DECISIONS IN COMMERCIAL LAW.

BALTIMORE AND OHIO RAILROAD COMPANY v. BAUGH.—The engineer and fireman of a locomotive running alone and without any train attached are fellow-servants of the railroad company, so as to preclude the latter from recovering from the company injuries caused by the negligence of the former. The question of the responsibility of a railroad corporation for injuries caused to or by its servants is one of general law, in regard to which the Supreme Court of the United States is not bound to follow the decisions of the State court. A corporation only acts through agents; the negligence of its managing agent is the negligence of the corporation. One who is placed in charge of a separate branch of the service, who alone superintends and has control of it, is as to it, in the place of the master. A rule of a railroad company, that where a train or engine is run without a conductor, the engineer shall be regarded as the conductor, does not change the general law as to the liability of the company for injuries caused by his negligence to an employee. Where an employee, equally with the engineer, knew the peril, and with this knowledge, voluntarily rode with the engineer on his engine, he assumed the risk.

NATIONAL TELEPHONE COMPANY v. BAKER.—A man who creates on his land an electric current for his own purposes and discharges it into the earth beyond his control, is as responsible for damage caused by that current, as he would have been if instead he had discharged a stream of water. Where the act is done in pursuance of a provisional order of the Board of Trade, it is protected to the same extent as other nuisances under statutory authority. A tramway company acting under a provisional order and using the best known system of electrical traction, caused electrical disturbance in the wires of a telephone company acting under license from the Postmaster-General. Kekewich, J., held that the tramway company were protected from liability for nuisance.

MOSES v. NATIONAL BANK OF LAWRENCE COUNTY.—Every negotiable promissory note, even if not purporting to be "for value received," imports a consideration, and the indorsement of such a note is itself *prima facie* evidence of having been made for value. A promissory note made payable to the maker's own order, first takes effect as a contract upon its indorsement and delivery by the maker to the first taker. A guaranty of the payment of a negotiable promissory note written by a third person upon the note before its delivery, requires no other consideration to support it, and need express none other (even where law requires the consideration of the guaranty to be expressed in writing) than the consideration which the note upon its face implies to have passed between the original parties. But a guaranty written upon a promissory note after the note has been delivered and taken effect, as a contract, requires a distinct consideration to support it; and if such a guaranty does not express any consideration, it is void where the statute of frauds requires the consideration to be expressed in writing. This is a judgment of the Supreme Court of the United States.

In Re DEXTER'S APPLICATION.—D., a British cigar manufacturer, applied to register as a new mark for manufactured tobacco, a label containing the words "Star of Hope," and a marine picture with a small six-pointed star in the sky. The application was opposed by W. as the registered proprietor of two marks for the same class of goods. The first mark was registered as an old mark in 1877, and consisted of an eight-pointed star. This mark was chiefly used upon packet tobacco, but from 1870 to 1884 cigars were manufactured for W. by an English firm, upon which the mark was used as part of a label containing the name of an imaginary Spanish firm, and the word "Habana." W.'s trade in cigars was comparatively small and subsidiary to his trade in packet tobacco. The second mark was registered in 1886 as a new mark, and consisted of a pictorial label, and by the side of the label an eight-pointed star, to which the words "trade mark" were attached. W.'s goods were frequently ordered by the public as "star" goods. D. moved to expunge W.'s marks: Wright, J., held first, that W. had no exclusive right to the name or design of a star; that apart from such claim, D.'s mark was not calculated to deceive, and that D. was entitled to registration; and also, that W.'s first mark was distinctive, and was not invalidated by the mode of user; first, because the misrepresentation accompanying the use of the mark upon cigars was not such as to destroy its distinctive character; secondly, because there had been no general or very extensive user of the mark upon cigars; and also, that W.'s second mark was misleading by reason of the position of the words "trade mark," and ought to be expunged, except as to the star, subject to an application being made by W. to amend.

BARCLAY v. PEARSON.—The defendant, who was the proprietor of a newspaper, carried on in connection therewith a competition under the following conditions: He published in his paper a paragraph, omitting the last word. In the same paper he printed a coupon, with a direction that persons wishing to enter the competition must cut out the coupon, fill out the word missing from the paragraph, together with their names and addresses, and send it with a postal order for one shilling to the office of the paper. It was further stated in the paper that the missing word was in the hands of a chartered accountant, enclosed in a sealed envelope; that his statement with regard to it would appear, with the result of the competition, in a subsequent issue of the paper; and that the whole of the money received in entrance fees would be divided equally amongst those competitors who filled in the missing word correctly. In an action by the successful competitors against the defendant and the unsuccessful competitors, seeking administration of the trusts of the money in the hands of the defendant for the purposes of the competition and distribution among the persons entitled thereto, Stirling, J., held that the competition constituted a lottery within the meaning of the Lottery Act and was illegal; that so far as the money in the hands of the defendant was impressed with any trust, it was one which had arisen out of an illegal transaction and the Court would not render any assistance in its administration; and that, notwithstanding the illegality of the competition, the competitors had a legal right enforcible by action at law, to the return of their contributions, at all events provided that they gave notice of their claim before the money had been distributed by the defendant.