States with, and exercising, consular authority, *subject* to the instructions *alone* of the Secretary of State; and, therefore, the officers of the legation evidently had no right to interfere with or to resist him, and having done so, their act was illegal and in direct violation of law. And this view is fully sustained by the opinion of Attorney General Legare, (March 24, 1843, vol. iv, page 165;) by Judge Story's opinion, (United States *vs.* Bachelder, ii Gallison, page 15,) and by prominent publicists, such as "De Clerq," "Warden," "Borel," "Miltitz," "Kluber," "Moreuil," "de Martens," &c. That he was thereupon promoted to the full consulship, and, with this higher dignity, directed to repair again to Constantinople, bearing with him an order of the government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel, with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refer:

"NAVY DEPARTMENT, *April* 13, 1852.

"SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the government of the United States and the Sublime Porte, and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, *as well as for other considerations*, that a vessel of war should convey him to his destination, from Spezzia or some other convenient port in the Mediterranean. You will, therefore, direct the commander of one of the vessels in the Mediterranean squadron to hold his ship in readiness to receive on board, at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese, and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

"You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

"I am, sir, very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Com. S. H. STRINGHAM,
"*Appointed to command the United States squadron*
"*in the Mediterranean, Boston, Mass.*"

Through a misapprehension this order was not complied with, and the memorialist remained at Syra, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and the further orders of the government till December 20, 1852, when, by a change in the administration of the State Department (on the death of Mr. Webster) he received the notice of his recall, and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, recognized as such by the State Department, was prevented by the same unwarrantable interference of the officers in the United States legation from performing the functions, and, in consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the consulate. The expense incurred by the payment of the compensation to his agent for the period in question—being one year four months and twenty-three days—amounted to the sum of $697 90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than $900 over and above all other expenses for his support and maintenance during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses, but the committee think it will be

just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of $900 for his travelling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee, therefore, report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his travelling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of $4,820 99, made up as follows: $431 49 for balance of contingent expenses; $900 for travelling expenses, and $3,489 50 for all other expenses, and as a balance of and a full indemnity for all advances, payments, and losses whatever, as declared by this bill.

IN THE HOUSE OF REPRESENTATIVES, *August* 8, 1856.

Mr. PENNINGTON, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, consular agent, and consul, from May 16, 1849, to December 20, 1852, a period of three years, seven months, and four days, as appears by the records of the State Department, (copies of which have been furnished to the committee,) and he claims by his memorial to be allowed the sum of $10,779 49 for compensation, contingent, travelling, and other expenses and losses as such vice-consul, consular agent, and consul, during that period. A part of the amount claimed is for compensation at the rate of one thousand dollars per annum, amounting in all to three thousand five hundred and ninety-five dollars and forty cents, for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as wholly inadmissible, for the reasons given at large in the case of George P. Marsh, late minister at Constantinople—a case similar in principle, in this particular, to the one now under consideration.

Another part of the claim of the memorialist is for the sum of six hundred and thirty-five dollars on account of the contingent expenses of his consulate. Upon a careful examination of this item, and after fully investigating his account by transcripts from and inquiries at the Treasury Department, the committee are satisfied there is justly due on this account the sum of four hundred and thirty-one dollars

and forty-nine cents, which should be allowed; this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed and that reported to be due arises from two facts: first, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16th of that year, the commencement of the period of his service; and, second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of one hundred and forty dollars on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for the balance alleged to be due to him on account of advances and payments made by him for the relief of refugees with American passports at Constantinople, from 1849 to 1851, both inclusive. The committee have stated this account upon the basis of the allowances actually made to him out of the foreign intercourse fund, under the directions of the State Department, and they find that, to indemnify him fully for these advances and payments, there should be paid to him the further sum of three hundred and forty-one dollars and fifty-one cents. It should be stated, however, that this result is arrived at by computing interest, according to the commercial custom at Constantinople, at the rate of 12 per cent. per annum. The advances and payments made by the memorialist were not authorized by any pre-existing law, (there being no law for the relief of distressed American citizens other than seamen;) but having been made in good faith, and afterwards sanctioned by the government, there would seem to be a manifest propriety in indemnifying the memorialist fully against loss. The committee, however, are aware of the objection existing in the minds of many to the payment of interest in the case of any claim on the government, and have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for this item, and to advise the memorialist to accept the allowance proposed in full, as stated in this bill. It appears to the satisfaction of the committee, from the examination of numerous public documents in the State Department, that on the 29th of July, 1851, while the memorialist was discharging the duties of the consulate at Constantinople, the persons then having charge there of the affairs of the legation of the United States, forcibly and without authority, violated his consular office, and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that he was thereby, and by their persistent interference with his official duties, unwarrantably driven from his office, and, for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at a rate of $500 per annum, which he paid out of his own funds, and for which he has never been reimbursed; that, after a full and protracted examination of the facts of his case, his course

was unqualifiedly approved by the Executive, (Mr. Webster being then Secretary of State;) that he was thereupon promoted to a full consulship, and, with this higher dignity, directed to repair again to Constantinople, bearing with him an order of the government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refers:

"NAVY DEPARTMENT, *April* 13, 1852.

"SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the government of the United States and the Sublime Porte, and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, *as well as for other considerations*, that a vessel of war should convey him to his destination from Spezzia, or some other convenient port in the Mediterranean. You will therefore direct the commander of one of the vessels of the Mediterranean squadron to hold his ship in readiness to receive on board at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese, and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

"You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

"I am, sir, very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Commodore S. H. STRINGHAM,
"*Appointed to command the U. S. Squadron in the Mediterranean, Boston, Mass.*"

For want of a vessel that could be spared for the purpose, or some other cause, this order was not complied with; and the memorialist remained at Syra, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and the further orders of the government, till December 20, 1852; when a change in the administration of the State Department, on the death of Mr. Webster, he was recalled, and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, was prevented by the same unwarrantable interference of the officials in the United States legation from performing the functions, and, of consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the

consulate. The expense incurred by the payment of compensation to his agent for the period in question—being one year, four months, and twenty-three days—amounted to the sum of $697 90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than $900 over and above all other expenses for his support and maintenance during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses; but the committee think it will be just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of $900 for his travelling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee, therefore, report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his travelling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of $4,820 99, made up as follows: $431 49 for balance of contingent expenses, $900 for travelling expenses, and $3,489 50 for all other expenses, and as full indemnity for all advances, payments, and losses whatever, as declared by the bill.