RECENT CASES.

BANKS AND BANKING.—STATE SAVINGS DEPOSITORS' BANK OF DETROIT V. FOSTER, 76 N. W. 499 (Mich.).—One State bank allowed another to draw on it up to a certain sum. In return it took certificates of deposit for that sum. *Held*, Montgomery dissenting, that the first bank was not entitled to share in the proceeds of an assessment of shareholders for the benefit of "depositors."

BANKS—SALE OF STOCK.—MERCHANT'S NAT. BANK OF ROME V. FOUCHE, 31 S. E. 87 (Ga.).—The capital of a national bank becoming impaired, an assessment of 25 per cent. was levied in accordance with R. S. 5205 to make up the deficiency. One of the shareholders refused to pay and his stock was in accordance with the Statute put up at auction. The highest bid was less than the amount of the call and the bank refused to deliver the shares. *Held*, in a suit by the bidder to compel the delivery that the law makes the amount due by each delinquent stockholder under an assessment on his stock an upset price which it must bring when sold under the provisions of the Statute. This construction of the Statute follows that of the Comptroller of the Currency under the present and last preceding administration.

BILLS—NOTES—PARTNERSHIP OR INDIVIDUAL LIABILITY.—MEYER V. HEGLER, 54 Pac. (Cal.) 271.—One J., of the firm of H. and J., executed to plaintiff a note in renewal of a former note, in the same form, but the name of the maker and the firm's endorsement were written by J. The original note was taken by plaintiff for a check given by him to J. and used in paying the firm's debts, it having been represented to plaintiff that the money was for the use of the firm. The loan actually was to pay J.'s share of the indebtedness, but plaintiff was not told this. *Held*, three judges dissenting, that nevertheless it was not a loan to the firm, so as to make it liable on the note otherwise than as an endorser.

CONTRACTS—PERFORMANCE—RESCISSION—THOMAS V. GAGE, 51 N. E. R. (N. Y.) 307.—A contract for a monument on defendant's cemetery lot, stipulated that defendant should "have privilege of inspecting said monument when finished, and if not satisfactory it shall be made so without additional expense." It further provided that defendant should have right to inspect model when made in clay, which was also to be to his satisfaction. The clay model met with approval of defendant, but when produced in plaster defendant found fault and expressed his opinion that it would be impossible for the contractors to suit him, and declared the contract rescinded. In an action for damages for breach of said contract, the defence alleged, failure to perform, and a verdict was directed for the defendant, although the plaintiff produced proof of damages. *Held*, that such direction was erroneous, as the contract was ratified, so far as the work had progressed, by the opportunity given defendant to examine the model in clay. On his being satisfied therewith, his rights to interfere with the further performance ceased.

CARRIERS—COMPULSORY TRANSFERS—AUTHORITY OF CITY—CITY OF ATLANTA V. OLD COLONY FRUIT CO. ET AL, 88 Fed. Rep. 859.—*Held*, under the

constitution of the State of Georgia, that a city has no authority to impose a compulsory system of passenger transfer upon a street railway company, 83 Fed. affirmed.

CARRIERS.—INJURY TO PASSENGERS.—ESCORT.—JOHNSON v. SOUTHERN RY. Co., 31 S. E. 212. (S. C.).—"A female holding a ticket entitling her to transportation as a passenger on a railroad train, if feeble, or incumbered with heavy baggage or other impediments, is entitled to have assistance in boarding the train; and if the same is not afforded her by the railroad officials or servants, her husband or other escort may render her the necessary assistance, and is entitled to a reasonable time to leave the train before it is put in motion. Where a husband was rendering this assistance, but had not time to leave the train, it only stopping half a minute because it was late, and where the conductor had notice after the train had started that plaintiff wished to leave the train, the plaintiff was allowed to recover for injuries incurred while leaving the train.

CONSTITUTIONAL LAW.—EQUAL PROTECTION OF THE LAW.—PLUMBERS' LICENSES.—STATE EX REL. WINKLER v. BENZENBERGER, ET AL. COMMISSIONERS OF PUBLIC WORKS.—A law requiring that master and journeymen plumbers must be examined and licensed before they can engage in the business of plumbing, provided that the examining or licensing of one member of a firm, or the manager of a corporation doing a plumbing business, should satisfy the requirements of the Statute. *Held*, that the law was unconstitutional as denying to plumbers doing business alone the equal protection of the law. For a recent Ohio case to the same effect see YALE LAW JOURNAL, vol. VIII, page 56.

CONSTITUTIONAL LAW—INTERFERENCE WITH INTERSTATE COMMERCE—CONVICTS.—PEOPLE v. HAWKINS, 51 N. E. Rep. (N. Y.) 257. Laws 1896, C. 931, make it a misdemeanor to sell or expose for sale goods made in any prison, without labeling them "Convict made," with the year and name of prison. *Held*, that this Statute as applied to articles made without the State, is void, as violating Const. U. S., Art. 1, § 8, subd. 3, empowering Congress to regulate commerce among the States.

Parker, C. J., and Bartlett and Haight J. J., dissented on the ground that such Statute was within the police power of the State to promote public welfare and prosperity. *Cf.* YALE LAW JOURNAL, 44,

CONSTITUTIONAL LAW—INTERNAL REVENUE ACT OF 1898—SALES ON BOARD OF TRADE—NICOLL v. AMES, 89 Fed. Rep. 144—Schedule A, ¶ 2 of the Internal Revenue Act of 1898, imposes a tax upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, and requires, upon the making of any such sales or agreement, the delivery by the seller to the buyer of a written bill or memorandum, to which shall be affixed stamps in value equal to the amount of the tax. *Held*, that such an act fell within Section 8, Art. I, of the Constitution of the United States, giving Congress power "to lay and collect taxes, duties, imports, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports and excises shall be uniform throughout the United States." But such a tax is not in violation of the rule of uniformity, for, it being limited to sales made at an exchange, board of trade, or similar place, is in effect a tax upon the privilege of selling at such places, graduated according to the use made of such privilege, and not upon either the document required, the product sold, or the occupation, aside from such privileges.

CONSTITUTIONAL LAW—INTERPRETATION OF STATUTES—LEGISLATIVE INTENT—PUBLIC OFFICERS—PEOPLE EX REL MITCHELL V. STURGES, 51 N. E. Rep. (N. Y.) 295.—Laws 1895 c. 247, amending the Charter of Saratoga Springs, requires the president to be appointed by trustees, instead of elected by the village * * * provides that the term of office of the incumbent should be vacant on the appointment of another by the trustees. *Held*, Parker, C. J., and O'Brien, J., dissenting that latter clause, providing that the term of incumbent should be vacant on the appointment of another by the trustees, does not invalidate act, and further, that there is nothing to show that the Legislature intended to affect the president rather than his office, thereby rendering it repugnant to a constitutional provision forbidding the deprivation of a right or privilege "unless by the law of the land."

CONSTITUTIONAL LAW—JURISDICTION—REGULATION OF HOURS OF WORK—UNITED STATES V. SAN FRANCISCO BRIDGE CO., 88 Fed. Rep. 891.—Congress has power to regulate the hours of labor which may be required or permitted on public buildings or works of the United States and the federal courts have jurisdiction to punish violators of such regulations, though the buildings or works where committed may be situated on land within the political jurisdiction of a State. *Cf. Holden v. Hardy*, YALE LAW JOURNAL, vol. 7, 316.

CORPORATIONS—FOREIGN—LIABILTIES OF STOCKHOLDERS—EXCLUSIVENESS OF REMEDY—STODDARD V. LUM ET AL. 53 N. Y. Supp. 607. Starr & C. Ann. St. Ill. c. 32 par. 8, provides that a stockholder's liability for unpaid stock shall be enforced "in the manner herein provided." Further, if a corporation shall cease doing business, leaving debts, suits in equity may be brought against all stockholders by joining the corporation; that each stockholder shall pay his pro rata share of such debts to the extent of the unpaid portion of his stock, after exhausting the assets of the corporation * * * and that courts of equity shall have power to close up the corporate business, and to appoint a receiver who shall be a resident of Illinois. * * * who shall have authority to sue in all Courts and do all things necessary in closing up the corporation's affairs. Under these sections it was *held* that the remedy so provided is exclusive, and therefore an assignee for creditors of a corporation cannot enforce the stockholders liabilities. It was further held that such remedy can properly be enforced in the Courts of Illinois alone, and that therefore the Courts of New York will not take jurisdiction. Green and Follett, J. J., dissenting.

CRIMINAL LAW—SECOND OFFENCE EVIDENCE—DUE PROCESS OF LAW—PRESUMPTION OF INNOCENCE.—PEOPLE V. SICKLES, 51 N. E. Rep. (N. Y.) 288. The defendant was indicted for the crime of robbery in the first degree, as a second offence, Penal Code, § 688, provides for an increased penalty for the commission of a felony after a former conviction. *Held*, that proof of such former conviction upon the trial, and before conviction of the second offence, is not objectionable as not being due process of law, or as depriving the defendant of the benefit of the presumption of innocence. Bartlett, J., dissented, on the ground that such proof of former conviction does not become material until after the second conviction, and thus only for the purpose of enabling trial judge to impose the proper term of imprisonment. He further held that to allow such proof was to convict without due process of law.

DAMAGES—INJURIES RESULTING IN DEATH—RIGHT OF PARENT TO RECOVER—AMOS V. ATLANTA Ry. Co., 31 S. E. 42 (Ga.).—In Georgia under the principles of the common law a parent can recover the loss of services of a child

because of a tortious injury to it by another, even though the injury results in death, and though at the time the tort was commited the child was serving sentence in the county chain gang.

ELECTIONS—BALLOT—MANDAMUS—STATE EX REL RUNGE V. ANDERSON CITY CLERK, 76 N. W. 482 (Wis.)—A ballot law provided that if the same man were nominated by two parties his name should be printed on the ticket under the designation of the party which first nominated him. It also provided that "the several regular party tickets * * * shall each be printed in one column under the appropriate party designation. The Democratic party having made nominations, the Populistic party nominated all the Democratic candidates. *Held*, that mandamus would not lie to compel the proper official to place the names of the candidates on the ticket a second time as nominees of the Populistic party. Winslow, J., dissenting, on the ground that the law is an unwarrantable interference with the freedom of election and hence void.

ENLISTMENT OF MINOR—RIGHT TO DISCHARGE—IN RE FERRONE, 89 Fed. Rep. 150.—A minor, whose parents were non-resident aliens, enlisted in the service of the United States, and at the time of his enlistment had no guardian. *Held*, that, although a guardian was since appointed, the provision in Rev. St., § 1117, requiring the consent of the parents or guardian of a minor to his enlistment in the military service, etc., did not authorize the court to order his discharge. *See* YALE LAW JOURNAL, vol. 8, p. 58, *Solomon, Sheriff*, v. *Davenport*.

ESTOPPEL—REPAIRING VESSEL—STATEMENT AS TO COST.—THE M. F. PARKER 88 FED. REP. 853.—One, desiring to buy a vessel, asked a ship carpenter for an estimate of what he would charge for putting her in thorough repair, and was told the cost would be $150. On the faith of this statement he bought the vessel for $315. When the repairs were completed the ship carpenter presented a bill for $300. *Held*, that while there was no express contract that the work should be done for $150, yet under the circumstances the repairer should be held estopped to claim more than the original estimate.

PROCEDURE—REMARKS TO JURY—CONSCIENCE—MILLER ET AL. V. MILLER ET AL., 41 ATL. (PENN., 277.—A jury wished to be discharged, on the ground that it could not agree to a verdict, whereupon the judge charged them: "It is sometimes said by parties that they can't conscientiously agree to a verdict. There is no conscience in the case. It is simply a question of judgment." *Held*, error, in that it eliminated cónscience from the consideration of the verdict.

PROPERTY GIFTS—DELIVERY—WHAT CONSTITUTES.—LIEBE V. BALTMANN, 54 PAC., Ore. 179.—One about to commit suicide indorsed securities and sealed them in an envelope directed to a friend, with whom he was living, and laid it on a table by his side in his own room, leaving a note to the friend containing directions as to the delivery of another letter and inclosure. The two slept in opposite parts of the house, and the friend reached the suicide shortly after the shooting, but the latter became unconscious, and died without making further reference, to the gift. *Held*, that there was no delivery, even though the donee had picked up the envelope during the lifetime of the deceased, when he delivered to another, and it was not opened until after the death.

PROPERTY—OFFICE—POLITICAL PARTIES—INJUNCTION.—KEARNS ET AL. V. HAWLEY ET AL., 41 Alt. Rep. (Penn.) 273.—The members of a county committee of a political party acquire no property right in their office, because of