The Treasury Department has received to date, on account of principal and interest	$6,518,034 75
The claims of societies, individuals, etc., adjusted and paid	1,994,929 18
Net unexpended balance at present in a separate account with the Treasury Department	$4,523,105 57

The expenditures of the War Department and the Navy Department, incident to the uprising of 1900 in China, are met in the ordinary course.

Deducting from the amount at present in the Treasury Department the $5,070.82, which is the unexpended balance of the amount reserved for private claims, the remainder is $4,518,034.75. As the expenses of the military and naval branches of the Government in China in 1900 were included in the regular military budget of that year, it would appear from the above that the last-mentioned sum may be disposed of by Congress as it may see fit.

CONSULAR ADMINISTRATION OF THE ESTATES OF DECEASED NATIONALS

The case of Wyman, Petitioner (191 Mass., 276), printed in Volume I, page 520, of this JOURNAL, raises an interesting, not to say difficult, question concerning the jurisdiction of consuls over the estates of those of the consul's nationals who die in the foreign state from which the consul holds his exequatur. The books lay it down that the care of such estates is one of the well-established rights or duties (depending upon the view-point) with which a consul is vested or charged. The general law has, however, left the details of the consul's powers to be determined either by the respective national customs or laws, or by international agreement. Accordingly, not only are there no uniform settled rules that govern the question among all nations, but no one nation has a uniform rule that will apply to all its own consular affairs with its fellow nations. Indeed, a reading of the treaties suggests that each two contracting powers have met the various questions involved uninfluenced by the custom of other nations and in much the way that seemed to be required by the surrounding circumstances of the particular negotiations in progress, though, as the analysis will show, and as would be expected, it is possible to make a more or less general classification of the various consular rights and duties under the treaties.

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A number of reasons readily suggest themselves for the diversity of stipulation noted, but the one that appears to control the contracting powers in the making of these conventions is the degree of political development that obtains in the respective countries. Among the elements of this development that seems to have been most closely scanned are the stability of the respective governments, the legal systems obtaining in them, the respect entertained by the people for their government and legal system, and the efficiency and integrity of the executive and of the courts. Accordingly, the widest consular powers seem usually to be found in conventions made either by two powers very low in the scale of political development or between two powers that are polar in such development.

The following rough and incomplete analysis of some American treaties will serve to show the truth of this in regard to the jurisdiction conferred upon our own consuls, and also to indicate the general range and nature of such jurisdiction over the estates of the consul's deceased nationals, which jurisdiction may indeed at times be practically unlimited.

It may be said, roughly, that under our treaties consuls may be empowered to administer upon the estates not only of intestates but of those dying testate. Moreover, they may have the right either to take charge of the estate and completely wind up its affairs, either under an appointment as administrator by a local court or by virtue of the treaty provision itself, or they may take charge of the estate temporarily, pending the appointment of an administrator by the proper local tribunal. In administering such an estate the consul may be obliged to administer it according to the law of the foreign country or according to the law of the national's native state. Under some treaties the consul is authorized to appoint an agent to exercise his powers in these matters. Again, while the consul under most treaties may perform his duties unassisted, other treaties require that he shall call to his aid one or more disinterested fellow nationals of the deceased. Indeed, some treaties provide that under proper conditions nationals not consuls may officiate in the winding up of a decedent's estate. Other treaties do not permit the consul to administer upon the estate at all and allow him only to take charge of the estate pending the proper appearance of absent and even minor heirs. Perhaps the extreme is reached in those treaties which, at the same time that they provide that not only may a consul intervene and entirely wind up the affairs of an estate, but that any national may also, in the absence of a consul, exercise the same powers, provide, further,

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that such an administration may be according to the laws of the native state of the deceased.

The following are the usual provisions concerning these matters that are to be found in the American treaties:

First. — As to those treaties providing for jurisdiction over the estates of both testates and intestates:

The consular convention with Austria-Hungary, 1870, article 16, provides that —

> In case of the death of a citizen of the United States in the Austrian Hungarian Monarchy, or of a citizen of the Austrian Hungarian Monarchy in the United States, without having any known heirs or testamentary executors by him appointed, the competent local authorities shall inform the Consuls or Consular Agents of the State to which the deceased belonged, of the circumstance, in order that the necessary information may be immediately forwarded to the parties interested.[1]

It is evident from this article, (1) *semble,* that the consular jurisdiction attaches where the individual dies without a will; (2) that the jurisdiction attaches to those dying without any known heirs; (3) that the jurisdiction attaches to those dying testate where the will names no executors; (4) that the consular jurisdiction in such cases is confined merely to informing the parties interested, the consul seeming to have no part in the administration of the estate itself; (5) that under this convention the duty of the local authorities toward the estate of the deceased foreigner is fulfilled when it notifies the consul of the death of his national.

Like provisions as to (1), (2), (3), (4), above, are to be found in the conventions with Belgium,[2] Germany,[3] Great Britain,[4] Greece,[5] Guatemala,[6] Italy,[7] Netherlands,[8] Roumania,[9] Servia,[10] and Spain.[11]

[1] Treaties in Force, 1904, 47.

[2] Consular convention, 1880, art. 15, Treaties in Force, 1904, 75, 79.

[3] Consular convention, 1871, art. 10, Treaties in Force, 1904, 279, 282.

[4] Convention as to tenure and disposition of real and personal property, 1899, art. 3, Treaties in Force, 1904, 375, 376.

[5] Consular convention, 1902, art. 11, Treaties in Force, 1904, 399, 402.

[6] Convention relating to tenure and disposition of real and personal property, 1901, art. 3, Treaties in Force, 1904, 406, 407.

[7] Consular convention, 1878, art. 16, Treaties in Force, 1904, 457, 461.

[8] Consular convention, 1878, art. 15, Treaties in Force, 1904, 579, 583.

[9] Consular convention, 1881, art. 15, Treaties in Force, 1904, 652, 656.

[10] Consular convention, 1881, art. 11, Treaties in Force, 1904, 694, 697.

[11] Treaty of friendship and general relations, 1902, art. 26, Treaties in Force, 1904, 732, 740.

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In the treaty with Germany the language of the entire section is identical except that in place of the words "consul or consular agents" the German treaty reads "nearest consular officer." The Netherlands convention is worded as is the German treaty, except that the local authorities are obliged to report to the nearest consular officer not only those cases in which the deceased national has no known heirs or testamentary executors by him appointed, but also "in case of minority of the heirs, there being no guardian."

It will be noted that the consular right under such a provision as that in the Austro-Hungarian convention appears to be only the right to be notified by the local authority of the death of his national, and his duty to be merely that of forwarding information to those of his nationals who are concerned.

The treaties with Belgium, Germany, Great Britain, Guatemala, Netherlands, Roumania, Servia, and Spain add to the rights conferred by the provision that appears in the Austro-Hungarian convention the following clause: "Consuls general, consuls, vice consuls, and consular agents shall have the right to appear, personally or by delegate, in all proceedings in behalf of the absent or minor heirs, or creditors until they are duly represented." This, doubtless, would be interpreted to give not only to the consul but to his agent or delegate a limited power of administration should such become necessary in the course of the exercise of the authorized powers. In the German treaty the words "consuls-general, consuls, vice-consuls, and consular agents" of the Belgian treaty (with which latter treaty agrees the language of the conventions with Roumania and Servia) are changed to the "said consular officer," with which latter agrees the language of the treaties with Great Britain, Guatemala, and the Netherlands. The treaty with Colombia [12] goes a step farther in one particular and is more restrictive in another: First, it provides that "They [consuls] may take possession, make inventories, appoint appraisers to estimate the value of articles and proceed to the sale of the moveable property of individuals of their nation;" but, secondly, they may do this only where there is no testamentary executor "or heirs at law" (the qualifying word *known* of the other convention is here omitted).

Secondly. — Other conventions provide that the consular jurisdiction shall attach only in those cases in which the consul's national dies intes-

[12] Consular convention, 1850, art. 3, par. 10, Treaties in Force, 1904, 206, 208.

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tate. In this class may be placed the conventions with Costa Rica,[13] Morocco,[14] and Paraguay.[15] Still further conventions confer upon the consuls jurisdiction over the estates of deceased persons in all cases whatsoever. Of such are the Persian [16] and Tripolitan.[17]

The consular jurisdiction in countries allowing consular administration where no will exists is various. The treaty with the Argentine Republic [18] provides that " If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-general or Consul of the nation to which the deceased belonged, or the representative of such Consul-general or Consul, in his absence, 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." Our courts have interpreted this to mean that under it consuls in preference to local public administrators may be appointed administrators of the estates of deceased nationals.[19]

The treaties with Costa Rica, Honduras,[20] and Paraguay provide that the proper consular officer or, in his absence, his representative may nominate curators, to " take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, giving proper notice of such nomination to the authorities of the country." [21] The treaty with Paraguay

[13] Treaty of friendship, commerce, and navigation, 1851, art. 8, par. 2, Treaties in Force, 1904, 215, 218.

[14] Treaty of peace and friendship, 1836, art. 22, Treaties in Force, 1904, 553, 557.

[15] Treaty of friendship, commerce, and navigation, art. 10, par. 2, Treaties in Force, 1904, 617, 620.

[16] Treaty of friendship and commerce, 1856, art. 6, Treaties in Force, 1904, 622, 624.

[17] Treaty of peace and amity, 1805, art. 20, Treaties in Force, 1904, 784, 788; of a similar import were the provisions of the Tunisian treaty of amity, commerce, and navigation, 1797, art. 19, Treaties in Force, 1904, 790, 793, which was abrogated by the treaty between the United States and France, 1904. [Treaties in Force, 1904, 949.]

[18] Treaty of friendship, commerce, and navigation, 1853, art. 9, Treaties in Force, 1904, 24, 27.

[19] See case of Wyman, Petitioner, 191 Mass. 276; In re Fattosini, 32 Miscellaneous (N. Y.) 18.

[20] Treaty of friendship, commerce, and navigation, 1864, art. 8, Treaties in Force, 1904, 439, 442.

[21] Treaty with Costa Rica, *supra*.

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permits, further, that the proper consular officer or his agent shall take charge personally of the property "for the benefit of the lawful heirs and the creditors, until an executor or administrator be named" by the appropriate consular officer.

As has been already indicated above, the consular officer or his representative may not in all cases act by himself, but is obliged under certain treaties to associate with him other disinterested persons. The treaty with Colombia contains the following stipulation:

> In all such proceedings, the Consul shall act in conjunction with two merchants, chosen by himself, for drawing up the said papers or delivering the property or the produce of its sales, observing the laws of his country and the orders which he may receive from his own Government; but Consuls shall not discharge these functions in those states whose peculiar legislation may not allow it. Whensoever there is no Consul in the place where death occurs, the local authorities shall take all the precautions in their power to secure the property of the deceased.

Again, as has already appeared, the treaties in some cases provide that the consul may appoint an agent to perform his various administrative functions upon the estates of deceased nationals. This is the effect of the treaty with Paraguay, which provides that "the Consul General, Consul or Vice Consul of the nation to which the deceased may belong, or, in his absence, the Representative of such Consul General, Consul or Vice Consul, shall, so far as the laws of each country will permit, take charge, etc." Of similar import are the treaties with Argentina, Belgium, Costa Rica, Germany, Great Britain, Guatemala, Honduras, Netherlands, Roumania, Servia, and Spain, the treaty with the latter granting to consuls the right of "appearing either personally or by delegate in their behalf in all proceedings relating to the settlement of their estate."

Not a few of our treaties provide that the consul shall, in winding up the estate, administer so far as may be the laws of his own country. The treaty with Colombia provides that "In all such proceedings, the consul shall act * * * observing the laws of his country and the orders which he may receive from his own government." The Persian treaty provides that the consul "may dispose of them [the effects of the deceased] in accordance with the laws of his country." The treaty with Spain permits consular officers, "so far as compatible with local laws, to perform all the duties prescribed by the laws of their country and the instructions and regulations of their own Government for the

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safeguarding of the property and the settlement of the estate of their deceased countrymen," until the heirs or legal representatives themselves appear.

Only the treaties with Morocco, Tripoli, and Tunis (now abrogated) have provided that the effects of deceased nationals should be taken in charge, will or no will, by other nationals, until the one entitled to the property should appear.

However, enough has perhaps been said to suggest that these various conventions will well repay a more detailed study.

THE INTEGRITY OF NORWAY GUARANTEED

The famous little maxim, " In union there is strength," carries with it the necessary implication that " In disunion there is weakness," and from the earliest day to the present it is the practice of the strong to separate probable opponents in order to crush each in turn. The separation of Norway and Sweden caused no little head-shaking among political prophets, for it was feared that Sweden and Norway might either yield in turn to Russia or feel the heavy hand of Russia.

The policy of Europe has been to prevent by diplomatic and other methods Russia's entry into the innermost and western chamber. The Russian-Japanese war showed the determination of Japan not to permit by peaceable means the further inroad of Russia into that portion of Asia nearest Japan. Opposed in most ways, the Far East and the Extreme West are at one in their desire to prevent the Russian from putting to sea. After centuries of effort Russia finds itself in possession of the Black Sea, but is not permitted unrestricted access to the Ægean. And Europe shows as little desire to see Russia encroach upon the Baltic. Hence the recent treaty of November 2, 1907, by which Norway agrees not to cede any of its territory, and in exchange for this agreement the integrity of Norway is guaranteed whenever threatened.

The reason for this new convention lies in the fact that the separation of Norway from Sweden seriously affects the treaty of November 21, 1855, between the united kingdoms of Norway and Sweden, France, and Great Britain, guaranteeing the integrity of the Scandinavian Peninsula.

" Desiring to prevent every complication of a nature to disturb the European equilibrium " — that is to say, to prevent Russia from acquiring a foothold in Norway and Sweden, and thus to confine it to the East of the Baltic — His Majesty the King of Sweden and Norway bound

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