President exclusively and absolutely—which is a precedent set by President Cleveland,—nothing remains to do; for in that case Panama is not only an independent nation, but it is one whose sovereignty—if Secretary Hay is right in his theory as to treaty covenants "running with the land" — we are bound by the old Granada treaty to defend. No matter what the American people may wish, no matter what Congress might have been disposed to do, if the President's irresponsible recognition of this new nation is conclusive, then nothing remains for Congress to do but to attend to details. The President himself will have done the vital thing without so much as "By your leave, Messrs. Congressmen."

—

It is upon this basis that Mr. Roosevelt virtually demands of Congress that it fill in the details of the Panama policy which he of his own unbridled will has inaugurated. He has virtually made himself an absolute monarch as to this most important matter. For does he not say:

> The only question now before us is that of the ratification of the treaty. For it is to be remembered that a failure to ratify the treaty will not undo what has been done, will not restore Panama to Colombia, and will not alter our obligation to keep the transit open across the Isthmus, and to prevent any outside power from menacing this transit.

And does he not—

> repeat that the question actually before this government is not that of the recognition of Panama as an independent republic. That is already an accomplished fact. The question, and the only question, is whether or not we shall build an Isthmian canal.

Take those two admonitions out of his special message, and nothing but a plea for Panama and the Panama canal route remains. But there is power in those admonitions. They are Rooseveltian for Tweed's less polished but not more defiant phrase.

—

How did Panama's independence come to be "an accomplished fact."? Simply through the favor of Mr. Roosevelt. It was by his orders, as his message shows, that Commander Hubbard, U. S. N., "prevented either party from attacking the other;" that is, that prevented Colombia from coercing a seceding State as we coerced South Carolina in the 60's. It was by his recognition of the seceding State, regardless of Congress, that this State became a sovereign Power which we are bound by treaty (according to the Hay theory that "the covenant runs with the land") to protect from the parent Power. So Mr. Roosevelt virtually says to the Senate: You might as well ratify the treaty, for I have already done everything else; and whether you like it or not, "What are you going to do about it?"

—

Obviously only one of two things can be done. The President's constitutional authority to put Congress into such a hole can be conceded, in which case a treaty with Panama must be confirmed whether the confirming power likes it or not. The only alternative is to attack this evil at the roots, by contesting the authority of the President to force his own will upon the country in a matter involving, as the recognition of new nations does, far-reaching questions of treaty obligations, of national honor, and even of war. If the President's recognition of Panama is constitutionally conclusive he has virtually usurped the war-making authority; for in that case his recognition imposes upon Congress the necessity of making war upon Colombia if Colombia attempts to hold Panama to its repudiated allegiance.

Gov. Garvin's inaugural message to the legislature of Rhode Island is a model of terseness, literary form and statesmanship. Among his recommendations is an amendment to the State constitution empowering 5,000 citizens to propose constitutional amendments for referendum adoption. He reminds the legislature that the passage of this amendment was solicited two years ago by 28 organizations—labor, reform and religious — representing many thousands of citizens, and yet the petitions were ignored. His rebuke of the last legislature for refusing to act upon the bribery corruption, to which he had called attention, is stinging, notwithstanding its mild terms and calm tone. Another of his especially valuable recommendations is the Purdy plan of apportioning State taxes — namely, in proportion to the actual expenditures of the respective towns for local purposes. He takes occasion also to condemn the growing practice in legislative bodies of burying important minority measures in committee, a procedure which he truly describes as "a maltreatment of representatives and their constituents, and unfair to the whole people of the State." But best of all is the spirit in which Gov. Garvin asks the Rhode Island legislature to approach the performance of its duties. "In this, the 258th year of the General Assemblies of Rhode Island," he writes, "may we be able to say of every act performed, It is just."

The lower courts of Oregon, which held that the initiative and referendum amendment to the State constitution had not been properly adopted and was therefore invalid (p. 215) have been overruled by the highest court of the State. This decision was rendered on the 21st of last month. The case arose over an act of the legislature affecting the city of Portland. To forestall a referendum petition, the legislature declared the act to be emergent, which, by the terms of the referendum amendment, enabled the legislature to give it immediate effect. It was a legislative trick for evading referendum possibilities. Upon coming into the courts the law was defended on two general grounds. It was argued, first, that the referendum amendment was invalid. This point was overruled by the Supreme Court. Secondly, it was argued that if the amendment were valid, the emergency declaration by the legislature could not be inquired into by

Digitized by Google

the judiciary, and this point the Supreme Court sustained.

When the case came up to the Supreme Court the validity of the referendum amendment was contested on two grounds: First, that the legislature had submitted it while another proposed amendment was pending, which the State constitution forbids; and, secondly, that it is in conflict with the provisions of the Federal Constitution which guarantee to every State a republican form of government. Both contentions were rejected by the court. As to the first, the court held that the obstructing amendment had lapsed from legislative inaction, and that therefore the way was clear for the referendum amendment. The opinion of the court on the second contention is of such widespread interest and importance that it will bear liberal quotation:

Nor do we think the amendment void because in conflict with section 4, article 4, of the Constitution of the United States, guaranteeing to every State a republican form of government. The purpose of this provision of the Constitution is to protect the people of the several States against aristocratic and monarchical invasions, and against insurrections and domestic violence, and to prevent them from abolishing a republican form of government. Cooley, Const. Lim. (7 ed.) 45; 2 Story, Const. (5 ed.) p. 1815. But it does not forbid them from amending or changing their constitution in any way they may see fit, so long as none of these results is accomplished. No particular style of government is designated in the Constitution as republican, nor is the exact form in any way prescribed. A republican form of government is a government administered by representatives chosen or appointed by the people or by their authority. Mr. Madison says it is "a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior." The Federalist, 302. And, in discussing the section of the Constitution of the United States now under consideration, he says: "But the authority extends no further than to a guaranty of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the Federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the Federal guaranty for the latter. The only restriction imposed on them is that they shall not exchange republican for anti-republican constitutions."—Id. 342.

Now, the initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place. The representative character of government still remains. The people have simply reserved to themselves a larger share of legislative power, but they have not overthrown the republican form of government, or substituted another in its place. The government is still divided into the legislative, executive and judicial departments, the duties of which are discharged by representatives selected by the people. Under this amendment, it is true, the people may exercise a legislative power, and may, in effect, vote or defeat bills passed and approved by the legislature and the Governor; but the legislative and executive departments are not destroyed, nor are their powers or authority materially curtailed. Laws proposed and enacted by the people under the initiative clause of the amendment are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the legislature at will. The veto power of the governor is not abridged in any way, except as to such laws as the legislature may refer to the people. The provisions of the amendment that "the veto power of the governor shall not extend to measures referred to the people" must necessarily be confined to the measures which the legislature may refer, and cannot apply to acts upon which the referendum may be invoked by petition. The governor is required under the constitution to exercise his veto power, if at all, within five days after the act shall have been presented to him, unless the general adjournment of the legislature shall prevent its return within that time, in which case he shall exercise his right within five days after the adjournment. He must necessarily act, therefore, before the time expires within which a referendum by petition on any act of the legislature may be invoked, and before it can be known whether it will be invoked or not. Unless, therefore, he has a right to veto any act submitted to him, except such as the legislature may specially refer to the people, one of the safeguards against hasty or ill-advised legislation which is everywhere regarded as essential is removed—a result manifestly not contemplated by the amendment.

The fly in this ointment is the sinister intimation of the Oregon court that democratic government, in so far as it may be direct and not representave, or may do away with fixed constitutional inhibitions, would be as obnoxious to the clause of the Federal Constitution regarding republican forms as are monarchies. It would truly be a surprising discovery should we find that the Federal Constitution protects democratic forms of government when not representative. But not more surprising, perhaps, than other recent discoveries in American constitutional law.

An analysis of the two recent British by-elections—those at Dulwich and Lewisham (boroughs of London), which have been widely hailed as Chamberlain victories, indicates that they are the kind of victories that are disastrous to the victors. At the last previous election (1895) in the former borough, the Tory vote was 5,218, while on December 15 last it was 5,819—a gain of 11½ per cent. But the Liberal vote grew from 2,176 to 4,382, a gain of 101 per cent. At Lewisham the disproportion is not so great, but even there it is large. The Tory vote in 1892 (the last previous election) was 5,309; on December 15 it was 7,709, a gain of 45 1-5 per cent. But the Liberal vote increased from 2,895 to 5,679—a gain of 97 per cent. In spite of this the London Daily Mail (which has finally thrown off the mask) jubilates over these two elections as "protection" victories. If the general election should show corresponding changes in all counties and boroughs, Chamberlain would be badly beaten.

Protectionist logic is of the whirligig order. Don't we all remember how the free trade gold of Great Britain used to flood our shores in the interest of free trade politics? So said protectionists. It is the other way now in England. Protectionists are claiming that British free trade is being encouraged by protection gold from Germany. "Now you see it and now you don't," is characteristic

Digitized by Google