accordance with the usual standards established by international law. Meanwhile, the United States has along with the other Powers entered automatically into informal relations with the *de facto* provisional government pending the establishment of such ultimate government as may be adopted.

Absolutism in China has received its death blow; and the new government, dedicated to the liberty, welfare and happiness of its nationals, and committed to stand for progress and reform, will, it is hoped and believed, worthily represent the great Chinese people.

DECISION OF THE SUPREME COURT IN THE CASE OF ROCCA V. THOMPSON [1]

On February 19, 1912, the Supreme Court of the United States, in the case of *Salvatore L. Rocca* v. *George F. Thompson* (in the matter of the estate of Guiseppe Ghio, deceased), affirmed the judgment of the Supreme Court of California that the public administrator, under the law of California, is entitled to letters of administration on the estate of an Italian citizen, dying and leaving an estate in California, in preference to the Consul General of Italy.[2] The Italian consul based his claim to the right of administration upon the clause in Article XVII of the treaty of May 8, 1878, between the United States and Italy, providing that the respective consular representatives of the two contracting parties shall enjoy "all the rights, prerogatives, immunities and privileges which are or may hereafter be granted to the officers of the same grade, of the most-favored nation." By virtue of this clause the consul claimed the same rights as are enjoyed by consuls of the Argentine Republic under Article IX of the treaty between that country and the United States concluded on July 27, 1853. This article provides that, in case a citizen of either contracting party shall die intestate in the territories of the other, the consul of the nation to whom the deceased belonged "shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs." Two distinct questions were therefore before the court: First, was the Italian consul entitled by virtue of the most-favored-nation clause of the Italian treaty to the same rights as are enjoyed by the Argentine consul under the treaty of 1853? Second,

[1] Printed in Judicial Decisions, p. 535.

[2] See for decision of the Supreme Court of California, this JOURNAL, Vol. 4, No. 3, p. 727; 157 Cal. 552.

did the Argentine consul enjoy under the terms of the treaty the right claimed by the Italian consul?

The surrogate of Westchester county, New York (*In re Fattosini's Estate,* 67 N. Y. Supp. 1119, and *In re Lobrasciano's Estate,* 77 N. Y. Supp. 1040), the Appellate Division of the Supreme Court of New York (*In re Scutella's Estate,* 129 N. Y. Supp. 20), and the Supreme Court of Alabama (*Carpigiani* v. *Hall,* 55 So. Rep. 248), had decided in favor of the Italian consul in cases arising in these States. The Supreme Judicial Court of Massachusetts had taken the same view as to the right of a Russian consul under the most-favored-nation clause of the Russian treaty. (*In re Wyman,* 191 Mass. 276.) The surrogate of New York county (*In re Logiorato's Estate,* 69 N. Y. Supp. 507) and the Supreme Court of Louisiana (*Lanfear* v. *Ritchie,* 9 La. Ann. 96) had expressed a different view. In none of these cases does it appear that the right of the Italian consul to claim, by virtue of the most-favored-nation clause, any right or privilege enjoyed by the Argentine consuls under the treaty of 1853, was questioned. In the Rocca case this right was questioned by counsel for the public administrator. It was urged that Article IX of the Argentine treaty was based upon reciprocity, in which the rights enjoyed by the Argentine consuls were given for and in consideration of valuable rights granted by the Argentine Republic to consuls of the United States; that these rights thus conferred on the Argentine consuls did not pass, automatically and without an exact equivalent, to the consuls of a third Power by virtue of the most-favored-nation clause; that if the contention of the Italian consul were accepted, the right to administer the estates of aliens dying intestate in this country would, in large measure at least, in view of the many most-favored-nation clauses in this respect in our treaties with foreign Powers, pass to foreign consuls, in preference to the public administrator, resident heirs and next of kin, as generally provided for in the laws of the States, regardless of the fact whether the same privilege was or was not enjoyed by the consular officers of the United States in the countries claiming the right. The rule of construction of the most-favored-nation clause applied in the case of *Whitney* v. *Robertson* (124 U. S. 190), in respect of special concessions in import duties, based upon valuable considerations, was invoked. The Supreme Court, however, did not find it necessary to pass upon this interesting question and expressly excepted it from the decision. The court found that even the terms of the Argentine treaty, — "the right to intervene in the possession, administration and judicial

liquidation of the estate of the deceased conformably with the laws of the country," — do not give to the consul the right to original administration of the estate, to the exclusion of one authorized by local law to administer; that the sole right conferred, whether in the possession, the administration or the judicial liquidation of an estate, is that of "intervention," and this conformably with the laws of the country. Intervention presupposes a proceeding already instituted. The concluding words of the court are:

> Our conclusion then is that, if it should be conceded for this purpose that the most-favored-nation clause in the Italian treaty carries the provisions of the Argentine treaty to the consuls of the Italian Government in the respect contended for (a question unnecessary to decide in this case), yet there was no purpose in the Argentine treaty to take away from the States the right of local administration provided by their laws, upon the estates of deceased citizens of a foreign country, and to commit the same to the consuls of such foreign nation, to the exclusion of those entitled to administer as provided by the local laws of the State within which such foreigner resides and leaves property at the time of decease.

The State courts, in the decisions above cited upholding the right of the consul under the treaty to administer, regardless of State laws to the contrary, necessarily decided that the stipulation was within the treaty-making power of the President and Senate. The Supreme Court, in view of the interpretation placed upon the terms of the treaty, was not called upon to decide this question.

MEXICO

For many years Mexico was justly pointed to as a Latin-American country which, by bitter experience with revolutions, had learned to appreciate the blessings of law and order. This state of affairs was due apparently to one man, Porfirio Diaz, under whose continuous presidency from 1884 to 1911 Mexico assumed an enviable position among the family of nations. It can not be denied that Diaz governed as a dictator, and that his government was emphatically a one-man's government, but there are times when a nation needs a strong guiding hand, and one man is better than none, or a coterie of aspiring, but mediocre, politicians. General Diaz would have done well to prepare his people for self-government, and, under his guidance, to train them in its difficulties and responsibilities. His failure to do so was perhaps his greatest mistake, as it was in large measure the cause of his downfall. It is indeed true